DEPARTMENT OF EDUCATION

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[Docket ID ED–2010–OPE–0012]

Program Integrity: Gainful Employment—Debt Measures

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

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

DATES: These regulations are effective July 1, 2012.

FOR FURTHER INFORMATION CONTACT: John Kolotos or Fred Sellers for general information only. *Telephone:* (202) 502–7805. Any other questions or requests for information regarding these final regulations must be submitted to: *GE-Questions@ed.gov.*

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

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SUPPLEMENTARY INFORMATION:

Executive Summary

Institutions providing gainful employment programs offer important opportunities to Americans seeking to expand their skills and earn postsecondary degrees and certificates. For-profit institutions offer many quality programs, but in some instances, these programs leave large numbers of students with unaffordable debts and poor employment prospects.

The Department of Education has a particularly strong interest in ensuring that institutions that are heavily reliant on Federal funding promote student academic and career opportunities. These final gainful employment regulations are designed to (1) provide institutions with better metrics and more time to assess their program outcomes and thereby a greater opportunity to improve the performance of their gainful employment programs before those programs lose eligibility for Federal student aid funds, and (2) identify accurately the worst performing gainful employment programs. At the same time, the final regulations require that these federally funded programs meet minimal standards because students and taxpayers have too much at stake to allow otherwise.

The Higher Education Act of 1965, as amended (HEA), has long provided for the extension of financial aid to students attending postsecondary programs that "lead to gainful employment in a recognized occupation," including nearly all programs at for-profit institutions and certificate programs at public and non-profit institutions. For-profit institutions, in particular, are a diverse, innovative, and fast-growing group of institutions. By pioneering creative course schedules and online programs and serving nontraditional students, many of these institutions have developed impressive, beneficial practices that both public and non-profit institutions might emulate. In recent months, a number of institutions have taken promising steps to improve the value of the programs they offer to students by offering free trial and orientation periods, closing underperforming programs, and investing more in their faculty and curricula. These reforms may serve students well and improve performance as measured under these final regulations.

At the same time, for-profit institutions typically charge higher tuitions for their programs than do their public and non-profit counterparts. They also have higher net prices, a measure of how much students pay after receiving grant aid, such as Federal Pell Grants. As a result, students on average assume more debt to enroll in a program than do their peers who attend public or private, nonprofit institutions.

We also have concerns about recruitment practices and completion rates for particular programs offered by for-profit institutions. The Government Accountability Office (GAO) and other investigators have found evidence of high-pressure and deceptive recruiting practices at for-profit institutions. These recruiting practices may contribute to low graduation rates. First-time students enrolling in four-year institutions in 2004 were only about half as likely to earn any kind of degree or certificate by 2009 if they began their postsecondary education at a for-profit institution than if they began their postsecondary education at a public institution. National Center for Education Statistics, 2004/2009 Beginning Postsecondary Students Longitudinal Study.

Proprietary institutions market their programs to students by emphasizing the value of the program against the cost to the student. This approach is often called the value proposition of the program and is meant to portray to students the value of the specific program offerings to that student's career goals. It is this posture that distinguishes programs "that lead to gainful employment in a recognized occupation" as set forth in the HEA.

These final regulations reflect the Department's policy determination that students are not adequately protected by the Department's current regulatory framework, which focuses on institutional level information. By defining what it means to provide training leading to gainful employment for each program that is eligible to receive title IV, HEA funds, the Department believes that students will be better served and the Department will have improved how it carries out its obligation to ensure program integrity.

Some have argued that cohort default rates, measured at the institutional level, already provide a measure of whether student debt is at appropriate levels. The Department believes that those measures are properly supplemented and complemented by those outlined here. The Department's experience with the CDR is that it operates for particular purposes and that, among other things, it does not identify the harm to students that can come from enrolling in a specific program that leaves them with high education debts and limited job opportunities. An institution's average default rate does not measure the effect of any individual program, and that information alone does not provide a student with a measure of whether he or she will be able to achieve a career goal and pay off loan debt. Moreover, the default rate does not take account of the possibility that many students are struggling to repay their loans, such as those receiving economic hardship deferments or who are in income-based repayment. These are students who are seeing their loans grow, rather than shrink, because their incomes are low and their debts are high. As a result the default rate is a better measurement of the potential loss to taxpayers than of the repayment burden on borrowers.

The Department is adopting in these final regulations a definition of programs that provide training leading

to gainful employment in a recognized occupation in order to provide students with a measure of the particular program they are considering taking. This program-level assessment is further reflected in the way in which we have required disclosures of information and in the care we have taken with regulating the development of new programs once a program has failed to meet the measures in the regulation. The regulations we are adopting will help to protect students by removing eligibility from the worst performing programs that fail the minimum requirements, while providing institutions with incentives to improve the performance of their programs under the measures and create better outcomes for the students enrolled in those programs.

Institutional measures of eligibility often fail to reveal the effects of providing bad outcomes to students in the particular programs that they offer. Most of the revenues of for-profit institutions come from Pell Grants and Federal student loans. The revenues of these institutions are dependent on the number of students they enroll in their programs; they are not otherwise dependent on whether their students graduate, find jobs, and ultimately repay their loans. Thus, if one of these students defaults on her or his loan, the institution's revenues are unlikely to be affected and the blended cohort default rates calculated for an institution tend to mask the harms to students that are coming from only a few bad programs offered at an institution. For students, however, the consequences of an unaffordable loan are severe. For the 2008 cohort year, 46 percent of student loans (weighted by dollars) borrowed by students at two-year for-profit institutions are expected to go into default over the life of the loans, compared to 16 percent of loans borrowed by students across all types of institutions.

Former students who are not gainfully employed and cannot afford to repay their loans face very serious challenges. Discharging Federal student loans in bankruptcy is very rare. The common consequences of default include large fees—collection costs that can add 25 percent to the outstanding loan balance—and interest charges; struggles to rent or buy a home, buy a car, or get a job; collection agency actions, including lawsuits and garnishment of wages; and the loss of tax refunds and even Social Security benefits. Moreover, borrowers in default are no longer entitled to any deferments or forbearances and may be ineligible for any additional student aid until they have reestablished a good repayment history.

Consistent with the HEA's requirements, to be eligible to participate in the title IV, HEA programs, certain institutions must provide an eligible program leading to gainful employment in a recognized occupation. The Department's goals in promulgating these regulations are to ensure that (1) students who enroll in these programs do not have to face these difficult challenges, because they are equipped to secure gainful employment rather than being left with unaffordable debts and poor employment prospects, and (2) the Federal investment of title IV, HEA student aid dollars is well spent.

The Department began its efforts in this area with regulations designed to help students make informed choices about postsecondary education programs in 2009 by conducting a series of public hearings and negotiated rulemaking sessions. It published two notices of proposed rulemaking (NPRMs) in 2010. The Department's proposed regulations emphasized the use of disclosure mechanisms to provide students and the public with critical information about the performance of gainful employment programs. On October 29, 2010, the Department published regulations (75 FR 66832) (Program Integrity Issues final regulations) requiring institutions with programs that prepare students for gainful employment in a recognized occupation to disclose key performance information about each program on their Web site and in promotional materials to prospective students. The required elements include the program cost, on-time completion rate, placement rate, median loan debt, and other information for programs that prepare students for gainful employment in recognized occupations.

Since publishing the final regulations, the Department has published in the **Federal Register** on April 13, 2011, a draft disclosure template for public comment (76 FR 20635). The Department intends to finalize this disclosure template by the fall of 2011 so that it is available for use by institutions by July 1, 2012. The disclosure template will automate the process by which institutions can prepare the required disclosures and will include links to provide the appropriate Web sites of other institutions offering the same program that participate in the title IV, HEA student aid programs, thus allowing students to compare similar programs. With this template, and consistent with section 4 of Executive Order 13563, the Department is thus attempting to foster informed decisions and to improve the operation of the market through "disclosure requirements as well as provision of information to the public in a form that is clear and intelligible."

The Program Integrity Issues final regulations also included significant new regulations that we designed to protect consumers from misleading or overly aggressive recruiting practices, and to clarify State oversight responsibilities. These regulations took significant steps to curbing fraud and abuse in the Federal student aid programs by strengthening existing requirements that are designed to protect students and taxpayers. Among these changes were the strengthening of our misrepresentation regulations to provide the Department greater authority to take action against institutions engaging in deceptive advertising, marketing, and sales practices. The regulations also eliminate "safe harbors" that allowed questionable recruitment practices that often included institutions paying incentive compensation to recruiters. Too often this type of compensation leads to overly aggressive recruiting practices that encouraged students to take out loans they could not afford or enroll in programs for which they were unqualified or in which it was unlikely they could succeed. Additionally, the Program Integrity Issues final regulations took a needed step toward ensuring that States are taking necessary steps to ensure the appropriate oversight of the postsecondary education being provided by institutions by establishing minimum steps that States must take to meet their important responsibility under the HEA to protect students, including for institutions that offer distance or correspondence education.

These final regulations, Gainful Employment—Debt Measures, reflect a number of significant changes and improvements from the July 26, 2010 NPRM in response to public comments. The changes and improvements are designed to provide a better measure of whether a program provides training that will lead to gainful employment in a recognized occupation. They reflect alterations from the proposed regulations designed to (1) Provide better program information to students, (2) identify the worst performing programs, and (3) create appropriate flexibility and provide institutions the opportunity to improve their programs before losing title IV, HEA program eligibility. These changes are also designed to minimize the costs for regulated institutions, while providing

considerable benefits both to students at regulated institutions and to taxpayers.

The regulations emphasize the importance of disclosing program information and take several further steps to promote informed decisions. Thus, under the final regulations, institutions must disclose to the public, and the Secretary may also disseminate to the public, information about how each of an institution's programs are performing under the debt measures that we are establishing in these final regulations. The Department is considering additional steps to promote the comparison of programs and to facilitate access to this information. In keeping with the emphasis on disclosure, the regulations also provide that during the first two years that a program fails the debt measures, the institution must provide warnings to students. To promote informed student choice, these warnings must be provided to students sufficiently in advance of enrolling to permit the student time to consider whether to enroll in the program.

While increasing the level of disclosure is critical, the Department recognizes that information alone is unlikely fully to promote the goals of the HEA and to ensure that programs provide training that leads to gainful employment in a recognized occupation. Students enrolling in a postsecondary program often have limited background information about a program and little or no experience choosing among postsecondary programs. High-pressure sales tactics by institutions may also make it difficult for individuals to choose carefully among programs. Therefore, the Department is setting minimum standards to measure whether programs are providing training that leads to gainful employment in a recognized occupation.

To provide an additional layer of protection for students and taxpayers, the Department is defining a set of measures that identifies the lowest performing programs by focusing on the ability of students to repay their student loans. Under these measures, a program is now considered to lead to gainful employment if it has a repayment rate of at least 35 percent or its annual loan payment under the debt-to-earnings ratios is 12 percent or less of annual earnings or 30 percent or less of discretionary income. Under the regulations, only after failing both debt measures for three out of four fiscal years does a program lose eligibility. These regulations set minimum standards and are designed to provide flexibility, specifically allowing programs an opportunity to improve their performance before losing title IV, HEA program eligibility. The Department believes that these measures will improve the operation of free markets by identifying the poorest performing programs and strengthening institutions' incentive to provide an affordable quality education.

Background of Rulemaking Proceedings

On September 9, 2009, the Secretary announced the Department's intent to establish two negotiated rulemaking committees to develop proposed regulations under title IV of the HEA through a notice in the **Federal Register** (74 FR 46399). The Secretary established one committee to develop proposed regulations governing foreign schools and another committee to develop proposed regulations to improve integrity in the title IV, HEA programs. Team I—Program Integrity Issues (Team I) met to develop proposed regulations during the months of November 2009 through January 2010; however, no consensus on the proposed regulations was reached during the negotiations. After Team I's negotiations concluded, the Department published two NPRMs.

On June 18, 2010, the Secretary published the first NPRM in the **Federal Register** (75 FR 34806) (June 18, 2010 NPRM) proposing to strengthen and improve the administration of programs authorized under title IV of the HEA. With regard to gainful employment, the June 18, 2010 NPRM included proposals covering several technical, reporting, and disclosure issues. The June 18, 2010 NPRM reserved for a second NPRM the remaining gainful employment issues, which addressed the extent to which certain educational programs lead to gainful employment and the conditions under which those programs remain eligible for title IV, HEA program funds.

On July 26, 2010, the Secretary published a second NPRM for gainful employment issues in the **Federal Register** (75 FR 43616) (July 26, 2010 NPRM). In the July 26, 2010 NPRM, the Secretary proposed to—

- Establish debt thresholds based on debt-to-income and repayment rate measures that a program at an institution would need to meet in order to demonstrate that it provides training that leads to gainful employment in a recognized occupation and consequently to remain eligible for title IV, HEA funds;
- Establish a tiered eligibility system under which a program may have unrestricted eligibility, may have restricted eligibility, or may become ineligible to participate in the title IV, HEA programs;
- Establish consequences for a program with a restricted eligibility status, including requirements to provide debt warning disclosures to current and prospective students that they may have difficulty repaying loans obtained for attending the program; employer affirmations that the program curriculum is appropriately aligned with recognized occupations at the employers' businesses and that there is a demand for those occupations; and limits on enrollment of title IV, HEA program recipients in that program;
- Provide that a program becomes ineligible if it does not meet at least one of the debt thresholds for one award year;
- Specify that the institution may not disburse any title IV, HEA program funds to students who subsequently begin attending a program determined to be ineligible, but may disburse title IV, HEA program funds to students who began attending the program before it became ineligible for the remainder of the award year and for the award year following the date of the Secretary's notice that the program is ineligible;
- Establish a transition year in which the Secretary would cap the number of programs that would be classified as ineligible for the first year after the regulations take effect;
- Add a definition of *The Classification of Instructional Programs (CIP);*
- Permit the Secretary to place on provisional certification an institution that has one or more of its programs determined to be subject to the eligibility limitations or determined ineligible under the gainful employment provisions; and
- Establish that in a termination action against a program for not meeting the gainful employment standards, the hearing official would accept, as accurate, earnings information for students that was obtained by the Department from another Federal agency, but would consider alternate earnings data as long as that data was reliable for the same students.

The Department reviewed the comments from both the June 18, 2010 NPRM and the July 26, 2010 NPRM and divided the final regulations into three separate documents. On October 29, 2010, the Secretary published both the first and second sets of final regulations in the **Federal Register** (75 FR 66832 and 75 FR 66665) (Program Integrity Issues and Gainful Employment/New Programs final regulations, respectively) with effective dates, generally, of July 1, 2011.

The Program Integrity Issues final regulations (75 FR 66832)—

• Clarified that only certificate or credentialed nondegree programs of at least one academic year that are offered by a public or nonprofit institution of higher education are gainful employment programs;

• Updated the definition of the term *recognized occupation* to reflect current usage;

• Established requirements for institutions to submit information on students who attend or complete programs that prepare students for gainful employment in recognized occupations; and

• Established requirements for institutions to submit information on students who attend or complete programs that prepare students for gainful employment in recognized occupations; and

• Established requirements for institutions to disclose on their Web site and in promotional materials to prospective students, the on-time graduation rate for students completing a program, placement rate, median loan debt, program costs, and any other information the Secretary provided to the institution about the program.

The Gainful Employment/New Programs final regulations (75 FR 66665)—

• Established a process under which an institution applies to the Secretary for approval to offer additional educational programs that lead to gainful employment in a recognized occupation.

These final regulations, Gainful Employment—Debt Measures, comprise the third set of regulations and reflect a number of significant changes from the proposed regulations in response to public comments. We received over 90,000 comments in response to the July 26, 2010 NPRM. These included tens of thousands of comments supporting our proposals and tens of thousands opposing them. Subsequent to our issuance of the Gainful Employment/New Programs final regulations, we also met with more than 100 individuals and organizations to permit these individuals and entities to clarify their comments in person. The Department extended its work on the regulations by six additional months to consider fully these comments. Consistent with Executive Order 13563, the result of this unprecedented public engagement is stronger regulations that (1) Are based on careful consideration of both the costs and benefits (both quantitative and qualitative) of the regulations; (2) incorporate many suggestions to allow flexible approaches for the regulated entities; and (3) balance the concerns of those on both sides of the “gainful employment” issue.

The final regulations will:

• Give all programs *three years to improve* their performance. The Department will begin by giving institutions data to help them identify and improve their failing programs and to help current and prospective students make informed choices. The first programs could lose eligibility based upon their performance under the debt measures calculated for fiscal year (FY) 2014 and released in 2015, rather than FY 2012 as proposed.

• Target only the worst performing failing programs by:

(1) Permitting an institution to maintain a program's title IV, HEA program eligibility until the program fails both the debt-to-earnings ratios and repayment rate measures for *three out of four FYs,* similar to the multi-year measures used to assess cohort default rates (CDRs) at an institution;

(2) Limiting the number of programs that will lose eligibility based on the debt measures calculated for only FY 2014 under § 668.7(k) to the *worst performing 5 percent of programs* (weighted by enrollment); and

(3) Eliminating enrollment restrictions that the Department had proposed in the July 26, 2010 NPRM to apply to all programs with repayment rates below 45 percent and an annual loan payment that is more than 20 percent of discretionary income or 8 percent of annual earnings.

• Improve the repayment rate and debt-to-earnings ratios measures based on extensive public comment by:

(1) Revising the measures such that a program is now considered to lead to gainful employment if it has a repayment rate of at least 35 percent or its annual loan payment under the debt-to-earnings ratios is 12 percent or less of annual earnings or 30 percent or less of discretionary income;

(2) Allowing institutions to demonstrate that their programs meet the debt-to-earnings ratios with alternative reliable earnings information, including use of State data, survey data, or Bureau of Labor Statistics (BLS) data during a transitional period;

(3) Measuring performance in years three and four of repayment, rather than years one through four, to examine more typical years in the life cycle of a loan (with a provision to use years three through six where necessary to ensure that more than 30 borrowers or completers are included in the measurement and additional adjustments to address the needs of programs that are improving their performance, graduate programs, and medical and dental programs);

(4) Measuring debt burdens based on an assumption that loans are repaid over 10 to 20 years depending on the level of degree, rather than 10 years for all programs as was originally proposed. Loan debt will be amortized over 10 years for undergraduate or post-baccalaureate certificate and associate's degree programs, 15 years for bachelor's and master's degree programs, and 20 years for programs that lead to a doctoral or first-professional degree;

(5) Limiting debt in the debt-to-earnings ratio calculation to tuition and fee charges for a specific educational program, if this information is provided by the institution, thereby providing programs relief for loans taken for indirect educational costs, including living expenses;

(6) Providing that borrowers who meet their obligations under income-sensitive repayment plans are considered to be successfully repaying their loans even if their payments are smaller than accrued interest, so long as the program at issue does not have unusually large numbers of students in those categories; and

(7) Providing that a program is considered to satisfy the debt measures if the number of students who completed the program or the number of borrowers whose loans entered repayment during the relevant four-year period is 30 or fewer.

• Improve the disclosure of information about programs by:

(1) Providing in § 668.7(g)(6) that the Secretary may disseminate the final debt measures and information about, or related to, the debt measures to the public in any time, manner, and form, including publishing information that will allow the public to ascertain how well programs perform under the debt measures and other appropriate objective metrics. The Department is considering appropriate ways to provide these metrics and other key indicators to facilitate access to the information and the comparison of programs;

(2) Requiring that an institution with a failing program that does not meet the minimum standards specified in the regulations must provide warnings to enrolled and prospective students;

(3) Requiring that the debt warnings for prospective students must be provided at the time the student first contacts the institution to request information about the program. The institution may not enroll the student until three days after the debt warnings are first provided to the student. If more than 30 days pass from the date the debt

warnings are first provided to the student and the date the student seeks to enroll in the program, the institution must provide the debt warnings again and may not enroll the student until three days after the debt warnings are most recently provided to the student; and

(4) Requiring an institution to disclose the repayment rate and the debt-to-earnings ratio (based on total earnings) of its gainful employment programs.

• Establish restrictions on reestablishing eligibility of ineligible programs, new programs that are substantially similar to an ineligible program, and failing programs that are voluntarily discontinued by the institution.

In sum, the Department has revised these regulations to promote disclosure, to encourage institutions to improve their occupational programs, and to provide more time for this improvement before revoking eligibility. The Department believes that institutions will strengthen their educational programs to meet these higher standards, and relatively few programs will fail. Programs that offer a rewarding education at an affordable price will prosper, and institutions will continue to innovate to serve students and taxpayers.

Implementation Date of These Regulations

Section 482(c) 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. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and to specify the conditions under which the entity may implement the provisions early.

The Secretary has not designated any of the provisions in these final regulations for early implementation. Therefore these final regulations are effective July 1, 2012.

Commitment to Continuing Retrospective Review

As discussed further under the heading *Executive Orders 12866 and 13563,* consistent with Executive Order 13563's emphasis on measuring "actual results" and on retrospective review of regulations, the Department intends to monitor the implementation of these regulations carefully, consider new data as they become available to ensure against unintended adverse consequences, and reconsider relevant issues if the evidence warrants. We recognize that, despite the Department's diligent efforts and extensive public input, there are limitations in the best available data and there remains some uncertainty about the impact of these final regulations, such as the number of programs that will be identified as ineligible.

In early 2012, the Department will calculate and share with institutions, for informational purposes only, performance data for programs subject to these regulations. Thus, institutions and the Department will have preliminary information about the performance of particular programs a full year before any programs could be labeled failing and three years before any programs could lose eligibility. This implementation schedule will allow the Department ample time to consider relevant evidence and data and to examine the performance of programs under the regulations. This collection of data, in conjunction with the agency's intention to evaluate the outcomes of these regulations, is consistent both with Executive Order 13563 and the Office of Information and Regulatory Affairs' February 2, 2011 memorandum (OMB M–11–19) on Executive Order 13563, which emphasizes the importance of "empirical testing of the effects of rules both in advance and retrospectively," and which encourages future regulations to be "designed and written in ways that facilitate evaluation of their consequences and thus promote retrospective analyses." The Department will continue to explore the effects of the regulations. Among other things, the Department will examine the type and number of programs determined to be failing and ineligible, and it will consider whether these final regulations should be reconsidered or amended in furtherance of its goals of protecting students and taxpayers against educational programs that leave students with unaffordable debts and poor employment prospects.

Analysis of Comments and Changes

As indicated earlier, over 90,000 parties submitted comments on the July 26, 2010 NPRM. Many of these comments were substantially similar. We have reviewed all of the comments. Generally, we do not address minor, nonsubstantive changes, recommended changes that the law does not authorize the Secretary to make, or comments pertaining to operational processes.

General

Comment Process

Comment: The Department received over 90,000 comments on the July 26, 2010 NPRM. Of those comments, approximately 25 percent were in support of our proposed regulations and approximately 75 percent were opposed. We received comments from numerous categories of individuals, including students, families, employees of institutions of higher education, school presidents, congressional and other governmental leaders, advocacy groups, State and local associations, trade associations, and businesses. The comments received varied in content and length from extremely short responses to complex and lengthy economic and legal analyses. The vast majority of the comments, however, were similar, largely duplicative, and apparently generated through petition drives and letter-writing campaigns. Generally, these commenters did not provide any specific recommendations beyond general support of or opposition to the proposed regulations. Many of the commenters—both those in support of, and in opposition to, specific provisions—indicated that they supported the goals and intent behind the proposed regulations. Specifically, commenters across all sectors of higher education as well as the student and consumer advocacy groups believed that the goal of ensuring student loan debt is affordable is an admirable one.

Some of the commenters did not express substantive comments on the proposed regulations or their effects. For instance, a number of the commenters, particularly those from students, simply said "No," or asked that the Department not "take away my student loans."

Supporters of the proposed regulations praised the Department's transparency and commitment to improving the integrity of the title IV, HEA student aid programs. Some commenters praised the amount of information and data that the Department released with the NPRM and subsequently on the Department's Web site. Other commenters believed that the Department had taken appropriate steps to gather public input and to craft regulations that protect students by regulating programs that claim to prepare students for gainful employment, yet leave students with large amounts of debt and unprepared for employment in recognized occupations. These commenters suggested that the proposed regulations would help to ensure that employers can hire well-qualified employees and that taxpayer dollars are spent wisely and effectively. Some of the commenters believed that the proposed regulations provide for much-needed enforcement authority.

Commenters who opposed the proposed regulations believed that the proposed regulations would have a number of unintended effects and suggested that the regulations would produce results counter to the President's economic and educational goals. These commenters also stated that the proposed regulations would be overly burdensome and discriminatory; represent an overreaching of the Department's authority; unfairly punish institutions for students' choices after graduating; disproportionately affect at-risk and underserved populations of students; and limit the growth of, and innovation in, new programs. The commenters recommended that the Department address these concerns by delaying the implementation of the regulations, considering alternatives to the debt-to-earnings and repayment rate metrics, and exempting certain types of institutions or programs from compliance with the regulations. While making a number of suggestions and recommendations, the commenters generally expressed a desire to work with the Department to provide additional information and insight to craft metrics that they believed would achieve the intended result of reducing student loan debt and helping students to obtain gainful employment.

Discussion: The Department appreciates the numerous comments we received in support of the proposed regulations as well as those we received that expressed concerns about them. Specific issues raised by the commenters are addressed in the relevant topical discussions. These comments were instrumental in identifying ways the Department could design final regulations that provide benefits to students, minimize costs to regulated institutions, and provide institutions with greater flexibility to achieve regulatory compliance.

Changes: Changes made in response to the commenters' specific concerns are addressed in the relevant topical discussions.

Timing of Implementation

Comment: Some commenters urged the Department to implement these regulations as early as possible, arguing that students, consumers, and taxpayers need protection now and cannot afford to wait for these regulations to go into effect a few years in the future. Some of these commenters noted that putting provisions into effect, perhaps in a transitional form, would spur institutions with poorly performing programs to invest in program improvements and student services, such as career counseling and job placement assistance, to improve student outcomes.

Some commenters asked the Department to delay the implementation of the regulations for a number of reasons. Some asked for the Department to delay implementation until the results of a forthcoming GAO study on proprietary schools are available. Other commenters requested a delay to allow Congress time to debate and pass a law on the definition of "gainful employment." These commenters argued that Congress, not the Department, appropriately has this authority. Some of the commenters also suggested a delay to allow time to see the effect of the additional disclosures and reporting requirements under the final regulations that will take effect July 1, 2011 (75 FR 66833–66975). Some commenters requested a delay until Congress acts to provide authority to institutions to limit loan funds to institutional charges.

Commenters requested that the Department apply the metrics only to students who enroll after the final regulations are published. These commenters argued that schools should not be held accountable for an outcome that was not defined at the time the students attended the program and that it would be unfair to judge schools on metrics that they could have influenced at the time, when the quality of the programs and the outcomes for the students may be improving. Commenters noted that the Department should delay enforcing the regulations so programs have an opportunity to improve, and that programs that are improving may not be able to satisfy the metrics immediately given that the metrics measure outcomes from students who graduated in past years.

A few commenters asked the Department to provide draft metrics to institutions before their programs would be subject to sanctions. The commenters encouraged the Department to use the new, three-year CDR as a model for how any new metrics on gainful employment could be phased in over time. They further stated that delayed implementation would give schools time to improve their programs and debt counseling advice to meet the metrics as well as time to discontinue programs that are not meeting the metrics.

Some commenters requested further actions within the negotiated rulemaking process. Commenters requested that the Department issue these regulations as an interim final rule so that the public would have an opportunity to submit additional comments and, perhaps, to permit further modifications to the regulations based on those comments. Other commenters recommended that the Department extend the 45-day public comment period to allow a full analysis of the breadth and complexity of the proposed regulations. They further suggested that the Department would benefit from further information from institutions on the details involved with compliance before implementation. A few commenters requested that the Department engage in another round of negotiated rulemaking so that participants could focus solely on an appropriate definition of gainful employment. These commenters believed that more analysis and discussion of the proposed regulations are needed before they become final.

Some commenters suggested that the gainful employment metrics should apply no earlier than July 1, 2014, and sanctions for ineligible programs should apply on or after July 1, 2016, arguing that these timeframes would give institutions an adequate opportunity to comply with the new requirements.

Discussion: We appreciate the concerns of the commenters who urged the Department to implement these regulations as early as possible. However, based on the concerns of other commenters, we believe it is desirable to extend the implementation schedule of these final regulations. In that regard, we agree that institutions should have the opportunity to improve program performance against the metrics before being subject to significant sanctions. The adjustments to the regulations reflecting these changes are discussed more fully under the relevant topical discussions.

We do not agree with commenters that we should delay implementing the final regulations until a third party takes some action such as waiting for a GAO study to be available. We have already undertaken extensive efforts to analyze the impact of these regulations and gather public comments. We also believe the need to remove poorly performing programs is too great to wait for third-party actions.

We do not agree that further actions need to be taken within the rulemaking process such as issuing interim final regulations, providing an additional comment period, or renegotiating the proposed regulations. Given the Department's extensive efforts to solicit and respond to comments from the public, including public hearings, three sessions of negotiations, additional meetings with interested parties, and the over 90,000 comments received, we do not believe it is necessary to reopen the rulemaking process and delay publishing these final regulations.

Changes: Changes made in response to the commenters' specific concerns are addressed in the relevant topical discussions.

Legal Authority

Comments: A number of commenters objected to the proposed regulations in whole or in part, claiming that no changes to the HEA require the Secretary to define the term "gainful employment," and that the term cannot now be defined since Congress left it undisturbed during its periodic reauthorizations of the HEA. Some commenters expressed the view that the framework of detailed requirements under the HEA programs that includes institutional measures using cohort default rates, disclosure requirements for institutions, restrictions on student loan borrowing, and other financial aid requirements prevents the Department from adopting debt measures to determine the eligibility for these programs. Other commenters noted that it was unfair for the Department to propose these requirements for some programs and not others. Some commenters suggested that the phrase "to prepare students for gainful employment" is unambiguous and therefore not subject to further definition. Some commenters claimed that the Department has previously defined the term "gainful employment in a recognized occupation" in the context of conducting administrative hearings and argued that the Department did not adequately explain in the July 26, 2010 NPRM why it was departing from its prior use of that term.

Discussion: The Department has broad authority to promulgate regulations to implement programs established by statute. Under section 414 of the Department of Education Organization Act, 20 U.S.C. 3474, "[t]he Secretary is authorized 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." Similarly, section 410 of the General Education Provisions Act, 20 U.S.C. 1221e–3, provides that the Secretary may "make, promulgate, issue, rescind, and amend rules and regulations" for Department programs, including the Federal student aid programs.

The eligibility of programs leading to gainful employment in a recognized occupation is addressed in sections 101, 102 and 481(b) of the HEA. Section 481(b) of the HEA defines "eligible program" to include a program that offers at least a defined minimum quantity of instruction that "provides a program of training to prepare students for gainful employment in a recognized profession." The HEA in section 102(a) defines an "institution of higher education for purposes of the student assistance programs" and provides further in section 102(b), that proprietary institutions of higher education, with limited exception, "provide[] an eligible program of training to prepare students for gainful employment in a recognized occupation." Similar requirements exist in section 101(b)(1) for public and private non-profit institutions of higher education providing programs at least one year in length, and section 102(c) provides similar requirements for public and private non-profit postsecondary vocational institutions.

Under section 102(b) of the HEA, programs offered at for-profit institutions are only eligible for title IV, HEA funds if they offer programs that "prepare students for gainful employment in a recognized occupation." Such an institution is required to offer at least one eligible program leading to gainful employment in a recognized occupation in order for the institution to be eligible.

This structure for eligibility at the program level and the institutional level is longstanding and has been retained through many amendments to the HEA. Indeed, as recently as the enactment of the Higher Education Opportunity Act of 2008 (HEOA) (Pub. L. 110–315), Congress retained this distinct treatment of programs by exempting liberal arts baccalaureate programs offered at some for-profit institutions from the requirement to provide gainful employment in a recognized occupation.

The HEA establishes eligibility requirements for certain programs based upon the program length and the type of institution offering the program, including such programs that lead to gainful employment in a recognized occupation. Other requirements apply to certain types of institutions offering eligible programs, such as providing disclosures about revenue, and limiting the percentage of revenue that can be received from title IV, HEA programs. Other requirements apply to all eligible institutions, such as submitting annual financial statements and compliance audits, and meeting eligibility requirements based upon the loan cohort default rate calculated for an institution. None of these requirements, viewed alone or together, constitutes a framework that prohibits the Department from establishing the debt measures in these regulations to determine eligibility for programs required to provide training leading to gainful employment in a recognized occupation.

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

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

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

These final regulations address harms to students that have been identified by the GAO, and were identified in the public hearings and in comments submitted in response to the proposed regulations, namely that program completers are unable to obtain jobs for which they received training. The regulations are also designed to address concerns about high levels of loan debt for students enrolled in postsecondary educational programs that, to qualify for participation in the title IV, HEA programs, must provide training that leads to gainful employment in a recognized occupation. These regulations are of particular importance because significant advances in electronic reporting and analysis now allow the Department to collect accurate and timely data that could not have

been utilized in the past. These analyses will provide the Department, students, and the institutions offering these programs with information about how well the programs are performing under the measures.

With respect to the general claims from some commenters that the terms "gainful employment" and "gainful employment in a recognized occupation" are unambiguous and cannot be defined in regulation, it is clear from the thousands of comments we received that the terms "gainful employment" and "gainful employment in a recognized occupation" are subject to many different views and interpretations. Thus, these regulations represent a reasonable interpretation of those terms and do so in a way that responds to many of the concerns raised in the comments. Adopting a definition now gives meaning to an undefined statutory term, thereby fulfilling the Department's duty to enforce the provisions of the HEA in a clear and meaningful way. And, although the term has been used to refer to applicable programs in the context of administrative hearings at the Department, that use does not limit the Department's use of its statutory authority to create a regulatory definition through the negotiated rulemaking procedures established under the HEA.

With respect to claims that the Department should wait for Congress to legislate before regulating, it is important to note that the original efforts by the Department to address concerns about defaults in the Federal student loan programs were realized using the Secretary's general authority to regulate under section 414 of the Department of Education Organization Act. While Congress ultimately enacted the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), which provides statutory authority for much of the cohort default rate provisions in effect today, the Secretary's authority was nonetheless appropriately used to issue regulations in this area to require, for example, teach-out arrangements for private institutions.

Changes: None.

Comment: Some commenters suggested that the proposed definition of gainful employment would be unlawful because it would constitute placing price controls on offering gainful employment programs.

Discussion: We disagree that these regulations would constitute price controls for gainful employment programs. The debt measures and eligibility thresholds provide institutions with multiple ways to manage their programs to improve performance.

Changes: None.

Thresholds for the Debt Measures (§ 668.7(a)(1))

General

Comment: Commenters expressed concerned that low-income and minority students, many of whom are Federal Pell Grant recipients, could be harmed by the proposed loan repayment rate and debt-to-income thresholds. These commenters noted that Federal Pell Grant recipients are likely to need to borrow the maximum amount of title IV, HEA loan funds and may have more difficulty repaying their loans than students who incur smaller levels of debt. As a result, according to the commenters, the schools these students attend may not be able to meet the debt measures and could be forced to close or limit their enrollment to exclude these students.

Some of the commenters cited research by Mark Kantrowitz of FinAid.org and FastWeb.com that they believed showed that institutions with 50 percent or more Federal Pell Grant recipients are unlikely to satisfy the proposed 35 percent loan repayment rate threshold, and institutions with 40 percent or more of Federal Pell Grant recipients are unlikely to satisfy the proposed 45 percent loan repayment rate threshold. Similarly, other commenters cited studies indicating that minority students earn less than their white counterparts. For low-income students, the commenters concluded that student access to higher education would be adversely affected because the proposed thresholds would act as a disincentive to institutions to admit these students. The commenters suggested that, given these concerns, the Department should allow lower repayment rates and debt-to-earnings ratios for institutions based on the demographics of the institution's student body and its success rate in graduating minority students. Other commenters recommended that the Department implement a sliding scale repayment rate based on the number of Federal Pell Grant recipients at an institution. Under this approach, institutions with a larger percentage of Federal Pell Grant recipients would be subject to a lower threshold for the loan repayment rate. Commenters suggested that, alternatively, the loan repayment rates of Federal Pell Grant recipients could be evaluated separately from the loan repayment rates of non-Federal Pell Grant recipients, with a lower threshold established for Federal Pell Grant recipients. Commenters also noted that some of these same issues apply to institutions and programs dominated by women, because careers dominated by women tend to be lower-paying and many women take maternity leave or work part-time and these circumstances would lead to lower repayment rates and earnings for women.

One commenter noted that the Department's repayment rate data, when viewed across all sectors of the education industry, show that institutions with lower repayment rates serve high-risk students. The commenter argued that if the data demonstrate anything, it is that "at-risk" students (working adults with family commitments and no parental support, or students from lower socioeconomic backgrounds who are more susceptible to forces that might cause them to leave or take a break from school) have more difficulty repaying their student loans or are more inclined to use alternative methods to repay their loans, regardless of the type of school they attended.

Discussion: The Department does not agree that the thresholds should be adjusted to reflect the demographics or economic status of the students enrolled in gainful employment programs. Students are not well served by enrolling in programs that leave them with debts they cannot afford to repay, regardless of their background. Moreover, as illustrated in the *Student Demographics* section of the RIA, there are institutions and programs achieving strong results with students from disadvantaged backgrounds, and many programs serving even the most disadvantaged students are performing well under the debt measures.

Changes: None.

Comment: Some commenters stated that because the loan repayment rate was established outside the negotiated rulemaking process, it lacked transparency and the breadth of input from stakeholders and the public that would have assured its quality and relevancy.

Discussion: The loan repayment rate was discussed during the negotiated rulemaking sessions in the context of whether borrowers who attended a program were repaying their loans. The issue summaries used for the rulemaking sessions describing the repayment rate were published at that time on the Department's Web site and are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity.html*. The negotiating committee did not reach consensus on proposed regulations (see 74 FR 43617). As a result the Department was not bound to any of the draft regulations for

the issues in the manner those issues were discussed with the committee. Consequently, the Department chose to propose a dollar-based repayment rate instead of the borrower-based repayment rate discussed by the committee. As opposed to a borrower-based calculation where all borrowers have the same impact on the repayment rate regardless of their debt loads, the proposed dollar-based calculation rewards, or gives more weight to, borrowers with higher debt loads that repay their loans. For example:

Borrowers A and B completed a program with $12,000 and $15,000, respectively, in loan debt. Borrowers C, D, and E withdrew from the program with loan debts of $3,000, $4,000, and $6,000, respectively. Under the proposed repayment rate, all loan debt incurred by borrowers who attended the program would be included in the denominator ($40,000) of the ratio. Presuming that program graduates are more likely to repay their loans, i.e., that Borrower A will repay the $12,000 debt and Borrower B will repay the $15,000 debt, but Borrowers C, D, and E will not repay their debts, the sum of Borrowers A and B's loans would be in the numerator, resulting in a 67.5 percent repayment rate ($27,000/$40,000). Under a borrower-based calculation, the repayment rate would be 40 percent (two out of the five borrowers were repaying their loans).

Changes: None.

Threshold for the Loan Repayment Rate and Debt-to-Earnings Ratios

Comment: Some commenters expressed concern that there was no reasoned basis to support the Department's selection of 45 percent and 35 percent as the repayment rate thresholds for determining, in part, if programs are fully eligible, restricted, or ineligible to participate in the title IV, HEA programs. The commenters believed that this approach was simply a way for the Department to try to close as many private sector schools as possible by adjusting the thresholds based on the market's ability to absorb displaced students from private sector schools.

On the other hand, some commenters opined that the proposed loan repayment rate needed to be strengthened, and recommended that the Department increase the threshold for each tier by at least 10 percentage points. Consequently, a program would have to achieve a repayment rate of at least 55 percent to remain fully eligible for title IV, HEA funds. Other commenters recommended a threshold of 50 percent for the loan repayment rate. Some commenters suggested that programs with repayment rates below 25 or 35 percent should lose eligibility. The commenters believed that it is important to recognize that the proposed thresholds are likely to overstate actual repayment rates because the proposed repayment rate excludes both private loans and parent PLUS loans and many students and families may have accrued substantial amounts of these types of debt for which repayment is not being measured. The commenters noted that in 2008–09, these two forms of debt accounted for 20 percent of all postsecondary education loans. The commenters believed that these circumstances demonstrated both the need to increase the repayment rate thresholds and the importance of including private loans in the debt-to-earnings measure.

Other commenters believed that no changes should be made in the proposed thresholds. Others argued that if a program satisfied the debt-to-earnings threshold, then it should be eligible for title IV, HEA funds. These commenters believed the loan repayment rate metric would not be a quality test of the program's results.

Another commenter argued that the proposed standards for the loan repayment rate were not strict enough for "low-value programs," which the commenter identified as programs where the percentage increase of post-graduate income is less than the program's debt-to-earnings ratio as a percentage of annual earnings for the program's graduates. The commenter recommended that the Department require a low-value program to maintain a 65 percent loan repayment rate in order for the program to maintain full eligibility.

A number of commenters noted that the mean repayment rate for all institutions is 48 percent and that an overwhelming majority of minority-serving institutions and community colleges, as well as many urban public and independent colleges and universities, would fail to meet the 45 percent repayment rate threshold if adopted by the Department. The commenters questioned the use of this standard of quality that almost one-half of all colleges would fail to meet. In addition, the commenters believed that repayment rates are influenced by a number of factors that have no relation to the quality of the educational program.

Some commenters believed that the Department did not justify its proposal that a program must have an annual loan payment of 8 percent or less of average annual earnings in order to meet the debt thresholds. The commenters suggested that the average annual earnings threshold should be adjusted from eight to at least 12 percent, which would be less than half of the expected upper level of spending on housing and more accurately reflect the role of education in a person's life.

Alternatively, commenters suggested the Department adopt a 10 percent threshold, pointing to the GAO study "Monitoring Aid Greater Than Federally Defined Need Could Help Address Student Loan Indebtedness" (GAO–03–508). The study indicated that 10 percent of first-year income is the generally agreed-upon standard for student loan repayment and that the Department itself established a performance indicator of maintaining borrower indebtedness and average borrower payments for Federal student loans at less than 10 percent of borrower income in the first repayment year in the Department's "FY 2002 Performance and Accountability Report" (see page 165, *http://www2.ed.gov/about/reports/annual/2002report/index.html*).

Some commenters noted that Sandy Baum and Saul Schwartz, economists upon whose 2006 study "How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt" the Department relied for the discretionary earnings threshold in proposed § 668.7(a)(1)(ii) and (iii) and (a)(2)(ii), have criticized the 8 percent metric as not necessarily applicable to higher education loans because the 8 percent threshold (1) Reflects a lender's standard of borrowing, (2) is unrelated to individual borrowers' credit scores or their economic situations, (3) reflects a standard for potential homeowners rather than for recent college graduates who generally have a greater ability and willingness to maintain higher debt loads, and (4) does not account for borrowers' potential to earn a higher income in the future. Commenters emphasized that Baum and Schwartz believe that using the difference between the front-end and back-end ratios historically used in the mortgage industry as a benchmark for manageable student loan borrowing has no particular merit or justification.

Commenters also stated that the 8 percent debt-to-earnings threshold is not supported by any standard economic analysis of educational investment decisions. According to the commenters, such an analysis does not imply a limit on annual debt payment related to annual earnings, but uses a cost-benefit model that includes the gains to earnings resulting from education. The commenters believed the Department should recognize that

borrowing for education costs is different than borrowing for a home mortgage because education tends to cause earnings to increase. As a result, the commenters believed the Department should increase the threshold. For example, a commenter suggested that a 12 percent threshold would be more reasonable.

Some commenters did not agree with the Department's rationale for proposing that a program's annual loan payment may be as high as 30 percent of discretionary income under § 668.7(a)(1)(ii). The commenters argued that the Department should simply adopt the recommendations made by Sandy Baum and Saul Schwartz in the 2006 College Board study that annual student debt should not exceed 20 percent of discretionary income. The commenters believed that the average annual earnings threshold needed to be strengthened noting that allowing a threshold of up to 8 percent only for student loan debt already fails to account for a student's other debts, but allowing up to 12 percent is clearly without a sound rationale and should be eliminated from the regulations after a phase-in period. The commenters also noted that a student's debt is likely to be understated because the same interest rate used for calculating the annual debt service for Federal unsubsidized loans would also be used to calculate the debt service of private education loans which are used more by students attending for-profit institutions. For these reasons, the commenters argued that the Department should avoid using any threshold higher than 8 percent of annual earnings or 20 percent of discretionary income.

Discussion: In view of these comments, the Department is replacing the proposed two-tiered approach that would establish upper and lower thresholds for the debt measures with a single set of minimum standards. Under this simplified approach, the Department is establishing a minimum standard of 35 percent for the loan repayment rate, and a maximum standard of 30 percent of discretionary income and 12 percent of annual earnings for the debt-to-earnings ratios.

The Department set these thresholds with the goal of identifying programs that are failing to prepare students for gainful employment in a recognized occupation, as demonstrated by the prevalence of unaffordable debts and poor employment prospects among their former students. In recognition of the seriousness of steps to revoke eligibility, the Department is defining standards that identify the most clearly problematic programs.

The debt-to-earnings ratios were set after consideration of industry practice and expert recommendations. The ratios identify only programs where the majority of graduates have debt-to-earnings ratios that exceed recommended levels by 50 percent. Consistent with the views expressed in the literature, it allows programs to demonstrate that their debt is affordable based upon either total earnings or discretionary income. The combination of these measures also recognizes that borrowers can afford to contribute a greater share of their income to debt service as their incomes rise.

The repayment rate measure demonstrates that former students are, in fact, struggling to repay their loans. It identifies the approximately one-quarter of programs where 65 percent of former students attempting to repay their loans are nonetheless seeing their loan balances continue to grow.

As shown in Table A, approximately 26 percent of programs across all sectors with more than 30 borrowers in a four-year period fall below the 35 percent threshold based on one year of repayment rate data. The public two-year sector has the highest concentration of programs below the threshold, with 9.2 percent of programs falling below the threshold. These numbers are higher than the actual number of programs we expect to fall below the repayment rate threshold because they may not fully account for the treatment of borrowers who are eligible for Public Service Loan Forgiveness (PSLF) or in alternative repayment plans that allow payments that are equal to or less than accrued interest, or an institution's potential responses to the regulations, such as investments in debt counseling, which could raise programs' rates before the first official rates for FY 2012 are calculated in 2013. Moreover, the repayment rate distribution presented in Table A shows that two-fifths of programs with repayment rates below the 35 percent threshold were within 5 percentage points of meeting the threshold. Once the aforementioned factors are taken into account, the loan repayment rate for numerous programs would likely increase to over the 35 percent threshold, thereby meeting the repayment rate measure.

Table A: Cumulative Distribution of Estimated Large Gainful Employment Programs by Repayment Rate Category and Sector*

	4-year Institutions			2-year Institutions			Less-than-2-Year Institutions			
Repayment Rate (0% to...)	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	All Institutions
5%	0.0%	0.0%	0.0%	1.1%	0.0%	0.0%	0.0%	0.0%	0.1%	**1.3%**
10%	0.0%	0.0%	0.0%	1.2%	0.0%	0.1%	0.0%	0.0%	0.2%	**1.5%**
15%	0.0%	0.0%	0.1%	1.3%	0.0%	0.2%	0.0%	0.1%	0.4%	**2.2%**
20%	0.0%	0.0%	0.8%	1.5%	0.0%	1.2%	0.0%	0.1%	0.7%	**4.4%**
25%	0.0%	0.1%	1.5%	2.1%	0.0%	2.6%	0.0%	0.1%	1.5%	**8.0%**
30%	0.3%	0.2%	2.7%	4.6%	0.0%	4.2%	0.1%	0.1%	2.8%	**14.9%**
35%	0.7%	0.3%	4.0%	9.2%	0.1%	6.2%	0.2%	0.2%	4.5%	**25.5%**
ELIGIBILITY THRESHOLD										
40%	1.0%	0.4%	5.7%	14.9%	0.1%	7.9%	0.3%	0.2%	5.6%	**36.0%**
45%	1.4%	0.6%	7.6%	20.3%	0.1%	9.4%	0.7%	0.3%	6.7%	**47.1%**
50%	2.0%	0.9%	9.3%	25.0%	0.2%	10.8%	1.0%	0.3%	7.8%	**57.2%**
55%	3.0%	1.1%	10.1%	27.9%	0.2%	11.3%	1.3%	0.3%	8.6%	**63.8%**
60%	3.7%	1.6%	10.5%	30.8%	0.3%	11.8%	1.4%	0.4%	9.3%	**69.8%**
65%	4.3%	2.0%	10.7%	32.2%	0.3%	12.3%	1.6%	0.4%	9.6%	**73.6%**
70%	5.3%	2.5%	10.8%	33.3%	0.4%	12.5%	1.7%	0.5%	10.1%	**77.2%**
75%	5.7%	3.2%	10.8%	33.7%	0.5%	12.7%	1.8%	0.5%	10.3%	**79.2%**
80%	6.0%	3.7%	10.8%	34.0%	0.6%	12.7%	1.8%	0.5%	10.4%	**80.6%**
85%	6.0%	3.9%	10.8%	34.0%	0.6%	12.8%	1.8%	0.5%	10.5%	**81.0%**
90%	6.0%	4.0%	10.8%	34.1%	0.6%	12.8%	1.8%	0.5%	10.5%	**81.2%**
95%	6.0%	4.0%	10.8%	34.1%	0.7%	12.8%	1.8%	0.5%	10.5%	**81.3%**
100%	6.0%	4.0%	10.8%	34.3%	0.7%	12.8%	1.9%	0.5%	10.6%	**81.7%**
Sector Total**	**6.2%**	**4.0%**	**11.1%**	**45.4%**	**1.0%**	**13.4%**	**4.9%**	**0.8%**	**13.2%**	**100.0%**

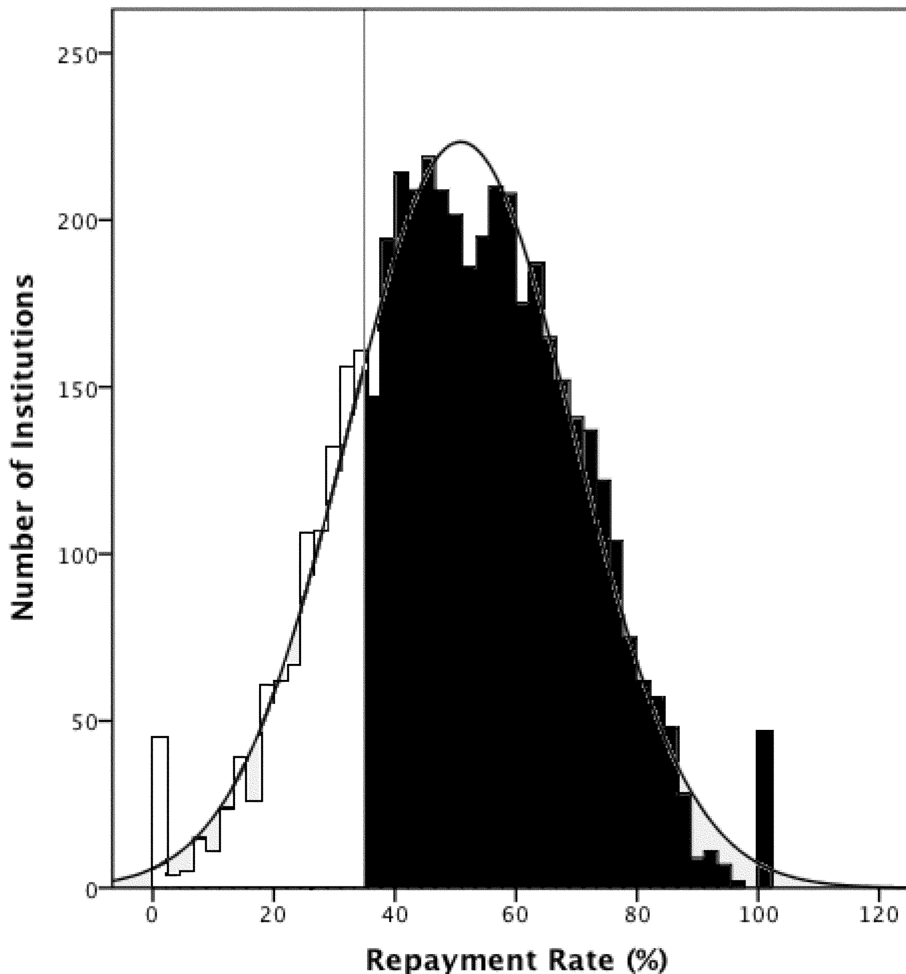
*Large program defined as having more than 30 borrowers entering repayment or completers in the 4YP.

**Sector total percentages include institutions with repayment rates that are unavailable.

Source: U.S. Department of Education analysis of data from the National Student Loan Data System and the Integrated Postsecondary Education Data System

Chart 1 shows the distribution of repayment rates across all types of institutions. The mean repayment rate for all of these programs, using the loan repayment rate specified in these final regulations, is 51 percent. The mean repayment rate for these programs at public institutions is 49 percent, 60 percent at private, non-profit institutions, and 43 percent at private, for-profit institutions.

Chart 1: Distribution of Repayment Rates in all Sectors



In developing the lower limit of the repayment rate in the July 26, 2010 NPRM, we attempted to define a relatively small subset of programs that could potentially lose eligibility. At the same time, we balanced that concern against the need to make the measure a meaningful performance standard. The programs within the lower boundary are, by definition, the worst performing when measured against both the repayment rate and debt-to-earnings ratios. Setting the threshold for eligibility at 35 percent identified approximately the lowest-performing quarter of programs.

A similar approach was taken in developing the repayment rate threshold for these final regulations. Although we have revised the methodology for calculating the repayment rate, the 35 percent threshold remains close to the 25th percentile among gainful employment programs. Table B shows frequency statistics associated with the new repayment rate measure across all institutional types.

Table B: Statistical Summary of Repayment Rates

Repayment Rates by Percentile						
5th	10th	25th	Median	75th	90th	95th
20.3%	26.9%	38.0%	50.6%	64.2%	75.0%	81.3%

With regard to the study by the College Board, economists Sandy Baum and Saul Schwartz preferred a debt-service approach based on discretionary income rather than total income. The authors argued that a percentage based on total income does not answer the question of how much students can borrow without having difficulties repaying their loans because the percentage of income that borrowers can reasonably be expected to devote to repaying their loans increases with income. However, the authors did not suggest that 20 percent is a reasonable debt-service ratio for typical borrowers. The authors suggested that the maximum affordable debt-service ratio is approximately 20 percent. In the July 26, 2010 NPRM, we adopted this suggestion as the primary measurement of affordable debt at most income levels.

However, because a gainful employment program would fail the discretionary income ratio whenever the

income of the students who completed the program was less than 150 percent of the poverty guideline, we proposed a second debt-to-earnings ratio where the annual loan payment would not exceed 8 percent of total income. As noted in the July 26, 2010 NPRM (see 75 FR 43620) and the Baum and Schwartz study, 8 percent is a commonly used standard for evaluating manageable debt levels. Under this "best of both worlds" approach, programs could satisfy the proposed debt-to-earnings ratios in one of two ways. Programs whose graduates have low earnings relative to debt would benefit from the calculation based on total income, and programs whose graduates have higher debt loads that are offset by higher earnings would benefit from the calculation based on discretionary income.

Chart 2 represents the interaction between the two debt measures and how programs could retain eligibility under either measure. Table C provides the data underlying Chart 2 and indicates the maximum median loan debt a program may have so that the monthly payment falls under the final debt threshold.

Chart 2: Allowable Debt Levels by Earnings (Areas under the Lines Represent Permissible Typical Debt Burdens)

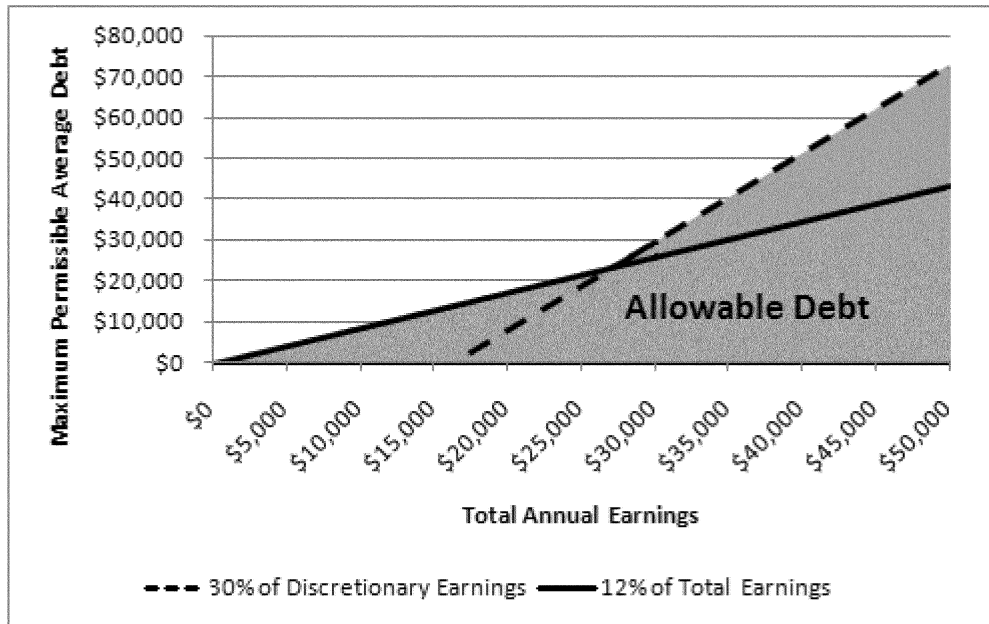


Table C: Allowable Debt Levels by Earnings

Average Annual Earnings	Maximum Permissible Average Debt: 12% of Total Earnings	Maximum Permissible Average Debt: 30% of Discretionary Earnings	Maximum Permissible Average Debt: Higher of Two Standards	Maximum Monthly Payment
$5,000	$4,345	$0	$4,345	$50
$10,000	$8,690	$0	$8,690	$100
$15,000	$13,034	$0	$13,034	$150
$20,000	$17,379	$8,157	$17,379	$200
$25,000	$21,724	$19,019	$21,724	$250
$30,000	$26,069	$29,881	$29,881	$344
$35,000	$30,414	$40,743	$40,743	$469
$40,000	$34,758	$51,605	$51,605	$594
$45,000	$39,103	$62,467	$62,467	$719
$50,000	$43,448	$73,329	$73,329	$844

For the loan repayment rate, the Department proposed a threshold of 45 percent for full, unrestricted eligibility.

This represented the mean repayment rate among institutions from all sectors (the actual repayment mean was 48 percent which was rounded down to 45 percent to establish the threshold).

The 20 percent discretionary income threshold, 8 percent total income threshold, and 45 percent repayment rate threshold in the proposed regulations established reasonable debt levels. Raising the baseline thresholds for the debt-to-earnings ratios by 50 percent set the boundary above which it could become increasingly more difficult for a borrower to make loan payments. In reducing the loan repayment rate threshold to 35 percent, which approximated the 25th percentile of the distribution of repayment rates, we set the boundary below which programs could potentially become ineligible for title IV, HEA funds. So, under the July 26, 2010 NPRM, programs that scored in between the baseline and lower thresholds would continue to qualify for title IV, HEA funds, but would be subject to restrictions.

Under the framework established in these final regulations, the Department shifts from focusing on programs that have problematic debt levels (programs subject to restrictions) to targeting the lowest-performing programs (programs where the annual loan payment exceeds 30 percent of discretionary income and 12 percent of annual earnings and repayment rates less than 35 percent). By adopting the more lenient thresholds for the debt-to-earnings ratios, we provide a tolerance of 50 percent over the baseline amounts to identify the lowest performing programs, as well as account for former students who completed a program but who may have left the workforce voluntarily or are working part-time. For the loan repayment rate, the 35 percent threshold continues to represent the 25th percentile of repayment rates rounded down to the nearest 5 percent, which in our view, allows for a minimally acceptable outcome where nearly two-thirds of borrowers would not be making payments sufficient to reduce by at least one dollar the outstanding balance of the loans they incurred for enrolling in a program. In addition, because a program now either passes or fails the minimum standards, unlike the approach in the July 26, 2010 NPRM we are not placing any restrictions on passing programs.

As discussed in more detail elsewhere in this preamble, under these final regulations, there will be some programs for which the Department will not have the data necessary to calculate the debt measures. Accordingly, we are clarifying that a program is considered to provide training that leads to gainful employment in a recognized occupation if the data needed to determine whether the program meets the minimum standards are not available to the Secretary.

With regard to the comment on "low-value programs," although we find the commenter's suggestion intriguing, the relationship between the variables (post-graduate income compared to the results of the debt-to-earnings ratio) do not provide a clear basis for setting the repayment rate at 65 percent. In any case, the suggested approach would add significant complexity and uncertainty, as institutions would not know what threshold their programs are expected to meet until they have determined their performance on the other threshold. More significantly, we are not convinced this approach would be better at identifying the poorest performing programs.

Changes: Section 668.7(a)(1) has been revised to establish minimum standards for a gainful employment program. The program satisfies the standards if its loan repayment rate is at least 35 percent, or the program's annual loan payment is less than or equal to 30 percent of discretionary income or 12 percent of annual earnings. Section 668.7(a)(1) also has been revised to state that a program is considered to meet the minimum standards if the data needed to determine whether a program satisfies those standards are not available to the Secretary.

Definitions

Definitions of "*Program*" *(Proposed § 668.7(a)(3)(i)); Final § 668.7(a)(2)(i))*

Comments: Commenters considered the definition of the term *program* to be too vague and requested additional guidance. For example, commenters questioned whether, under the proposed regulations, a program would contain multiple degree levels, whether the Department would evaluate a program at the institutional or branch level, and whether a program could include multiple areas or concentrations of study. Similarly, other commenters noted that because program performance varies greatly by campus location, the measures should be made at the campus level, and successful campuses would thus not be negatively affected by the regulations.

Discussion: We agree that the definition of the term *program* should be clarified. To properly track programs or associate the program with its debt measures, we identify a program by a unique combination of the institution's six-digit OPEID number, the program's six-digit CIP code, and credential level. For this purpose, the credential levels are undergraduate certificate, associate's degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, and first-professional degree.

Under this definition, a program with a unique identifier that is offered by an institution at its main campus or at any of its locations is considered the same program for the purposes of the reporting and disclosure requirements in § 668.6 and the gainful employment program requirements in § 668.7. In addition, with regard to whether a program could include multiple areas or concentrations of study, we believe the definition's use of CIP codes alleviates this concern as the CIP code evaluation would take into account those issues. We remind institutions that they are responsible for accurately assigning CIP codes to programs in their reporting to the National Center for Educational Statistics (NCES) under section 487(a)(17) of the HEA. The inaccurate assignment of CIP codes may adversely affect the institution's participation in the title IV, HEA programs. The Secretary would consider a CIP code inaccurately assigned if the Secretary determines that the program best conforms to the description of another CIP code.

The Department does not agree that the debt measures should apply at a campus level when a single institution has multiple locations. In these circumstances, a student may attend courses for his or her program at more than one location or take additional courses online. Even if a program may be attended, in its entirety, at individual locations of an institution, the program is essentially the same program at all of the locations of the institution. We believe that it would be difficult and arbitrary to attempt to distinguish among the various gradations in patterns of student attendance. Additionally, even though there may be some variation between locations, such as those resulting from locations in different States subject to different State licensure requirements for a particular career, we do not believe such variation justifies attempting to distinguish a program's performance based on being offered at multiple locations. Moreover, in many cases, dividing programs by location would make it more difficult to reliably assess performance due to the fact that many institutions may have a small number of students in a particular location.

Changes: In § 668.7(a)(2), we have revised the definition of *program* as described in this discussion.

Comments: Commenters did not believe the CIP code format is sufficiently granular to adequately distinguish among programs. The commenters noted that currently there are a number of gainful employment programs that share the same CIP code. For example, in the context of new and emerging health care fields, multiple programs may be designated in the "general" or "other" subcategories. The commenters believed that, because the CIP codes are not scheduled to be updated until 2020, they will rapidly become obsolete but will still be used to assess program performance.

Discussion: We believe that using the CIP codes is sufficient to identify a program, particularly when used in combination with the institution's OPEID and credential level as provided under the definition of *program.* We believe this coding convention greatly mitigates any concern related to the available codes under the CIP. We do not view the decennial updating of the CIP to be an impediment to the use of

these codes because new fields of study may also use more generic CIP codes until the next update of the CIP codes. However, if the CIP codes prove inadequate to reflect the diversity of offerings at the postsecondary level, the coding can be revised to reflect the greater depth required before 2020. In addition, through our oversight of institutional reporting under the Integrated Postsecondary Education Data System (IPEDS) completions survey, we can make adjustments to the CIP code categories more frequently to ensure that they appropriately reflect the programs being offered by institutions.

Changes: None.

Comment: One commenter stated that 59 percent of cosmetology schools, many of which offer only one program, were at risk of losing eligibility based on the data contained in the document on cumulative four-year institutional repayment rates that the Department released after issuing the July 26, 2010 NPRM. According to the commenter, these schools could lose eligibility because of the limited number of borrowers who make up the school's cohort and the impact that a single or relatively small number of borrowers can have on the school's repayment rate. The commenter noted that for schools with one or a limited number of program offerings, the loss of one program would result in the loss of the institution. The commenter recommended that the Department provide for very limited exemptions from the annual loan repayment rates for institutions with a small number of borrowers in repayment and consider instead basing the threshold on four-year cohorts of 120 students or less, consistent with the low-volume treatment for CDRs.

Discussion: The HEA identifies those programs that must provide training that leads to gainful employment in a recognized occupation in order to receive title IV, HEA funds. The statute makes no exception for an institution with only one program; accordingly, we cannot exempt institutions offering only one program from the debt measures. However, we are providing in these final regulations an exemption for a program with a small number of borrowers or completers because debt measures based on a few students completing the program or repaying their loans may not accurately reflect the program's performance.

In general, under these regulations, and as described in further detail under the heading, *Definitions of "Three-Year Period (3YP)" and "Prior Three-Year Period (P3YP)" (Proposed § 668.7(a)(3)(iii) and (iv)),* we will assess programs based on two years of performance against both debt measures. When a program has fewer than 30 borrowers or program completers in the two-year period, however, we will assess the program's performance across a four-year period. We also are revising the regulations to provide that programs that have fewer than 30 borrowers or program completers in the four-year period are considered to meet the debt measures due to the difficulty in reliably assessing the performance of programs with small numbers of students.

In addition, because the Social Security Administration (SSA) will attempt to match the identity data of the students included in a two- or four-year period to the identity data that it maintains, any mismatches may result in SSA not including students in its calculation of the mean and median earnings for a program. Consequently, there may be cases where more than 30 students completed a program, but SSA calculates the mean and median earnings for the program based on 30 or fewer students. For these cases, as discussed more fully under the heading, *Draft debt measures and data corrections (§ 668.7(e)), Final debt measures (§ 668.7(f)), and Alternative earnings (§ 668.7(g)),* the Department will use the mean and median earnings provided by SSA to calculate the debt-to-earnings ratios for the program, but where SSA is unable to provide earnings data for one or more students, the Department may adjust the median loan debt for the program based on the number of students that SSA excluded in calculating the mean and median earnings. SSA may not calculate the mean and median earnings for a program if the number of students excluded falls below a threshold established by SSA. In these cases, the Department will consider the program to have satisfied the debt measures.

Finally, we are revising the regulations to provide that programs with a median loan debt of zero are meeting the measures. This clarification is a logical extension of the debt measures since programs with a median loan debt of zero are not placing any debt burden on the majority of their students.

Changes: We have revised § 668.7(a)(2) to establish the term *four-year period* (4YP), which is defined as the period covering four consecutive FYs that occur on the third, fourth, fifth, and sixth FYs (4YP) prior to the most recently completed FY for which the debt measures are calculated. For a program whose students are required to complete a medical or dental internship or residency, as identified by an institution, the four-year period (4YP–R) covers the sixth, seventh, eighth, and ninth FYs (4YP–R) prior to the most recently completed FY for which the debt measures are calculated. We note that debt measures for programs using the 4YP–R will not be calculated until data covering those years are available. The definition of *four-year period* also provides that a required medical or dental internship or residency is a supervised training program that requires the student to hold a degree as a doctor of medicine or osteopathy, or a doctor of dental science; leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health-care facility that offers post-graduate training; and must be completed before the borrower may be licensed by the State and board certified for professional practice or service.

In addition, we have revised § 668.7(d) to provide that the debt-to-earnings ratios for a small program are calculated using the 4YP or the 4YP–R if 30 or fewer students completed a program during the 2YP or the 2YP–R, respectively. Similarly, the 4YP or the 4YP–R is used for the loan repayment rate, if the corresponding 2YP or 2YP–R represents 30 or fewer borrowers whose loans entered repayment during the 2YP or the 2YP–R, respectively.

The revised regulations in § 668.7(d) provide that, in determining whether the 2YP or the 2YP–R represents 30 or fewer students or borrowers, we remove from the applicable two-year period any student or loan for a borrower that meets the exclusion criteria under § 668.7(b)(4) or (c)(5). Under those sections, we do not include a student or loan for a borrower in the two- or four-year periods used to calculate the debt measures if the Department has information that (1) for the loan repayment rate, one or more of the borrower's loans were in an in-school or a military-related deferment status or, for the debt-to-earnings ratios, the student's loans were in a military-related deferment status at any time during the calendar year for which the Department obtains earnings data from SSA, (2) for both measures, the student died, (3) for both measures, one or more of the borrower's loans were assigned or transferred to the Department that are being considered for discharge as a result of the total and permanent disability of the borrower, or were discharged on that basis under 34 CFR 682.402(c) or 34 CFR 685.212(b), or (4) for the debt-to-earnings ratios, the student was enrolled in any other

eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under § 668.7(c)(3).

We also have revised § 668.7(d)(2)(i) to provide that a program satisfies the debt measures if SSA does not provide the mean and median earnings for the program. In addition, the final regulations provide that if the median student loan debt of a program is equal to zero, the program would meet the debt measures.

Graduate Programs

Comment: Some commenters recommended that the Department exempt graduate programs from the gainful employment requirements because graduate students are sufficiently sophisticated to determine whether they can afford the education they seek and how much debt to incur. The commenters also noted that many graduate students are already employed and pose little risk of nonpayment, but have extremely high loan limits available to them, making them more likely to consolidate their loans, repay their loans under income-sensitive repayment plans, and incur what may be significant unpaid accrued interest that is subject to capitalization. Other commenters expressed concern that graduate students in a program would be likely to consolidate loans from the graduate program with loans from their undergraduate programs, and as a result the graduate program could find it harder to meet the repayment rate threshold if it enrolls students who enter with significant amounts of student loan debt. Alternatively, some commenters recommended that the Department limit the amount of debt counted in calculating the repayment rate to the amount used to pay tuition and fees for the program if the Department chooses not to exempt graduate programs. The commenters believe this approach would ensure that institutions are not improperly penalized for decisions made by students to borrow excessively, including incurring private loan debt, which may result in the institution being unable to continue to offer the graduate program of study.

Discussion: The HEA identifies those programs that must provide training that leads to gainful employment in a recognized occupation in order to receive title IV, HEA funds. These include graduate programs; therefore, we do not have a legal basis to categorically exempt these programs from the statutory requirements. However, some distinctions are recognized based upon the characteristics of those programs, such as the use of an extended repayment period in the calculation of the debt to earnings ratio. Based on the comments noting that students attending graduate programs may have different expectations about how long it will take to repay their loans due to the increased costs associated with those programs, we have extended the repayment period for certain of those programs to up to 20 years for the purposes of calculating the annual loan payment for the debt-to-earnings ratios. In addition, we recognize that many graduate students have outstanding student loans from prior postsecondary programs. When calculating the repayment rate for post-baccalaureate programs, we will consider a borrower with a consolidation loan to be successfully repaying his or her loans if the outstanding balance does not increase over the course of the most recently completed FY.

Changes: See changes discussed under the heading, *Loan Amortization,* and under the heading, *Loan Repayment Rate Calculation.*

Definitions of "*Three-Year Period (3YP)*" *and* "*Prior Three-Year Period (P3YP)*" *(Proposed § 668.7(a)(3)(iii) and (iv))*

Comments: Commenters disagreed with the Department's proposed regulations to use starting salary data for the "earnings" portion of the debt-to-earnings ratio calculation. They were concerned that 3YP data do not take into account the lifelong benefit of higher education and the fact that graduates will earn more money as they gain experience and responsibility. Commenters recommended that the Department eliminate the 3YP and P3YP distinctions and replace these two independent benchmarks with a single benchmark based upon income data for a six-year period.

A number of commenters indicated that it is impossible for medical and dental residents to satisfy the proposed gainful employment standards, under the proposed P3YP. According to the commenters, the proposed P3YP fails to account for the fact that most, but not all, medical and dental residents will undertake employment during years 4, 5, and 6 following graduation at entry level salaries. For example, it takes a minimum of three years of a residency before a medical doctor can become eligible for full licensure and able to practice medicine without supervision in all fifty States. Residencies in categorical subspecialties, such as neurology, anesthesia, or cardiology, can take up to eight years.

Along the same lines, commenters representing several medical and dental schools, and related residency programs that award postgraduate certificates, noted that the proposed repayment rate regulations failed to consider the nature of medical and dental training and required residency periods. Because the residency periods may be for three to eight years following medical and dental school graduation, the proposed repayment rate for these programs would be lower than it should be. The commenters stated that the compensation of medical residents is so small that it is not a recognized occupation according to the BLS and that medical school graduates are not gainfully employed until after they complete their medical residencies. Consequently, it could take several years for a physician or surgeon to achieve a median salary level. As a result, many medical school graduates opt for income-contingent, income-based, or extended repayment plans and consolidate their loans, leading to significant amounts of capitalized interest. The commenters stated that under the proposed repayment rate formula, the majority of U.S. medical schools would fail to meet the 45 percent repayment rate standard. Therefore, the commenters urged the Department to exempt from the regulations medical school programs and postdoctoral dental residency certificate programs.

Another commenter recommended that the Department allow institutions to base the loan repayment rate on either the four most recent Federal FYs or the prior set of four FYs (i.e., years 5 through 8) in order to better reflect earnings after graduation. The commenter offered that institutions choosing the prior four-year period should be required to comply with the stricter 45 percent repayment rate threshold. The commenter also noted that this approach could provide an option for schools during economic recessions when external factors can result in artificially reduced loan repayment rates.

Discussion: The Department proposed in § 668.7(a)(1)(ii) and (iii) to use the most current earnings available of the students who completed the program in a 3YP to calculate debt-to-earnings ratios. If an institution could show that the earnings of students in a particular program increase substantially after an initial employment period, the Department would use the P3YP. As discussed more fully under the heading, *Earnings of program completers,* those calculations have been modified to use two-year periods. This change to a two-

year period will allow an institution to show improvement in a program's performance in a shorter cycle. Under the proposed framework, approximately one-third of the students who are included in the 3YP would have completed a program or entered repayment during a particular year, whereas under these final regulations approximately one-half of the students in the 2YP will represent a single year. Accordingly, the current debt measures for a program will not be affected by former students in the program for more than a two-year period.

The Department agrees that the performance of programs whose graduates are required to complete medical or dental internships and residencies before they can begin professional practice should be measured at a later point in repayment than borrowers who would be expected to obtain gainful employment immediately after leaving a program. Although borrowers earn money and enter repayment, in a sense, the internships and residencies are a continuation of the educational program. As long as an institution identifies these programs, we will calculate the repayment rate based on the two-year cohort of borrowers who first entered repayment on their loans in the sixth and seventh years prior to the year the repayment rate is calculated rather than the third and fourth years used for all other borrowers. The debt-to-earnings ratios for these programs will be calculated based on the two-year cohort of borrowers who completed the program in the sixth and seventh years prior to the year the debt-to-earnings ratios are calculated. In order to be clear about those medical or dental internship or residency programs for which the 2YP–R (as well as the 4YP–R) would apply, we are providing in the definitions of *two-year period* and *four-year period* that a required medical or dental internship or residence is a supervised training program that contains three elements. First, the program must require the student to hold a degree as a doctor of medicine or osteopathy, or a doctor of dental science. Second, the program must lead to a degree or certificate awarded by an institution of higher education, a hospital, or a health-care facility that offers post-graduate training. Third, the program must be completed before the borrower may be licensed by the State and board certified for professional practice or service.

To provide an alternative for institutions that take immediate steps to improve a program's loan repayment rate during the initial three-year evaluation period, we will calculate the repayment rate based on the most recent two-year period, the two-year period alternate (2YP–A), which includes loans for borrowers who entered repayment during the first and second FYs prior to the most recently completed FY. We believe this provision parallels the alternative earnings approach described elsewhere in this preamble under which an institution may use alternative earnings data to recalculate the debt-to-earnings ratios for a failing program. Unlike that approach, however, the Department will automatically calculate the loan repayment rate for a program based on the 2YP and the 2YP–A (provided that the 2YP–A represents more than 30 borrowers whose loans entered repayment) for the covered two-year period and use the higher of those rates to determine whether the program satisfies the 35 percent repayment rate standard. Because it is intended to recognize rapidly improving programs during a transition period, the 2YP–A is available for repayment rates calculated for FYs 2012, 2013, and 2014 only.

Changes: Proposed § 668.7(a)(3)(iii) and (iv) defining a 3YP and P3YP have been removed. In their place, we have added a definition of *two-year period* in § 668.7(a)(2)(iv). Under this definition, for most programs, a *two-year period* is the period covering two consecutive FYs that occur on the third and fourth FYs (2YP) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2012, the 2YP is FYs 2008 and 2009. For a program whose students are required to complete a medical or dental internship or residency, as identified by an institution, a *two-year period* is the period covered by the sixth and seventh FYs (2YP–R) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2012, the 2YP–R is FYs 2005 and 2006.

We also have provided in the definition of *two-year period* that a required medical or dental internship or residency is a supervised training program that requires the student to hold a degree as a doctor of medicine or osteopathy, or a doctor of dental science; leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health-care facility that offers post-graduate training; and must be completed before the borrower may be licensed by the State and board certified for professional practice or service.

Finally, for FYs 2012, 2013, and 2014, the *two-year period* (2YP–A) is the period covered by the first and second FYs prior to the most recently completed FY for which the loan repayment rate is calculated. For example, if the most recently completed FY is 2012, the 2YP–A is FYs 2010 and 2011.

Restricted Programs (Proposed §§ 668.7(a)(2) and 668.7(e)); Failing Programs and Ineligible Programs (Final § 668.7(h) and (i))

Restricted Programs and Enrollment Limits

Comment: Some commenters objected to proposed § 668.7(e)(3), which would limit enrollment of title IV, HEA recipients in a restricted program to the average number enrolled during the prior three award years. The commenters believed that these growth restrictions, coupled with the employer affirmations in proposed § 668.7(e)(1), would result in the Department, rather than the market, controlling how many students are trained for a particular profession. The commenters argued that the Department would be exercising power over the job market, even though it is not equipped to assess the needs of the job market. According to these commenters, an analysis of whether a job market is growing, contracting, or otherwise changing requires consideration of many complex and interrelated factors, and that this analysis is beyond the Department's expertise in the educational sector. In addition, the commenters opined that the proposed regulations would have the effect of regulating job markets, not debt levels or whether a program prepares its students to earn an income. The commenters noted that a short-term oversupply of potential employees in a certain field could cause a program to become restricted, regardless of whether the program adequately trained its students for employment in that field.

Some commenters argued that title IV, HEA funds are not intended to be used only for a program that prepares a student for an occupation that is in demand at the time the student enters the program. Another commenter concluded that because restricted programs would likely have a significant number of Pell Grant students, limiting the number of title IV, HEA eligible students who can enroll in those programs would impede President Obama's 2020 higher education goal, because these are the types of students that institutions need to educate to meet that goal. In view of this consequence, this commenter suggested that the Department eliminate the proposed growth restriction and employer verification requirements and only

require institutions to make debt disclosure warnings to students in the institutions' promotional materials for these programs.

Some commenters recommended that the Department limit enrollment for a restricted program to the number of students enrolled during the previous award year. The commenters noted that under proposed § 668.7(e)(3), limiting enrollment to the average number of title IV, HEA eligible students enrolled during the last three award years could result in reducing enrollment. If a program has been growing over the last three years, the average enrollment for the three-year period would be lower than the highest enrollment for the most recent year. For example, if a program had an enrollment of 10 in year 1, 20 in year 2, and 30 in year 3, the average enrollment for all three years would be 20. The average enrollment would be 10 fewer than the highest enrollment for the three-year period.

Similarly, other commenters believed that reducing the number of title IV, HEA eligible students in a restricted program would likely cause institutions to scale back resources. They noted, however, that restricting enrollment to the most current award year level would drive improvement while still limiting growth. The commenters believed that this approach would avoid any diminishing of program quality that would otherwise occur when programs that could meet the debt thresholds are forced to scale back resources.

On the other hand, some commenters noted that the proposed average-enrollment approach might not reflect historic norms for a program experiencing rapid enrollment growth during the past three years and that a baseline reflecting growth in just those years might not provide an effective limitation. The commenters recommended that the Department place stricter enrollment limitations on restricted programs.

Commenters supporting the proposal to restrict enrollment argued that the restriction should be limited in duration. The commenters were concerned that institutions with large programs could continue to enroll title IV, HEA eligible students indefinitely without improving quality. Commenters also noted that nothing would prevent institutions from enrolling non-title IV students in restricted programs, thus allowing those programs to continue to grow. The commenters noted that many institutions enroll large numbers of borrowers who receive taxpayer-funded assistance from other government-funded educational programs such as the G.I. Bill. One of the commenters stated that according to the Department of Veterans Affairs, eight of the top 10 colleges with the most VA-funded students are for-profit institutions. In view of these concerns, the commenters recommended that the Department (1) require that a program on restricted status must improve in order to continue receiving Federal student aid, and (2) make the program ineligible if it is in a restricted status for three consecutive years.

In addition, commenters had several questions concerning the criteria the Department would use in determining how to count enrolled students for purposes of the enrollment restrictions.

Discussion: See the following discussion.

Ineligible Programs

Comment: Commenters expressed concern that the proposed regulations did not include a "grandfather" provision allowing students attending programs deemed ineligible to complete their program of study. The commenters believed that students enrolled in associate's and bachelor's degree programs should be permitted to attend the ineligible program and continue to receive title IV, HEA funds for longer than the one additional year proposed in the regulations. Commenters suggested alternative time periods including allowing a student to continue to receive title IV, HEA funds (1) until he or she completes the program, (2) up to the published length of the program, or (3) up to one and one-half times the length of the program. The commenters believed these periods were appropriate as long as the student is continuously enrolled and complies with satisfactory academic progress standards.

Another commenter contended that requiring a student in an ineligible program to rely on transferring to another institution to complete his or her degree or credential would result in substantial burdens for students, including disrupting the student's academic progress, adjusting to a new learning environment, and potentially having difficulties in the job market, including, but not limited to, having to explain to employers the reason for changing colleges midstream. The commenter argued that this limitation on student eligibility would not serve the Department's underlying policy goals because it would require students to decide among what the commenter believed to be three unappealing choices: (1) Remain in the program without title IV, HEA program assistance (but with a continued ability to obtain private educational loans at higher interest rates); (2) transfer to another program (with the accompanying negative consequences); or (3) leave the program without a credential but with student loan debt.

To help ensure that students in an ineligible program have adequate alternative options for obtaining a postsecondary education, other commenters suggested that the Department place an ineligible program on a probationary status for the first and second years after the year the program has been determined to be ineligible. The program would lose its eligibility for title IV, HEA funds only if it failed to meet the gainful employment standards for a third successive year. The commenters offered that, under this approach, the Department could require an institution to submit a plan to bring the program into compliance with the gainful employment standards, which would result in the institution having a reasonable amount of time to make needed adjustments. Similarly, other commenters recommended that in cases where more than 50 percent of an institution's students are enrolled in a particular program, the Department should not impose sanctions unless the program fails to meet the threshold requirements for three consecutive years.

Another commenter was concerned that a significant number of students enrolled in ineligible programs would not have meaningful access to more appropriate alternative educational opportunities and that there would not be the capacity to accommodate students from programs that fail the debt measures. The commenter opined that the Department should work with Congress to develop a transition plan to increase postsecondary capacity to address the needs of current and prospective students displaced when their program becomes ineligible under the regulations. The plan, according to the commenter, could include new investments in a range of programs that are currently authorized under the Higher Education Opportunity Act of 2008 (Pub. L. 110–315) (HEOA) but have never been funded, including the "Program to Increase College Persistence and Success;" the "Bridges from Jobs to Careers" grant program; and the "Business Workforce Partnerships for Job Skill Training in High Growth Occupation or Industries" grant program. In addition, the commenter believed that the Department should consider developing regulations or guidance to help ease student transitions between postsecondary institutions and other Federal training and employment programs, building on

successful State and local "career pathways" models that enable low-income and other at-risk individuals to acquire the skills they need for well-paying jobs and careers.

Other commenters believed that students who are unable or choose not to complete an ineligible program, or who are unable to or choose not to transfer to another program within the same institution, should have their Federal student loan debts discharged so that they have the opportunity to move on without penalty. The commenters noted that FFEL and Direct Loans may be discharged under the closed-school provisions of the title IV regulations. Another commenter suggested using the false certification provisions as the basis for discharging loans for students enrolled in ineligible programs. Other commenters believed that incurring loan debt for attending an ineligible program should be an allowable defense to collection for a student who is later unable to make loan payments.

Another commenter believed that the Department should give an institution an opportunity to lower tuition instead of making the program immediately ineligible. The commenter described a program designed for speakers of the Spanish language where a student takes automobile mechanics classes that are taught every day in the Spanish language for four hours, and then takes two hours of English as a Second Language on the same day. The commenter stated that the program is highly effective, but because it costs more than the institution's traditional programs it may become ineligible for title IV, HEA funds under the proposed metrics.

Commenters were also concerned that the proposed regulations did not specify when and under what standards an institution could apply to have an ineligible program regain its eligibility. The commenters recommended that the Department allow the institution to apply to regain eligibility for a program one full award year after the program became ineligible and determine whether the program regains its eligibility under the standards proposed for new programs.

Other commenters believed that no penalties should be imposed on a program for failing to meet a metric until after an institution is notified and provided with an opportunity to take corrective action. The commenters suggested that the Department allow the institution to bring the ineligible program into compliance during at least the same period of time that a student would be allowed to continue to receive title IV, HEA program funds for attending that program.

A commenter asked the Department to clarify how a student would be affected if a program is determined to be ineligible during the course of the student's studies. The commenter also questioned how the proposal disallowing the award of title IV, HEA program funds to students who begin attending an ineligible program after a specified date relates to a situation where a student has taken a leave of absence and the student resumes attending the program after the program became ineligible.

Discussion: As discussed under the heading, *Thresholds for the Debt Measures (§ 668.7(a)(1)),* we have simplified the regulations by establishing a single set of minimum standards that are applied over at least a three year period. Under the simplified approach, a program either passes or fails the minimum standards. Consistent with the general emphasis on disclosure and appropriate incentives, the debt warnings provided students during this extended period will play an important role.

Because the debt warnings in these final regulations are more extensive than the requirements proposed in the July 26, 2010 NPRM and the Department is seeking to focus the sanctions on the lowest-performing programs, we believe it is no longer appropriate to limit enrollment or place other restrictions on a gainful employment program.

We agree with commenters that institutions should be allowed some time to improve a program before it becomes ineligible for title IV, HEA funds, and we have therefore adopted the suggestion made by some of the commenters that a program not be subject to sanction for a three-year period. In § 668.7(h), we are providing that a failing program is one that does not satisfy at least one of the minimum standards for a FY. Under § 668.7(i), a failing program becomes ineligible if it fails the minimum standards for three out of the last four most recently completed FYs. If and when that occurs, the Department notifies the institution that the program is ineligible on this basis and that the institution may no longer disburse title IV, HEA funds to students enrolled in that program except as permitted using the procedures in § 668.26(d).

Using an extended period of three out of four FYs of failing the measures to make a program ineligible will provide greater flexibility and offer a measure of protection to programs that generally pass at least one of the measures but have an isolated and perhaps unusual year in which the program fails both debt measures. This change simultaneously responds to some of the concerns identified in the comments about the possibility that merely one year of failing the measures would result in a program becoming ineligible under the proposed regulations. In particular, this approach significantly reduces the chances that random variations in the caliber of a specific student cohort could put a program at risk of losing its eligibility for title IV, HEA funds. A good program could have a bad year, but it is far less likely that a good program could have three bad years out of four years. Extending the period of measurement to three out of four years allows for a more accurate reflection of typical performance.

Moreover, the approach helps to control for recessions and other variations in the labor market that could make it difficult for students (including those graduating from programs performing well on the measures) to get jobs. The average recession in the post-World War II period lasted for 11 months. See *http://www.nber.org/cycles/US_Business_Cycle_Expansions_and_Contractions_20100920.pdf.* In recent recoveries the unemployment rate has remained elevated for longer than the official recessionary period. With a longer observation period of three out of four years, programs will be less at risk of being judged by business cycle conditions that are out of their control.

At the same time, if the regulations had been altered to require two consecutive years of failing both measures for a program to lose eligibility, it is likely that some programs might not respond quickly enough to make relevant improvements. Using a period of three out of four consecutive FYs to determine a program's eligibility will also have the advantage of preventing a program that generally fails both measures from remaining eligible by simply passing one of the debt measures in one year. This extended period provides an opportunity for the institution to make a sustained assessment of the program's performance under both debt measures. This approach also provides an institution with time to make improvements to the program and evaluate whether it would be better to discontinue the program voluntarily.

As discussed more fully under the heading, *Debt warning disclosures (§ 668.7(j)),* because prospective and currently enrolled students face added risks for enrolling or continuing in failing programs, an institution must inform students of those risks and of the

options available to those students for continuing their education. The information provided to students through the debt warnings must address the questions of how long an institution may disburse funds to students enrolled in failing and ineligible programs and how students would be affected when a program becomes ineligible while they are enrolled. We believe that creating required disclosures of information to students while a program is failing and using a longer period to determine if a program is ineligible is better for students than allowing currently enrolled students in a program that loses eligibility to continue receiving Federal student aid funds.

With regard to the suggestions that the Department discharge the loans for students who are unable or unwilling to complete a failing program or transfer to another program, we note that the current loan discharge provisions are statutory and do not apply in these circumstances. Accordingly, a change in the law would be required to adopt these suggestions.

In response to the question of how an institution can reinstate the title IV eligibility of a program that becomes ineligible under these regulations, the institution must comply with the requirements under § 668.7(l). These provisions, discussed under the heading, *Additional Programs (proposed § 668.7(g)(2) and (3); Restrictions for ineligible and voluntarily discontinued failing programs (final § 668.7(l)),* describe the process by which an institution can reestablish the eligibility of an ineligible program or a failing program that the institution voluntarily discontinued, or establish the eligibility of a program substantially similar to an ineligible program.

Regarding the commenters' concern that a significant number of students enrolled in ineligible programs would not have meaningful access to more appropriate alternative educational opportunities and there would not be the capacity to accommodate students from programs that fail the debt measures, past experience with student loan default rates suggests that educational opportunities can continue to expand even if large numbers of institutions lose student aid eligibility. Pursuant to the Omnibus Budget Reconciliation Act of 1990, between 1991 and 1996, we eliminated approximately 1,148 schools from our student loan programs based on three consecutive years of unacceptably high default rates. Table D uses data from the National Postsecondary Student Aid Study (NPSAS) to show student enrollment between 1991 and 1996 by various characteristics. Over the course of this six-year period, schools that remained eligible for Stafford loans appear to have been able to accommodate the number of students who once attended, or otherwise would have attended, schools that lost eligibility.

Table D: Selected Characteristics of Undergraduate Students by Stafford Loan Receipt, 1989-90 and 1995-96

	Students			Subsidized Stafford Loan Borrowers		
	1989-90	1995-96	Change	1989-90	1995-96	Change
Public	**10,946**	**12,512**	**1,566**	**1,151**	**1,897**	**746**
4-year	4,736	5,055	319	872	1,633	760
2-year	5,998	7,254	1,256	258	261	3
Less-than-2-year	212	202	-9	20	3	-17
Private Nonprofit	**2,313**	**2,572**	**259**	**676**	**1,026**	**350**
4-year	2,072	2,356	284	620	988	368
Less-than-4-year	241	216	-26	56	38	-18
Private For-profit	**1,350**	**887**	**-463**	**821**	**466**	**-355**
2-years or more	453	431	-22	272	230	-42
Less-than-2-year	897	456	-441	549	236	-313
Total	**16,271**	**16,678**	**407**	**2,946**	**3,677**	**731**

Source: U.S. Department of Education, National Center for Education Statistics, 1989–90 National Postsecondary Student Aid Study (NPSAS:90).

As can be seen in Table D, overall undergraduate enrollment increased by some 400,000 in this timeframe, while enrollment at for-profit institutions declined by approximately one-third. In this case, the students appear to have increased their attendance at community colleges, by approximately 1.25 million students, as well as at public four-year universities.

The Department recognizes that the higher education landscape has changed since the early 1990s, with strong growth in for-profit institutions and innovations in online and distance learning options that allow for enrollment to expand at lower marginal costs. Therefore, we expect that the distribution of students leaving programs that fail the debt measures will differ from the situation in the 1990s, with a larger share of students expected to remain at institutions within the for-profit sector by moving to successful programs that increase enrollment in response to increased demand created by the closure of ineligible programs.

We appreciate comments suggesting that the Department work with Congress to develop a transition plan to increase postsecondary capacity to address the needs of potentially displaced students by funding programs authorized but not funded under the HEOA or to develop regulations to help ease student transitions between postsecondary institutions and other Federal training and employment programs. Congressional action would be required for these actions to occur.

The President's 2020 higher education goal is the guiding star for the Department. All of our efforts are directed to developing higher education strategies that support institutions in their efforts to better serve students and prospective students, particularly those who are from disadvantaged backgrounds, minority students, students with disabilities, working adults, and others that are at risk. However, the purposes of the 2020 goal will not be achieved by allowing institutions to continue offering low-performing programs that upon completion leave students with large debts and poor employment prospects.

These regulations have been developed specifically to provide opportunities for institutions to improve the gainful employment programs they are providing. Today, the effective programs must compete with ineffective programs. These regulations will first provide feedback to institutions so that they can improve programs against the debt measures. These regulations then provide a significant period of time for institutions to re-assess and re-design marginally effective programs. Further, the regulations would require institutions to provide prospective students and families with meaningful consumer information that includes these debt measures. Finally, and only after three years of failing all three debt measures within a four-year period, programs become ineligible. This approach balances the competing forces of costs and benefits associated with regulatory change to provide a path to improving gainful employment programs that will move us towards meeting our national college completion goals, while giving institutions the flexibility they need to continue generating quality, innovative education programs.

The final regulations are intended to strengthen programs, not cause them to close, and institutions are already acting to improve the performance of their programs. The likely result is not only better outcomes in terms of the debt measures but also, as described in the RIA, increased retention, in and graduation from, gainful employment programs. And if the institutions that are currently offering poor performing gainful employment programs fail to make the necessary improvements, we have no doubt that other for-profit providers—particularly those that are offering one of the many effective programs today—will fill the gap left by the termination of programs that fail three out of four FYs. The gainful employment regulations are a step toward achieving the President's 2020 goal.

With respect to the comments asking for clarification about how a student would be affected if a program is determined to be ineligible while the student was on a leave of absence, the institution will need to follow the procedures under § 668.26(d), regarding disbursement of funds after a program loses eligibility.

Changes: We have removed the thresholds and conditions that would have applied to restricted programs under proposed § 668.7(a)(2) and (e). In § 668.7(h), we specify that, starting with the debt measures calculated for FY 2012, a program fails for a FY if it does not meet any of the minimum standards.

In new § 668.7(i) we provide that, starting with the debt measures calculated for FY 2012, a program will become ineligible if it fails all of the debt measures for three out of the four most recent FYs.

Loan Repayment Rate (§ 668.7(b))

Loan Repayment Rate Calculation

Comment: Commenters argued that the definition of "repayment" as it relates to the repayment rate ignores students who are actively repaying their loans because the recognized repayment is limited to payments that reduce loan principal during a given FY. The commenters pointed out that this approach omits borrowers from the numerator of the repayment rate who are in good standing in repaying their loans, including some borrowers repaying under income-based, income-contingent, or graduated repayment plans. While the treatment is different in each of these payment plans, each can permit monthly payments that are equal to or less than accrued interest. In other words, under those plans, a borrower can be making reduced payments that leave interest unpaid. As a result, the loan amount outstanding does not decrease between the beginning and end of the FY. The commenters argued that because these repayment plans are attractive to borrowers who consolidate loans from multiple lenders, and to borrowers with loans from both undergraduate and graduate programs, institutions should not be penalized in the repayment rate calculation for borrowers who choose these plans. The commenters believed that institutions would be penalized by borrower choices beyond their control, particularly since those plans are promoted by the Department as a means of responsible borrower debt management.

Discussion: In the July 26, 2010 NPRM, the Department proposed considering students making payments under the income-contingent repayment (ICR) and income-based repayment (IBR) plans to be successfully repaying their loans if they were paying more than the interest accruing on their loans, or if they were working in fields that made them eligible for PSLF. The Department recognizes that some borrowers are meeting their obligations under the IBR and ICR plans but are not paying enough to reduce the outstanding balance on their loans. Considering all of these students to be successfully repaying their loans would create a loophole that would allow high repayment rates for programs based solely on enrollment in IBR and ICR, no matter how large the debts and how low the earnings of the programs' graduates. These plans are intended to help borrowers in financial distress; however, an educational program generating large numbers of borrowers in financial distress raises troubling

questions about the affordability of those debts. Therefore, we have struck a balance in these final regulations that recognizes the legitimate use of the ICR, IBR, and other plans that provide for scheduled payments that are equal to or less than the interest accruing on the loan but maintains protections against excessive reliance on these plans among a particular program's former students.

The Department is replacing the term Reduced Principal Loan (RPL) with the term Payments-Made Loan (PML) to clarify that under the revised methodology for calculating the repayment rate, payments made on a loan include not only those payments that reduce the outstanding balance but also payments made under certain repayment plans, or for certain consolidation loans, payments that do not reduce the outstanding balance. Under these final regulations, PML includes the loans of borrowers who are repaying under all of the FFEL and Direct Loan repayment plans, including repayment under the IBR and ICR plans. The Original Outstanding Principal Balance (OOPB) on loans of borrowers included in the applicable two- or four-year period who make payments during the most recently completed FY that reduce the loan amount to an amount that is less than the total outstanding balance of the loan at the beginning of that FY, will now be included in the numerator of the repayment rate. The final regulations clarify that loans that have defaulted in the past, including consolidation loans composed of at least one defaulted loan, are excluded from the numerator of the calculation, i.e., from the Loans Paid in Full (LPF) and the PML. To be consistent with the definition of PML, we are also clarifying that LPF do not include loans that have been in default.

When calculating the repayment rate for post-baccalaureate certificate, master's degree, doctoral degree, or first-professional degree programs, we will consider a borrower with a consolidation loan to be successfully repaying his or her loans if the outstanding balance does not increase over the course of the most recently completed FY.

For borrowers repaying under the IBR, ICR, and other plans that provide for scheduled payments that are equal to or less than the interest that accrues on the loan, the OOPB of loans for borrowers making scheduled payments under those plans that are equal to or less than the interest that accrues on the loan during the FY will be included, on a limited basis, as OOPB of PML in the numerator of the repayment rate. This approach will also benefit programs whose borrowers may be repaying their loans under these plans during and shortly after completing required medical or dental internships and residencies. However, to ensure that borrowers in gainful employment programs are thoughtfully counseled into entering the repayment plans that best meet their needs and do not have to rely excessively on the IBR or ICR plans because their programs leave them unable to secure sufficient employment to repay their loans, the Department is limiting the dollar amount of loans in negative amortization or for which the borrower is paying accrued interest only that will be included in the numerator as OOPB of PML to no more than 3 percent of the total amount of OOPB in the denominator of the ratio (percent limitation). This percent limitation is based on available data on a program's borrowers who are making scheduled payments under these repayment plans.

For the loans associated with a particular institution for which the Department has actual data on borrower repayment plans and scheduled payment amounts, that data will be used to calculate the amount to be included in the OOPB of PML. If the amount calculated is higher than the percent limitation, only the amount of the percent limitation will be included in the OOPB of PML.

The Department has information on the repayment plans and scheduled payments for Direct Loans and FFEL loans held by the Department. However, the Department does not currently collect information about the repayment plans and scheduled payments amounts on FFEL loans that it does not hold. The Department is developing plans to collect this information on loans that it does not hold. Until the Department determines that there is sufficiently complete data on program borrowers with scheduled payments that are equal to or less than accruing interest, the Department will include in the numerator 3 percent of the OOPB in the denominator of the ratio for all programs.

When applying the percent limitation on the dollar amount of the interest-only or negative amortization loans, the Department may adjust the limitation by publishing a notice in the **Federal Register**. The adjusted limitation may not be lower than the percent limitation specified in § 668.7(b)(3)(i)(C)(*1*) or higher than the estimated percentage of all outstanding Federal student loan dollars that are interest-only or negative amortization loans.

To establish this limitation, the loan servicing systems were queried to determine the value of the loans entering repayment on or after October 1, 2003 that were in a repayment plan that allowed a scheduled payment equal to or less than accruing interest. That query identified 1.1 percent of loans in this status. We will not treat interest-only or negative amortization loans unfavorably in the repayment rate calculation so long as they do not represent a disproportionate share of borrowers. The limit on the percentage of these loans that would count positively in the numerator of the repayment rate calculation was based on this 1.1 percent figure and adjusted up to 3 percent to provide some flexibility with regard to using repayment plans that allow a scheduled payment equal to or less than accruing interest, but to dissuade excessive use of these plans.

The regulations continue to recognize in the repayment rate borrowers who are full-time employees of public service organizations and who are working to qualify for PSLF under 34 CFR 685.219(c). The Department is developing an employer certification form that should be available by early 2012 and will allow borrowers, as frequently as annually, to document that they are engaged in PSLF qualifying employment. The OOPB of loans for borrowers who are in the process of qualifying for PSLF will be included in the numerator of the repayment rate as part of the OOPB of PML if the borrower submits a PSLF employment certification form to the Department that demonstrates that the borrower is engaged in qualifying employment and the borrower made qualifying payments on the loan during the most recently completed FY.

Changes: Section 668.7(b)(3) has been revised by replacing Reduced Principal Loan (RPL) in the numerator of the repayment rate ratio with Payments-Made Loans (PML). PML only includes loans that have never been in default or, in the case of a Federal Consolidation Loan or a Direct Consolidation Loan, neither the consolidation loan nor the underlying loan or loans have ever been in default.

PML includes a limited amount of the OOPB of loans in which a borrower is making scheduled payments under IBR, ICR, or other repayment plans that are equal to or less than the interest that accrues on the loan. Section 668.7(b)(3) clarifies the treatment of Federal Consolidation Loans or Direct Consolidation Loans (consolidation loans) of a borrower who is repaying loans related to a gainful employment program when the borrower is reducing the outstanding balance of the consolidation loan to an amount that is less than the outstanding balance of the

consolidation loan at the beginning of that FY. Section 668.7(b)(3) also clarifies that if the program is a post-baccalaureate certificate, master's degree, doctoral degree, or first-professional degree program, PML includes the total outstanding balance of a Federal or Direct Consolidation Loan that at the end of the most recently completed FY is less than or equal to the total outstanding balance of the consolidation loan at the beginning of the FY, and that the outstanding balance of a consolidation loan includes any unpaid accrued interest that has not been capitalized. Section 668.7(b)(3) specifies the documentation on which the Department will rely to include a borrower in the process of qualifying for PSLF in the loan repayment rate.

The definition of Loans Paid in Full (LPF) has been revised to clarify that these are loans that have never been in default or, in the case of a Federal Consolidation Loan or a Direct Consolidation Loan, neither the consolidation loan nor the underlying loan or loans have ever been in default.

Comment: Some commenters recommended that the Department apply the repayment rate only to those students who graduate or complete a program. The commenters argued that if the repayment rate is used as a proxy for determining whether the program prepares students for gainful employment (i.e., whether graduates have received the capabilities needed to succeed in the particular occupation), the relevant group measured should be those who successfully complete the program. The commenters believed that if students who fail to complete the program are included in the calculation, the Department would be merely rewriting the CDR provision. One of the commenters stated that measuring institutions based on former students who are not paying their loans is not a fair metric. The commenter stated that only those students who have maximum earnings potential because they completed the full program should be measured.

Discussion: The Department disagrees with the commenters that the repayment rate should focus only on program completers. The Department believes that in order to determine whether a program is succeeding in its mission of preparing students for gainful employment using title IV, HEA funds, it is important to examine the level of success of all enrollees in the program. Programs that experience a high number of drop outs and withdrawals leaving students with no employment skills and student loan debt they have insufficient means to repay cannot be said to be preparing students for gainful employment. Although we agree that students who complete the program have a better chance of repaying their student loans, we believe that including both program completers and noncompleters in the repayment rate calculation provides a more comprehensive picture of the program's overall success. Additionally, students enrolled in certain programs may not be required to receive the program's academic credential in order to secure employment or advance in their career field, and as a result, may be repaying their student loans. Regarding the comment about CDR, we explain the differences between the repayment rate and CDR under the heading, *Use of the cohort default rate as an alternate measure.*

Changes: None.

Comment: Commenters questioned the logic of including in the numerator of the repayment rate only those loans that were paid in full or whose principal balance was reduced during the FY. The commenters believed that institutions should not be penalized for the Federal government's policy decision to issue loans that are not credit based; offer borrowers flexible repayment plans; and promote deferments, forbearances, and loan consolidation to borrowers in repayment. The commenters recommended that the Department consider a loan to be in repayment for purposes of the repayment rate calculation if the borrower has made at least four payments during the most recent FY. Although the commenters welcomed as a positive first step the Department's decision to exclude from the repayment rate borrowers who are in an in-school or military-related deferment status, they argued that borrowers who have valid reasons for requesting deferment or forbearance, such as unemployment, maternity leave, disability, elder care, or economic hardship, should be given equal consideration. The commenters believed that a deferment or forbearance granted to a borrower who leaves the workforce for a period of time to care for children or a sick parent, or to undergo a medical procedure, is as legitimate as an in-school deferment that primarily benefits students at two and four-year public and non-profit institutions, and middle class students enrolled in graduate programs. Consequently, the commenters recommended that the Department either exclude from the repayment calculation all loans for which deferment or forbearance is pending or enact strict standards for issuing deferments and forbearances.

Discussion: We disagree with the notion that an institution should be shielded from Federal policy decisions regarding the student loan programs. The Department makes available its Federal student loan programs regulations to institutions before the institution agrees to participate in the title IV, HEA programs. Moreover, we believe the institution should be held accountable for how it delivers programs intended to provide gainful employment, particularly when most of its former student borrowers have to rely on economic hardship deferments, forbearances, and other means to avoid defaulting on their loans or managing life circumstances. To be sure, deferments, forbearances, and other program benefits are necessary to assist borrowers in loan repayment, but particularly heavy reliance on these tools among former students of a particular program raise questions about the performance of that program.

Concerning the request to enact stricter standards for deferment or forbearance, any such changes are outside the scope of the proposals we included in the July 26, 2010 NPRM and therefore we are not addressing them here.

With regard to the request that the Department exclude from the repayment calculation all loans for which deferment or forbearance is pending, we are excluding in these final regulations loans that are in deferment status for reasons that are clearly unrelated to whether a program prepares students for gainful employment. Specifically, we exclude from the repayment rate calculation loans that were in an in-school or military-related deferment status during any part of the FY, loans that were discharged as a result of the death of the borrower under 34 CFR 682.402(b) or 34 CFR 685.212(a), and loans that were assigned or transferred to the Department that we are considering discharging, or were discharged, on the basis of the total and permanent disability of the borrower. However, we are not excluding from the repayment calculation all loans for which deferment or forbearance is pending because we believe that if an institution provides a program that leads to borrowers securing gainful employment at sufficient salary levels to repay their student loans, the program will be able to meet the repayment rate threshold of 35 percent even if individual borrowers' life circumstances (e.g., needing to provide elder care or taking maternity leave) result in some of them using available deferment and forbearance benefits. Thus, the availability of deferment and

forbearance will not prevent a program from meeting the minimum loan repayment rate standards. Moreover, because the volume and frequency with which former students of a program use deferments and forbearances may be an indicator of program success in preparing students for gainful employment, we are not excluding all borrowers in deferment.

With regard to the comment that a loan should be counted in the numerator of the repayment rate if a borrower makes four payments in a FY, we believe that making only four payments in a FY would indicate strongly that the borrower does not have the capacity to repay the loan. Therefore, it would be inappropriate to include the loan in the numerator of the loan repayment rate.

Changes: Section 668.7(b) has been revised to exclude from the repayment rate calculation loans that were in an in-school or military-related deferment status during any part of the FY, loans that were discharged as a result of the death of the borrower under 34 CFR 682.402(b) or 34 CFR 685.212(a), and loans that were assigned or transferred to the Department that we are considering discharging, or were discharged, on the basis of the total and permanent disability of the borrower.

Treatment of Borrowers Carrying Forward Accrued Unpaid Interest

Comment: One commenter, whose analysis and recommendations were cited by numerous commenters, pointed out that although accrued interest is generally capitalized when a borrower first enters repayment, there are circumstances under which accrued unpaid interest remains outstanding and is not capitalized. Under these circumstances, due to the manner in which loan payments are applied (borrower payments are applied first to collection charges and late fees, next to accrued but unpaid interest, and finally to principal), the commenter concluded that there was an interest-related problem and called it the "persistence of interest." The commenter noted that in these circumstances, under the proposed regulations, a borrower making full monthly payments (i.e., payments that exceed the new interest that accrues each month on the loan) would not be counted in the numerator of the repayment rate because the borrower's payments would be applied to accrued, unpaid interest. According to the commenter, the treatment of these loans as nonperforming loans in the repayment rate calculation not only yields a lower repayment rate, but is also based on the past status of the loan. The commenter also pointed out that even if outstanding accrued interest is capitalized and added to principal, the interest-related problem continues to exist unless the capitalization takes place at the beginning of the FY. The commenter further stated that if the capitalization takes place during the course of the FY, it will appear to increase the principal balance when compared to the principal balance at the beginning of the FY, even if the borrower made payments that reduced loan principal prior to the capitalization.

The commenter also noted that there are many instances in which accrued outstanding interest stems from a past loan status, such as a brief deferment or forbearance period, that may leave the loan in a nonperforming status for purposes of the repayment rate for a significant period of time into the future. To address the "persistence of interest" factor in the repayment rate calculation, the commenter recommended that the Department modify the regulations to provide that the calculation be based on a comparison of the sum of the principal balance and the accrued unpaid interest on the loan at the beginning and the end of the given FY rather than on a comparison of the outstanding principal balance. The commenter supported the proposed approach of excluding from the numerator of the repayment rate borrowers' loans in deferment or forbearance status and loans for which borrowers are paying a scheduled $0 monthly payment or a payment that is less than the new accruing interest under the IBR and ICR plans.

Discussion: To determine whether a borrower's OOPB should be included in the numerator of the repayment rate, the Department will determine whether the total outstanding balance of a borrower's loan at the end of the FY for which the rate is being calculated is less than the total outstanding balance of the loan at the beginning of that FY, and the outstanding balance of a borrower's loan, at both the beginning and the end of the FY, will include any outstanding unpaid accrued interest that has not been capitalized. We believe that by including any outstanding unpaid accrued interest that has not been capitalized in the beginning year total outstanding balance of the loan, a borrower who makes full scheduled monthly payments on a loan that are greater than accruing interest will be able to show a reduced total outstanding balance for the loan by the end of the FY, even if interest is not capitalized or is capitalized at some point during the year.

Changes: The new term "Payments-Made Loans" (PML) in § 668.7(b)(3) specifies that the outstanding balance of a loan used in calculating the repayment rate includes any unpaid accrued interest that has not been capitalized.

Treatment of Consolidation Loans

Comment: Commenters objected to the Department's decision to view loans repaid through the consolidation process as not being paid-in-full until the consolidation loan is paid in full. The commenters noted that the Department has historically treated consolidation loans as a positive step for a borrower to take in managing student loan debt and stated that the Department was contradicting this position by treating consolidation loans unfavorably in the loan repayment calculation. These commenters noted that there is not sufficient data from the National Student Loan Data System (NSLDS) that would allow an institution to track repayment of a consolidation loan and recommended that such loans be treated positively in the repayment rate calculation (i.e., treated as in repayment) until the data is available to prove otherwise.

Other commenters questioned § 668.7(b)(2)(i) of the proposed regulations, which provides that a "consolidation loan is not counted [in the numerator] as paid in full." The commenters stated that it was unclear whether the repayment rate calculations would properly segregate consolidation loans according to source institution. The commenters believed that if the repayment rate calculation fails to properly attribute the underlying loans repaid through the consolidation for a borrower who consolidates during a given FY, the borrower's principal balance at the end of the FY will be greater than the principal balance at the beginning of that FY. The commenters believe this situation will also result in an institution not receiving credit in the numerator of the repayment rate for payments the borrower made on loan principal in the same FY in which the borrower consolidated the loan. To address this issue, the commenters recommended that the Department develop an acceptable and transparent method for determining the amount of a consolidation loan that is attributable to a particular program.

Another commenter recommended that any consolidation loan on which a borrower has made scheduled payments, including principal and interest, during the immediate prior calendar year should be treated as a reduced principal loan in the repayment rate calculation.

Discussion: Loan consolidation in the Federal student loan programs is a refinancing mechanism that allows a borrower to aggregate a number of loans to secure one repayment source, to extend the maximum available repayment period, and to reduce the monthly payment amount. The underlying loans are effectively refinanced through the consolidation process. Although the Department agrees that loan consolidation may be a positive step for a borrower, it does not represent payment by the borrower of the loans consolidated. The loans paid off through the consolidation process are reflected dollar-for-dollar in the new consolidation loan debt. We see no basis for treating a consolidation loan payoff as successful borrower repayment, or LPF, for purposes of the repayment rate.

The Department has a long history under the CDR process of successfully tracking loans that were in default and then repaid through consolidation and including those loans in the appropriate institution's CDR. For the repayment rate calculation, the Department has enhanced its capacity to look back through multiple consolidation loans and to assign loans repaid through consolidation to a program at an institution. Although a consolidation loan is not considered LPF until the entire consolidation loan is repaid, the OOPB of the underlying loans attributable to a gainful employment program is included in the numerator (i.e., PML of OOPB) if the borrower makes payments that reduce the total outstanding balance of the consolidation loan by the end of the FY under review.

As part of the data correction process contained in these final regulations, and discussed more fully under the heading, *Data access and review,* we will provide access to the NSLDS data underlying the repayment rates, including the information associated with consolidation loans. As a result, institutions will be able to request corrections to the assignment of borrowers and loan amounts, including the portion of consolidation loans, used to calculate a program's repayment rate.

Changes: Section 668.7(b)(1)(iii) has been added to specify that for consolidation loans, the OOPB is the OOPB of the FFEL and Direct Loans attributable to a borrower's attendance in the program. We have added § 668.7(b)(1)(iii) and revised § 668.7(b)(3)(i)(A) to clarify that if certain consolidation loan payments are made, the OOPB of the underlying loans attributable to a gainful employment program will be included in the numerator of the repayment rate.

Use of the Cohort Default Rate as an Alternate Measure

Comment: One commenter recommended that the Department eliminate the loan repayment rate and replace it with the CDR. Alternatively, the commenter suggested that the repayment rate be modified to count positively in the numerator all borrowers who are not delinquent in repaying their loans, including those that use various program benefits such as consolidation, forbearance, and deferment.

Some of the commenters requested that the Department clarify the definition of a reduced principal loan in the regulations. The commenters indicated that it was unclear whether a student would need to make more than one payment that reduces principal in the FY to be considered to have a reduced outstanding principal balance.

Discussion: The Department does not believe that the CDR is an appropriate measure of whether the students who attended a program are gainfully employed. The CDR is an institutional rate that only measures the number of an institution's borrowers who fail to make payments on a loan for an extended period of time. The CDR only includes a small group of the borrowers during a limited time period, and counts many of those borrowers as successes even if they are struggling to repay their loans. Borrowers using reduced payment plans may be seeing their loans grow rather than shrink because their incomes are low and their debts are high. As a result, the CDR is a better measure of potential loss to taxpayers than of the repayment burden on students.

Students attending programs leading to gainful employment in a recognized occupation often do so because they have been told that they will be able to secure employment that will allow them to pay off their debts. The Department's experience with the CDR and other institutional measures is that they may mask an under-performing program and obscure for students, the Department, and institutions the harm that can result from enrolling in a specific program. An institution's CDR may therefore be a misleading measure of an individual program's success in providing students with sufficient income to pay off education loan debt.

The repayment rate is intended to operate at the program level and track the loan repayment by borrowers formerly enrolled in specific programs, not simply those who reach a certain level of delinquency or who default. Gainful employment should allow the borrower to make all the scheduled payments on the loan during the given FY under review, not simply make intermittent payments.

Regarding the commenter's question about clarifying the term "reduced principal loan," as previously discussed, we have replaced the term "reduced principal loan" with the term "payments-made loan". The reduction of the borrower's total outstanding balance between the beginning and end of the FY can be as little as one cent in order for the OOPB of the loan to be included in the numerator of the program repayment rate. The outstanding balance of a loan includes any unpaid accrued interest that has not been capitalized.

Changes: None.

Control Over Student Borrowing

Comment: Many commenters stated that student overborrowing and related repayment difficulties, as reflected in repayment rates, are related to a program's inability to limit student borrowing. The commenters objected to the Federal requirement that a school offer students the maximum loan amount for which they are eligible even when the program believes that a student may have difficulty repaying the loans and wishes to recommend a lesser loan amount. The commenters believe that if they are required to offer the maximum loan amount to any student who meets the admission requirements and maintains satisfactory academic progress, they should not be held accountable for excessive borrowing and a borrower's failure to repay. Some of these commenters questioned the need for students to receive loan funds in excess of direct tuition and fee costs and requested authority to adopt institutional policies of limiting annual loan limits to direct costs. The commenters did not believe an institution's programs should be adversely impacted by debt a student chooses to take on for discretionary expenses. Several of these same commenters recommended that a school's regulatory authority under the Federal Perkins Loan program to consider a borrower's "willingness to repay" a loan before making a Perkins loan to a student should be applied to Direct Loan program loans.

Discussion: To ensure access to postsecondary education, the cost of attendance provisions in section 472 of the HEA recognize both direct costs (tuition, fees, books, and supplies) and indirect costs (room and board allowance and allowances for other educationally-related costs). Indirect costs are not viewed as discretionary or

unnecessary costs. The institution, however, has the authority to decline to originate a Direct Loan or to reduce a Direct Loan amount in section 479A(c) of the HEA. To prevent discrimination against certain students or categories of students that may result from the use of across-the-board policies by an institution, the HEA requires the institution to exercise its authority under this provision on a case-by-case, documented basis with a written explanation provided to the student. This authority provides an institution with the ability to address individual cases of unnecessary, excessive borrowing by students. Any change in this authority would require a change in the HEA.

In response to the statement that links excessive borrowing to an institution funding all admitted students who are making satisfactory academic progress, we note that the institution would have to disburse title IV, HEA funds to any student making satisfactory academic progress regardless of the amount of loans the student borrowed. For the debt-to-earnings ratios, if the institution identifies the amount of the tuition and fees for each student to the Department, we will limit the amount of loan debt included in that calculation for a student who completes a program to the total amount of tuition and fees the institution charged the student for enrollment in all programs at the institution. However, because the repayment rate is looking at the cumulative loan amounts in repayment, it would be inconsistent and impractical to limit the debt considered on a borrower-by-borrower basis. Such a limitation would require complex adjustments that would attribute, over time, the amount of the borrower's loan payments to a tuition-adjusted loan amount. This approach could produce an anomalous outcome where a borrower who is otherwise severely delinquent in repaying his or her loan could nevertheless be counted as successfully repaying the loan after any loan payments made by the borrower are attributed to the part of the loan used for tuition and fees.

Finally, the application of "willingness to repay" as a criteria when awarding Federal Direct Loans would require a change in the HEA.

Changes: None.

Data Access and Review

Comment: Commenters objected to the limited access institutions had through the NSLDS to the data elements that will be used to calculate the repayment rate, including accurately identifying the principal balance of a loan at various points over the life of a loan and whether a borrower had made payments to reduce loan principal during the FY. The commenters requested that the Department disclose, explain, and confirm the accuracy of the data from NSLDS that it will use to calculate programmatic repayment rates so that institutions can internally replicate and monitor their rates. The commenters believe that this situation denies them a reasonable opportunity to revise their policies and procedures to come into compliance before sanctions may be imposed against them. They urged the Department to revise the repayment rate regulations to clearly state that schools would not be penalized for data for students who were enrolled in or attended the school prior to the regulation's enactment, or July 1, 2014, whichever is earlier. They also asked the Department to provide repayment rate data to institutions, with available resources to explain the data, similar to the process we use with school CDR data. The commenters believe this will provide the institutions and the Department with time to test the underlying information and time for institutions to identify changes needed in their programs to meet the gainful employment regulations' requirements.

Discussion: The Department believes that § 668.7(e) of these final regulations includes sufficient safeguards regarding NSLDS data and reasonable access to these data before they are finalized. Specifically, as specified under § 668.7(e) and discussed more fully under the heading, *Draft debt measures and data corrections (§ 668.7(e)), Final debt measures (§ 668.7(f)), and Alternative earnings (§ 668.7(g)),* the Department will generate draft rates for institutional review prior to calculation of the final repayment rate for each FY for which rates are calculated. The Department will provide for each program the borrower-related data used to calculate the draft rate and the institution will be able to review and challenge the accuracy of the data. The Department believes that the Department's disclosure of draft rates and a school's ability to identify and correct the data in the NSLDS used to calculate the repayment rates prior to the calculation of final rates provides reasonable access to data for institutions and will assure the accuracy of the final rates.

Based on the effective date of these regulations, the first final repayment rates will be calculated for FY 2012 and will examine borrowers who first entered repayment in FY 2008 and FY 2009 and who have been in repayment for three to four years. Thus, these final regulations would not result in any program losing eligibility prior to the final calculation of debt measures for FY 2014. With that said, there is a great deal that institutions can do to ensure an acceptable repayment rate by working with former students to encourage repayment rather than non-payment. After considering the comments, we determined that this approach is in the best interest of the former students and taxpayers.

Changes: Section 668.7 of the regulations has been amended by adding a new paragraph (e) under which the Department notifies an institution of draft results of the debt measures for each of its programs. An institution may review and challenge the accuracy of the NSLDS loan data used to calculate the draft loan repayment results. The Department will not issue final repayment rates for a program until all of the data challenges for that program are resolved. Further detail regarding these changes is provided under the heading, *Draft debt measures and data corrections (§ 668.7(e)), Final debt measures (§ 668.7(f)), and Alternative earnings (§ 668.7(g)).*

Debt-to-Earnings Ratios (§ 668.7(c))

General

Comment: For an institution undergoing a change of ownership that results in a change in control from non-profit to for-profit status, some commenters suggested that the Department compute the debt-to-earnings ratios only after three years of data are obtained from the newly formed for-profit entity.

Discussion: In general, because the debt measures are calculated on a program basis, nothing about the calculations will change if an institution undergoes a change of ownership that results in a change in control, as described in 34 CFR 600.31. For example, if the same program (same CIP code and credential level) that was offered by the acquired institution continues to be offered after the change in ownership, the debt measures are calculated using data from before and after the changes in ownership. If that program was only offered by the acquired institution, the debt measures carry over to the acquiring institution.

However, in the commenter's example where control changes from a non-profit institution to a for-profit institution, we agree to delay calculating the debt measures for the degree programs previously offered by the non-profit institution that are now gainful employment programs of the for-profit institution. For these programs, the

Department will calculate the debt measures based on data provided under § 668.6(a) by the for-profit institution after the change in control.

Changes: None.

Debt Portion of the Debt-to-Earnings Ratios

Loan Debt

Comment: Some commenters argued that if the proposed regulations are intended to reduce student debt levels by forcing institutions to reduce tuition rates, this goal conflicts directly with the current 90/10 provisions in § 668.28 which inhibit, and in many cases effectively prohibit, for-profit institutions from reducing tuition. According to the commenters, the net effect of the proposed regulations combined with the 90/10 provisions would be to force institutions to enroll wealthier students and discourage institutions from serving minority and disadvantaged students. Similarly, other commenters believed that using debt measures to assess program quality may lead to adverse consequences for students by increasing pressure on institutions to comply with the 90/10 provisions and creating incentives for institutions to minimize risk by limiting applicants who may adversely impact the institution's metrics. The commenters contended that these consequences would be further exacerbated because temporary provisions under the 90/10 provisions in § 668.28(a)(6), related to counting as cash a portion of unsubsidized Stafford loan disbursements, will expire June 30, 2011.

Other commenters believed that the 90/10 provisions should be eliminated because they serve no good purpose and lead to price fixing or have compelled institutions to price a program at the maximum amount of title IV aid for which low-income students qualify to receive plus an additional 10 percent that is funded by other sources.

Discussion: The 90/10 provisions, which require a proprietary institution to derive at least 10 percent of its revenue from sources other than title IV, HEA program funds, are statutory and are therefore beyond the scope of these regulations. However, we are not persuaded that the 90/10 provisions conflict with the gainful employment measures. In a report published October 2010, the GAO did not find any relationship between an institution's tuition rate and its likelihood of having a very high 90/10 rate. This report, United States Government Accountability Office, "For Profit Schools: Large Schools that Specialize in Healthcare are More Likely to Rely Heavily on Federal Student Aid," October 2010, is available at *http://www.gao.gov/new.items/d114.pdf.* GAO's regression analysis of 2008 data indicated that schools that were (1) Large, (2) specialized in healthcare, and (3) did not grant academic degrees were more likely to have 90/10 rates above 85 percent when controlling for other characteristics. Other characteristics associated with higher than average 90/10 rates were (1) high proportions of low-income students, (2) offering distance education, (3) having a publicly-traded parent company, and (4) being part of a corporate chain. GAO defined "very high" as a rate between 85 and 90 percent, and about 15 percent of the for-profit institutions were in this range. Also, GAO found that in general there was no correlation between an institution's tuition rate and its average 90/10 rate. In one exception, GAO found that institutions with tuition rates that did not exceed the 2008–2009 Pell Grant and Stafford Loan award limits (the award amounts were for first-year dependent undergraduates) had slightly higher average 90/10 rates than other institutions, at 68 versus 66 percent.

The Department's most recent data on 90/10, submitted to Congress in February 2011 and available at *http://federalstudentaid.ed.gov/datacenter/proprietary.html,* show that only 8 of 1851 institutions had ratios over 90 percent and about 14 percent had ratios in the very high range of 85 to 90 percent. The GAO report and the Department's data suggest that most institutions could reduce tuition costs without the consequences envisioned by the commenters.

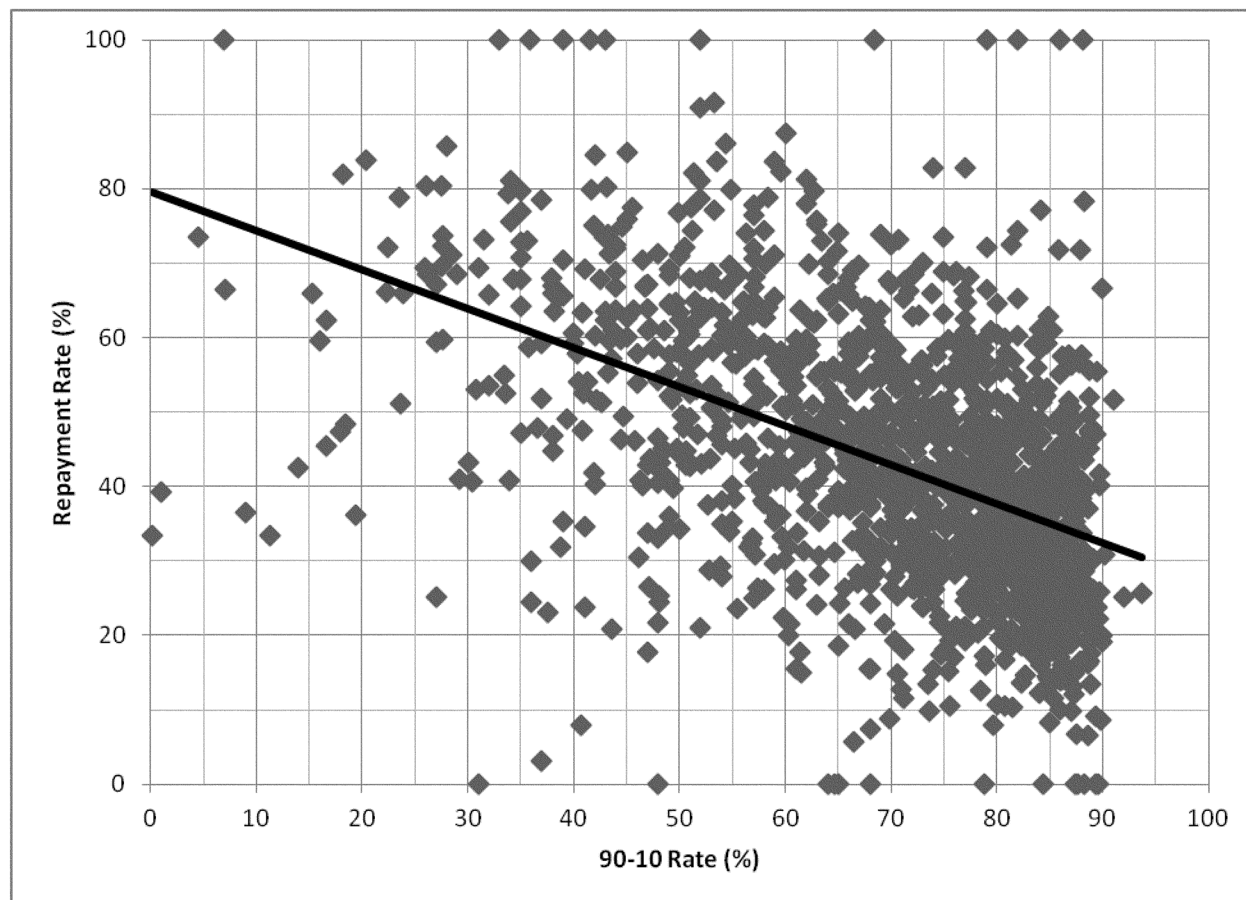
An analysis by the Department of the repayment rate indicates that it is entirely possible to meet both the 90/10 requirements of the existing statute and the repayment rate thresholds in these final regulations. Table E shows the distribution of for-profit institutions by 90/10 rate category and their performance on the repayment rate test. The percent of schools falling below the 35 percent repayment rate threshold increases with the 90/10 rate, indicating that many schools score well on both measures simultaneously. Moreover, even in the highest 90/10 rate categories, almost 50 percent of schools pass the repayment rate.

Table E: Repayment Rate Performance by 90/10 Category

90/10 Rate	Passing Programs	Failing Programs	Programs with No Repayment Rate	Total	% of Programs in 90/10 Category	Failing Rate in 90/10 Category
0% to 10%	5	1	10	16	0.9%	6.3%
10% to 20%	9	1	24	34	1.8%	2.9%
20% to 30%	20	1	16	37	2.0%	2.7%
30% to 40%	41	6	38	85	4.6%	7.1%
40% to 50%	84	14	44	142	7.7%	9.9%
50% to 60%	144	18	48	210	11.4%	8.6%
60% to 70%	204	48	56	308	16.6%	15.6%
70% to 80%	258	148	52	458	24.7%	32.3%
80% to 85%	114	144	38	296	16.0%	48.7%
85% to 90%	75	136	46	257	13.9%	52.9%
Above 90%	1	3	4	8	0.4%	37.5%
Total	**955**	**520**	**376**	**1,851**	**100.0%**	**28.1%**

Chart 3 is a scatter plot of paired institutional 90/10 and repayment rates. It includes the regression line that describes the linear relationship between the two rates when the 90/10 ratio is used to predict the repayment rate.

Chart 3: Repayment Rate Performance by 90/10 Ratio



At the upper end of the repayment rate distribution it appears there is roughly an equal likelihood that repayment rates will be either above or below the regression line. In other words, based simply on visual inspection there appears to be little relationship between 90/10 and repayment rates for institutions with relatively high 90/10 rates. A further analysis of the 1,475 institutions with both a repayment rate and 90/10 calculation reveals a correlation coefficient (R) between the two variables of −.483. That is, institutional 90/10 ratios tend to decline as their repayment rates increase. A correlation coefficient between 0.3 and 0.5 (irrespective of sign) is indicative of a moderate effect; a value greater than 0.5 is considered a large effect. Thus, the relationship between these two variables can be described as moderate. Continuing the analysis one step further, the R-Squared value is .233, meaning that about 23 percent of the variation in the repayment rates can be explained by the 90/10 rates. Thus we see no evidence here supporting the notion that better performance on the measures, i.e. increasing repayment rates, will adversely affect 90/10 calculations.

Several other factors also suggest that any tension between the 90/10 requirements and the gainful employment measures can be managed by most institutions. First, even though some of the provisions of the HEA that make it easier for institutions to meet the 90/10 requirements are time-limited, other provisions enacted in 2008 as part of the reauthorization of the HEA will remain in effect, such as the ability to count income from other programs that are not eligible for HEA funds. Second, institutions have opportunities to recruit students that have all or a portion of their costs paid from other sources. The changes to the HEA in 2008 also permit an institution to fail the 90/10 measure for one year without losing eligibility, and the institution can retain its eligibility so long as it does not fail the 90/10 measure for two consecutive years. Furthermore, institutions that have students who receive title IV, HEA funds to pay for indirect costs such as living expenses already are in the situation described by the commenters where the amount of title IV, HEA funds may exceed the institutional costs. These institutions are presumably managing their 90/10 measures using a combination of other resources, and this result would also be consistent with the findings in the GAO report described above.

Changes: None.

Comment: Some commenters argued that excluding parent PLUS loans from median loan debt greatly understates the debt levels associated with middle-class students attending public and non-profit institutions. At the same time, the amount of debt students incur for attending for-profit institutions is greatly overstated because most of these students are independent and low-income and are therefore more likely to receive additional support through unsubsidized Stafford loans instead of parent PLUS loans. Consequently, the commenters believed that excluding parent PLUS loans reflects the

Department's bias in depicting educational loan burdens and the costs of education attributable to various education sectors in general. Other commenters opined that an effect of the proposed regulations would be that an institution would counsel parents to incur more loan debt because parental debt would not count against it under the proposed metrics.

Discussion: Overall, only 3.5 percent of the students enrolled in certificate programs benefited from parent PLUS loans. Including these loans would have little impact on the debt measures. Moreover, including parent PLUS loans would distort the measures, which are designed to measure and assess a student's debt burden, because the student is not responsible for repaying loans incurred by a parent.

Changes: None.

Comments: With regard to the proposal that loan debt includes all debt incurred by a student from a FFEL or Direct Loan, a private education loan, or an institutional loan, some commenters opined that as a legal and practical matter institutions cannot control student debt in excess of tuition, fees, books, and prescribed charges that are part of the cost of attendance. The commenters reasoned that because excess debt varies depending on the circumstances of the individual student, not the educational program, it should not be included in calculating the debt-to-earnings ratios. Similarly, some commenters believed that the proposed regulations failed to address student over borrowing because the Department did not change current guidance prohibiting schools from limiting student indebtedness to the amount of tuition and fees.

Along the same lines, other commenters opined that the debt portion of the debt-to-earnings ratios would be a more realistic measurement of the amount of debt for which an institution should be responsible, if (1) all private loans are excluded from the calculation, unless institutions have some method of approving or declining student loan amounts, or have the ability to impact the amount of funds a student borrows, and (2) to alleviate the impact that student over borrowing can have on the debt-to-earnings ratios, institutions are held accountable only for debt incurred to pay actual educational expenses and not for excess amounts used for living and other expenses. The commenters offered that the amount incurred to pay actual educational expenses can be derived by using the amount institutions report as the net price on the College Navigator Web site. The reported net price minus any grant or gift aid received by a student would be the maximum amount of debt that the student would need to accumulate to pay actual education expenses.

Commenters contended that the proposed debt-to-earnings ratios would not cause an institution to reduce tuition and fees because the Department did not provide a systematic way for the institution to limit student borrowing. The commenters noted that a student would be eligible to receive the same amount of student loan funds ($9,500) for a one-year program costing $15,000 or for one costing $10,000. So without any borrowing limits, a student who receives $5,500 in Federal Pell Grant funds could still borrow the maximum loan amounts even if the institution reduced the cost of the program by 33 percent to $10,000. Consequently, the commenters reasoned that reducing program costs, even by unrealistic levels of 33 percent, would not guarantee a reduction in student debt associated with the program. The commenters suggested that for the July 26, 2010 NPRM to have its intended effect of reducing program costs, the total amount of debt included in the debt-to-earnings ratios should be capped at the cost of tuition and fees. Other commenters suggested that the amount of loan debt should be capped at the total of institutional charges less any grant aid received by students.

Another commenter stated that while the proposed regulations emphasized protecting the taxpayer from wasteful spending, the HEA encourages students to over borrow by funding living expenses instead of just tuition, fees, and books. The commenter believed that the HEA makes the taxpayer the student's individual bank, but under the proposed regulations, institutions would be the responsible party for these expenses. The commenter provided an example of an institution where student loans totaled $7.34 million for the 2009–10 award year, of which approximately $1.75 million, or 24 percent, was used for student living expenses. The year before, living expenses accounted for only 6 percent of total loans. The commenter suggested that the Department place limits on the amount of a loan that could be used for living expenses or not hold institutions responsible for this portion of student loan debt.

Discussion: Although a statutory change would be required to allow an institution to directly limit or control student borrowing, we are not persuaded that an institution that makes reasonable efforts to counsel its students about the dangers of over borrowing cannot affect student behavior. Nevertheless, for the purpose of calculating median loan debt the Department agrees to limit the total amount of loans a student incurs in completing a program to the total amount the institution charged the student for tuition and fees if the institution reports those amounts to the Department. Using the actual amount charged, instead of a derived or estimated amount, allows the Department to more accurately limit loan debt for the ratio calculations.

We are revising § 668.7(c)(2) to reflect this change. Under this section, an institution may report the total amount charged for tuition and fees for each student who attended programs at the institution. In cases where a student attends more than one program, the Department will compare the total amount of tuition and fees the student was charged for attending those programs to the total amount of loan debt the student incurred for attending those programs. Of course, for a student who attended only one program, we will compare the amount of tuition and fees charged to the loan debt incurred for that program. For each student, we will use the lower of the amount of tuition and fees charged or the total loan debt incurred for purposes of calculating the median loan debt for the program. However, because some programs would not benefit from limiting loan debt, reporting the amount charged is optional for the institution. In any event, the amount of the median loan debt the Department will provide to institutions for disclosure purposes under § 668.6(b) will not be limited to tuition and fees charges because we believe a prospective student should know how much loan debt a typical student incurred in completing the program.

In the Program Integrity Issues final regulations, we discussed generally in the preamble the process the Department will use to calculate the median loan debt of a program. In these final regulations, we are establishing how the Department determines the loan debt of each student in a program and derives the median loan debt of the program.

Under these provisions:

(1) Loan debt includes FFEL and Direct loans (except for parent PLUS or TEACH Grant-related loans) owed by the student for attendance in a program, and as reported by the institution under § 668.6(a)(1)(i)(C)(*2*), the amounts the student received from private education loans for attendance in the program and the amount from institutional financing plans that the student owes the

institution upon completing the program.

(2) Loan debt does not include any loan debt incurred by the student for attendance in programs at other institutions. However, the Department may include loan debt incurred by the student for attending other institutions if the institution providing the program for which the debt-to-earnings ratios are calculated and the other institutions are under common ownership or control, as determined in accordance with 34 CFR 600.31. We generally do not include educational loan debt from institutions students previously attended because those students made individual decisions to enroll at other institutions where they completed a program. Entities with ownership and control of more than one institution offering similar programs might have an incentive under these regulations to shift students between those institutions to shield some portion of the educational loan debt from the debt included in the debt measures under these final regulations. The provision in § 668.7(c)(4)(iii) will negate that incentive by permitting the Department to include that debt in the analysis. The regulations also provide that a determination of common ownership or control will be made under 34 CFR 600.31, which sets forth the definitions and concepts that the Department routinely uses to review changes of ownership, financial responsibility determinations, and identifying past performance liabilities at institutions.

(3) Under § 668.7(c)(5)(iv), the Department will not include a student in calculating the debt-to-earnings ratios for the program the student completed if the student is enrolled in another eligible program at the institution or at another institution. However, we clarify that the student must be enrolled in another program during the calendar year for which the Department obtains earnings data from SSA (the earnings year). We exclude the enrolled student based on the assumption that he or she will not be employed for the earnings year used to calculate the debt-to-earnings ratios for the program the student originally completed.

We illustrate in Table F how the Department will implement this process.

Table F: Attributing Loan Debt

	Educational Enrollment / Completion in Gainful Employment Programs			Which program's loans to include in the debt-to-earnings calculation for this gainful employment program		
	Was the student enrolled during the earning year* in any program at the same or another institution?	After completing the program, did the student complete a higher credentialed gainful employment program at this institution?	Was the student ever enrolled in a lower credentialed gainful employment program at this institution?	Include loan debt from this gainful employment program?	Include loan debt from lower credentialed gainful employment programs?	Notes
Student I	Yes	Yes or No	Yes or No	No	No	Student not included in debt-to-earnings calculation because we presume the student was not working during the earnings year*
Student II	No	No	No	Yes	No	Include loans from this program only.
Student III	No	Yes	Yes or No	No	No	This program's loan debt will be included when the higher credentialed program is evaluated.
Student IV	No	No	Yes	Yes	Yes	This program's loan debt will include loans from this program and from lower credentialed program(s).

*The earnings year is the calendar year that the Social Security Administration will use to report average and median earnings for a gainful employment program.

Changes: Section 668.7(c)(2) has been revised to provide that an institution has the option to report the total amount of tuition and fees the institution charged a student for attending programs at the institution. This section

also has been revised to provide that the Department calculates the median loan debt of the program for each student who completed the program during the 2YP, the 2YP–R, the 4YP, or the 4YP–R based on the lesser of the total loan debt incurred or the total amount of tuition and fees the institution charged the student for enrollment in all programs at the institution, if the institution provides this information to the Department. Also, we have added § 668.7(c)(4) to specify how the Department determines the loan debt for a student.

Comment: Some commenters expressed concern that the proposed debt-to-earnings ratios inappropriately inflate the cost of education by incorrectly capitalizing unpaid interest in determining median loan debt.

Discussion: The commenters are correct in noting that the Department will calculate median loan debt using loan amounts for unsubsidized loans that include capitalized interest. However, we do not believe this treatment inflates the cost of education because the interest incurred during program attendance is part of the cost of the loan. Moreover, the total amount of the student's loan debt may now be limited to the total cost of tuition and fees.

Changes: None.

Loan Amortization

Comment: Commenters urged the Department to calculate the annual loan amount for the debt-to-earnings ratios by using a more accurate loan amortization schedule. Under the proposed regulations, the annual loan debt for a program is based on a 10-year repayment schedule. The commenters noted that a fixed, 10-year amortization does not reflect the loan repayment behavior of many borrowers, and suggested that the Department determine the average length of repayment for borrowers who entered repayment during the four most recently completed FYs. Alternatively, the commenters suggested that the loan amortization rate should vary depending on the program students complete: 15 years for a certificate program, 20 years for a bachelor's degree program, and 25 years for a graduate degree program. The commenters stated that these amortization rates reflect the current costs of education and student repayment practices. Similarly, other commenters suggested using loan amortization schedules of 15 years for non-degree programs and 20 years for degree programs. Some commenters recommended that the Department use (1) the actual term of the loan applicable to each student based on each student's payment plan in effect at the time the ratios are calculated, and (2) each student's actual interest rate for the ratio calculations.

Other commenters expressed concern that using a debt-to-earnings metric that tracks earnings only over a three-year period while using a standard 10-year amortization schedule for loan debt over-weights the debt factor and under-weights the benefits of higher education. The commenters stated that if a borrower enters a new career upon completion of a degree program, the borrower's income is likely to increase with each passing year, but limiting the income timeframe to a three-year period fails to fully consider the potential for income gain in relation to debt. The commenters were also concerned that the debt-to-earnings metric did not take into account other benefits of higher education such as better health and life insurance coverage, a lower unemployment rate, and greater mobility to change jobs.

Some commenters believed the proposed regulations were heavily biased against longer term and higher-cost programs (e.g., health care programs). Students enrolled in higher-cost programs borrow more, but their earnings in the first three years after graduation are not likely to be substantially greater than those students who have earned less costly degrees. According to the commenters, these students may take seven years or more after graduation to experience the real financial advantage of the additional education they obtained.

Discussion: In view of the comments that a fixed 10-year repayment schedule may not be appropriate for all programs, the Department agrees to amortize the median loan debt for a program based on credential level. It would be impractical to use the actual terms of the loan for each borrower or the time frame the borrower realizes the benefit of higher education. Using the actual borrower data could also lead to repayment periods of less than 10 years. The average repayment period for Federal student loans remains a little over 8 years. We recognize the commenters' concern that longer programs could be significantly more likely to fail the debt-to-earnings ratios under the proposed 10-year repayment schedule. Consequently, we are adopting an approach along the lines suggested by some of the commenters: For undergraduate or post-baccalaureate certificate programs and associate's degree programs, loan debt will be amortized over 10 years; for bachelor's and master's degrees, 15 years, and for programs that lead to a doctoral or first-professional degree, 20 years. We believe this approach tracks the amount of debt that students incur at each level as they progress through their postsecondary education and will monitor the length of repayment by credential level to make any necessary future adjustments.

Changes: Section 668.7(c)(2)(ii) has been revised, in part, to provide that the Department will calculate the annual loan payment for a program by using a 10-year schedule for undergraduate or post-baccalaureate certificate programs and associate's degree programs, a 15-year schedule for bachelor's and master's degree programs, and a 20-year schedule for doctoral and first-professional degree programs.

Earnings Portion of the Debt-to-Earnings Ratios

Earnings of Program Completers

Comment: Some commenters opined that calculating a program's debt-to-earnings ratio based on earnings received during the first three years of employment does not take into account the lifelong benefit of higher education because as earnings increase with experience some graduates will be able to pay off their loans in the 10th or 15th year of repayment. Consequently, the commenters argued that the Department should use BLS data at the 50th percentile because doing so will more likely track what a student would make within the first 10 years of his or her career. For those professions not requiring a graduate or first-professional degree, the commenters suggested using BLS data at the 75th percentile. Some other commenters suggested that the Department allow institutions to use either SSA data or BLS wage data. For BLS data, the commenters recommended using wages at the 50th percentile for degree programs and at the 25th percentile for certificate programs.

Similarly, some commenters opined that a decision of whether to continue schooling beyond high school should be based on a comparison of the lifetime benefits and costs of that schooling. The commenters argued that using SSA data for the income portion of the ratio calculations does not accurately reflect the impact that postsecondary education will have on a student's lifetime earnings or the student's ability to ultimately repay his or her loan obligations. While noting that the Department's likely intent is to ensure that students are able to afford the necessary loan payments in the early

years after leaving school, the commenters cautioned that any deviation from a comparison of lifetime benefits to lifetime costs has the potential to harm students. For example, if education confers benefits to students—such as increased earnings throughout their careers—then regulations that have the effect of restricting students' ability to borrow to pay for that education can be detrimental. In addition, the commenters stated that because the starting salaries are often not that high for students enrolled in teacher education programs, those programs would perform poorly under the debt-to-earnings ratios even though they offer positive lifestyle benefits that are not reflected in teacher income. Considering the effect that low salaries have on the debt burden test, the commenters believed the proposed regulations would create an incentive for institutions to stop providing programs that lead to low-paying public sector employment.

Under proposed § 668.7(c)(3), the Department would have required institutions to prove that their graduates' salaries increased substantially in order to use P3YP salary data. Commenters stated that institutions do not have this salary data. Moreover, the commenters noted that there does not appear to be a good reason for requiring institutions to provide this proof because the Department can obtain income data for the six prior years as easily as the three prior years. Therefore, commenters recommended that the Department automatically calculate the debt-to-earnings ratios over the proposed 3YP as well as the P3YP and use the most favorable result to determine whether a program satisfies the debt-to-income requirements.

Other commenters noted that due to the extended length of required residencies, most medical and dental school graduates have relatively low earnings for several years. The commenters argued that because a residency is post-graduate medical education, the debt-to-earnings ratio for medical school graduates should be calculated not from the point when the student graduates from medical school, but rather from the start of the first full year after the student completes his or her medical residency.

Discussion: In response to concerns that using earnings of recent program graduates would penalize programs whose students typically begin careers in low-paying jobs, we agree to extend the employment period. As discussed more fully under the heading, *Definitions,* instead of using the earnings of students who completed a program during the three most recent award years (years 1 through 3), the Department will use the earnings of students who completed a program during the third and fourth FYs (years 3 through 4) prior to the FY for which the ratios are calculated. For example, the ratios calculated for FY 2016 will use the most recent earnings available for students who completed a program between FYs 2012 and 2013 (between October 1, 2011 and September 30, 2013). Although a longer employment period may better reflect the earnings connected to the education and training provided by a program, extending the employment period without cause, or extending it significantly as suggested by commenters advocating the use of lifetime earnings, may weaken or sever that connection. It would also delay the Department's efforts in identifying poorly performing programs. For medical and dental school graduates whose earnings are unquestionably higher after completing a required internship or residency, the Department will use the earnings of students who completed those medical and dental programs during the sixth and seventh FYs (years 6 through 7) prior to the FY for which the ratios are calculated. For example, the ratios calculated for FY 2016 will use the most recent earnings available for students who completed a program between FYs 2009 and 2010 (between October 1, 2008 and September 30, 2010).

Finally, the public service programs described in the comments would likely fare well under the loan repayment rate due to their former students' potential eligibility for Public Service Loan Forgiveness.

With regard to the comments about using the 50th or 75th percentile earnings from BLS, doing so would suggest that all programs yield similar or better earnings results than average. Moreover, because BLS includes wages only for those employed in an occupation (individuals trained in the occupation but not working, are not counted), adopting the 50th or 75th percentile earnings would allow significantly more debt than the typical graduate of a program would likely incur.

Changes: See the discussion of the changes to § 668.7(a)(2), under the heading, *Definitions.*

Actual Earnings From SSA and Bureau of Labor Statistics (BLS) Wage Data

Comment: Some commenters objected to the proposal that the Department would use the actual average earnings of program completers to calculate the debt-to-earnings ratios because neither the Department nor an institution would have access to individual earnings data. The commenters believed that an institution would be entirely ignorant of the figures used to determine whether a program violates the gainful employment regulations and would have no ability to challenge the underlying data. Furthermore, the institution would learn of any noncompliance only after the data set is closed. The commenters argued that this lack of access to the data compromises the institution's right to knowledge and notice. For this reason, the commenters suggested that the Department use earnings data publicly available from BLS to determine average annual earnings. The commenters stated that institutions have developed an understanding of how actual wages relate to BLS data and how BLS wage data relate to program length and tuition and fees. According to the commenters, by using BLS data, an institution would be in a better position to assist students in determining and reducing their debt-to-earnings ratios. Moreover, using BLS data would allow an institution to determine whether its programs satisfy the gainful employment requirements and to make necessary changes prior to being subject to penalties for noncompliance. For example, if an institution determines it does not have the ability to offer and satisfy the debt-to-earnings ratios for a program, it can revise the program or teach out students enrolled in the program and discontinue admissions. The commenters argued that if the Department's goal is to make an institution more accountable for the education it provides, then the institution must be informed, in advance, of the data the Department will use to determine whether its programs comply with the regulations. The commenters believed that using BLS data would further this goal as well as enhance and encourage more transparency throughout the admissions and enrollment processes.

Along the same lines, other commenters stated that institutions would be unable to monitor program performance under the debt-to-earnings ratios. First, the commenters were concerned that the proposed regulations did not specify the source of the earnings data and there was nothing in the proposed regulations that would limit the Department from changing the data source. Second, because the proposed regulations did not define the term "earnings" the commenters believed it was unclear as to what

measure would be used to determine whether a program satisfies the debt-to-earnings ratios. Other commenters questioned whether annual earnings would equal a full 12 months of earnings or be based on past calendar earnings because, if based on calendar year data, the data will not be representative of graduates' actual earnings if employment began mid-year or towards the end of the reporting period. Third, even if the Department specified SSA as the source of earnings data and defined "earnings," the commenters stated that institutions would still be unable to monitor program performance under the proposed debt-to-earnings metric because institutions do not have access to actual earnings for program graduates from SSA or any other source. Therefore, the commenters believed that institutions would be deprived of effective notice of the impact of the debt-to-earnings ratios and could not take effective action to improve program performance before being subject to sanctions. Finally, the commenters stated that some program graduates begin their careers in low paying jobs or internships. For example, graduates of the arts and fashion-based programs typically know they must begin at a low-paying position to prove themselves and get a foothold in a competitive market, or to retain the freedom to do creative work of their choice. The commenters were uncertain how the Department would assess whether an institution can show that students completing a program "typically experience a significant increase in earnings after an initial employment period" as described in the July 26, 2010 NPRM. Because of this uncertainty, the unavailability of SSA data on the actual earnings for program graduates, and the unrealistic expectation that program graduates would provide earnings data to an institution four to six years after completing a program, the commenters concluded that institutions would not be able to monitor program performance under the debt-to-earnings ratios.

For the following reasons, commenters opined that using actual SSA wage data to calculate the debt-to-earnings ratios would be arbitrary:

(1) Institutions have no access to the SSA actual earnings data and therefore have no way to determine whether their programs comply with the ratio requirements.

(2) By relying on actual earnings data, the Department does not consider that students may have valid reasons unrelated to the value or quality of their education for choosing not to seek employment or seeking low-wage or part-time employment.

(3) The proposed regulations fail to account for macro-economic conditions that could drive national unemployment rates or that are beyond the control of institutions.

(4) The SSA data fail to include comparable earnings for self-employed individuals and fail to include all of the earnings for graduates who operate small businesses or as independent contractors.

In addition, some commenters opined that because the proposed regulations do not control for the population served by institutions, the regulations discriminate against programs in economically disadvantaged areas. The commenters recommended using data from BLS or the U.S. Department of Agriculture's Economic Research Service (ERS) noting that the ERS provides wage data for metropolitan and non-metropolitan labor markets.

Some commenters believed that the proposed debt-to-earnings ratio does not reflect gainful employment in a recognized occupation but instead measures the post-completion debt retirement capacity of a program completer regardless of whether (1) after initial placement, he or she has been continuously employed in the occupation related to the program, or (2) he or she received a waiver for placement, or was never placed, because of continuing education or another acceptable reason allowed by an accrediting agency under its placement methodology. As a result, the commenters contended that the proposed regulations were heavily biased against programs for the health care professions that enroll principally women (ages 18–34) who often leave the workplace for child bearing during the three-year period after graduation.

Some commenters believed that using actual wage data from SSA might be acceptable if the Department did not count graduates who did not work, maintained full-time employment for short periods, or worked part time. The commenters offered that these situations could be more a reflection of the student than the education provided and would inappropriately lower the income used in the calculation.

Other commenters conceded that BLS earnings data and Standard Occupational Classification (SOC) codes may not be as complete as desired (the BLS data do not account for earnings by degree attainment and it is difficult to properly align or determine the SOC codes that apply to a particular program), but nevertheless endorsed using BLS data to provide a transparent way for institutions to manage their compliance with the regulations. These commenters supported using BLS data at the 25th percentile for non-degree programs and at the 50th percentile for programs leading to bachelor's degrees and higher credentials.

Other commenters supported using actual earnings and including all graduates (thus counting those who stray outside the strict mapping to an occupation), but were concerned that the Department did not propose to provide debt-to-earnings data, or results, on a quarterly, monthly, or more frequent basis. The commenters believed that failing to provide this data, would prohibit institutions from identifying negative trends and responding to any problems before being subject to sanctions.

Other commenters stated that because the for-profit sector enrolls a higher percentage of nontraditional and female students, the Department should use BLS median wages instead of SSA actual wages to provide a fixed, federally-targeted wage base that would minimize detrimental, differential, and possibly legally discriminatory, population effects. The commenters also suggested that the Department use the BLS median wage instead of the originally proposed 25th percentile wage to better reflect the earnings in any given occupation.

Other commenters believed that using actual earnings of part-time workers would force institutions to close down quality programs because those programs would not satisfy the debt-to-earnings thresholds. According to the commenters, program closures would have an enormous effect on female-dominated occupations in health sciences, where working mothers have the opportunity to work part-time or take leave from work to manage home and family responsibilities, by leaving thousands of predominantly low-income women without the opportunity for an education. To mitigate this circumstance, the commenters suggested that the Department use BLS wage data instead of actual earnings to calculate the debt-to-earnings ratios. Alternatively, if actual earnings are used, the commenters suggested that the Department add a multiplier to the average annual earnings that is commensurate with the proportion of enrolled women in a particular program.

Some commenters believed that the proposed loan repayment rate undercuts the validity and need for debt-to-earnings tests. The commenters reasoned that graduates who are repaying their loans have sufficient income, but if they are not repaying

their loans, the fact that their earnings may exceed some threshold appears to be irrelevant. These and other commenters stated that even the brightest, most skilled, and employable graduates will face earnings limitations in low-wage-earnings cities and surrounding areas. Consequently, because the proposed metrics do not account for differences in regional wages, the commenters were concerned that programs offered in those areas would fail the debt-to-earnings tests thereby depriving employers of the opportunity to hire qualified, well-trained graduates.

Some commenters believed that the proposed gainful employment regulations were irrational because programs would be subject to a potential loss of eligibility, strict enrollment limits, and other punitive measures based on metrics that did not exist at the time that students incurred loan debt that would now be subject to review under the proposed measures. In addition, the commenters stated that because the Department would impose punitive measures against programs based on aggregate data, not on the basis of individual student data, the proposed regulations are ill-designed to achieve the purposes identified by the Department in the July 26, 2010 NPRM. For this reason, the commenters opined that the proposed regulations were arbitrary and capricious because educational choices would be eliminated for students who were doing well themselves by repaying their loans, obtaining jobs in their field, and contributing to society in general.

Other commenters echoed these concerns noting that every student whose data would be used under the debt-to-earnings metric would have left an institution before the implementation date of the regulations, with some students leaving as early as five years before that date. In view of the “retroactive” nature of the proposed regulations, the commenters concluded that it would not be feasible for an institution to take any corrective actions before sanctions would be imposed by the Department.

Some commenters believed that the final regulations should not require institutions to retroactively gather data on individuals who previously enrolled in programs leading to gainful employment because many institutions would be unable to do so.

Discussion: The Department has several concerns about using BLS data to calculate the debt-to-earnings ratios. First, as a national earnings metric that includes untrained, poorly-trained and well-trained employees, BLS earnings data do not distinguish between excellent and low-performing programs offering similar credentials. Second, BLS earnings data do not relate directly to a program—the data relate to a SOC code or a family of SOC codes stemming from the education and training provided by the program. An institution may identify the SOC codes by using the BLS CIP-to-SOC crosswalk that lists the various SOC codes associated with a program, or the institution could identify through its placement or employment records the SOC codes for which program completers find employment. In either case, the BLS data may not reflect the academic content of the program, particularly for degree programs. Assuming the SOC codes can be properly identified, the institution could then attempt to associate the SOC codes to BLS earnings data. BLS provides earnings data at various percentiles (10, 25, 50, 75, and 90), but the percentile earnings do not relate in any way to the educational level or experience of the persons employed in the SOC code. So, it would be difficult for an institution to determine the appropriate earnings, particularly for students who complete programs with the same CIP code but at different credential levels. For example, there is no difference in earnings in the SOC codes associated with a certificate program and an associate’s degree program with the same CIP code. Moreover, because BLS percentiles simply reflect the distribution of earnings of those employed in a SOC code, selecting the appropriate percentile is somewhat arbitrary. For example, the 10th percentile does not reflect entry-level earnings any more than the 50th percentile reflects earnings of persons employed for 10 years. Even if the institution could reasonably associate the earnings for each SOC code to a program, the earnings vary, sometimes significantly, between the associated SOC codes, so the earnings would need to be averaged or somehow weighted to derive an amount that could be used in the denominator for the debt-to-earnings ratios. Finally, and perhaps most significantly, BLS earnings do not directly reflect the earnings of the students who complete a program at an institution. Instead, BLS earnings reflect the earnings of workers in a particular occupation, without any relationship to what educational institutions those workers attended. While it is reasonable to use proxy earnings like those available from BLS for research or consumer information purposes, we believe a direct measure of program performance must be used in determining whether a program remains eligible for title IV, HEA funds. The earnings data we obtain from SSA will reflect the actual earnings of program completers without the ambiguity and complexity inherent with attempting to use BLS data for a purpose outside of its intended scope.

As noted by many of the commenters, a tradeoff in using SSA data rather than BLS data is timely access to the earnings data needed for making strategic decisions about program offerings and managing programs to comply with the gainful employment standards. Whereas BLS data are readily and publicly available, an institution will not have SSA data for a particular FY until the Department obtains the data from SSA. This delay is unavoidable because the Department will use the most recent earnings data available from SSA to calculate the debt-to-earnings ratios for each FY. To mitigate issues related to timely access, the Department will implement the following approach:

- For the debt measures calculated for FY 2011, we will provide for each gainful employment program offered by an institution the debt-to-earnings ratios for the 2YP covering FYs 2007 and 2008. Along with the ratio results, we will provide the associated median loan debt and SSA earnings data (the mean and median annual earnings). In addition, we will provide the loan repayment rates for each program for the same two-year period. We intend to provide the ratio results and underlying data for these FYs to the affected institution and only for informational purposes. The Department will provide the same data for each subsequent FY the ratios are calculated.
- As discussed more fully under the heading, *Draft debt measures and data corrections (§ 668.7(e)), Final debt measures (§ 668.7(f)), and Alternative earnings (§ 668.7(g)),* the Department is providing a process under which an institution may demonstrate that a failing program would satisfy a debt-to-earnings standard by using alternative earnings data from BLS, a State-sponsored data system, or from an institutional survey conducted in accordance with the National Center for Education Statistics (NCES) standards, to recalculate the debt-to-earnings ratios. These options are responsive to comments suggesting that the actual earnings give an inaccurate view of a program and that we allow other data sources to be used for the earnings calculation.

Under this approach, an institution will have an early view of the performance of its programs from which

it can make initial assessments and plans for improving or discontinuing failing programs. In addition, because a program will not become ineligible until the Department calculates the debt measures for FY 2014, the institution will have the SSA data for two additional FYs (FYs 2012 and 2013) to supplement and better inform its initial assessments. Moreover, to allow more time for improvements of potentially failing programs, beginning with the debt measures calculated for FY 2012, the institution may use alternative earnings data under the recalculation process described more fully under the heading, *Draft debt measures and data corrections (§ 668.7(e)), Final debt measures (§ 668.7(f)), and Alternative earnings (§ 668.7(g))* to extend the program's eligibility. The following Table G illustrates this approach.

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Table G: Implementation Timeframes under the Final Gainful Employment Regulations

DEBT MEASURES YEAR		FY 2011*	FY 2012**	FY 2013	FY 2014***	FY 2015	FY 2016
CALCULATION YEAR		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
REPAYMENT RATE							
	Entered Repayment Years	FY 2007 FY 2008	FY 2008 FY 2009	FY 2009 FY 2010	FY 2010 FY 2011	FY 2011 FY 2012	FY 2012 FY 2013
	Repayment Activity Year	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
DEBT-TO-INCOME RATIOS							
	Years Completed Program	FY 2007 FY 2008	FY 2008 FY 2009	FY 2009 FY 2010	FY 2010 FY 2011	FY 2011 FY 2012	FY 2012 FY 2013
	Earnings Year	Calendar 2010	Calendar 2011	Calendar 2012	Calendar 2013	Calendar 2014	Calendar 2015
DEBT MEASURES RELEASE YEAR		2012*	2013**	2014	2015***	2016	2017

* Informational rates only

** First year for failing programs - 34 CFR 668.7(h)

*** First year for ineligible programs - 34 CFR 668.7(i)

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A program that fails the debt measures for FYs 2012, 2013, and 2014 becomes ineligible for title IV, HEA funds after the final rates are released for FY 2014. During this initial three-year window, an institution may use BLS earnings data to show that the program satisfies the minimum standards for one of the debt-to-earnings ratios. Despite our concerns about using BLS data, in view of the commenters' beliefs that BLS data appropriately provides some certainty to institutions seeking to evaluate their programs before actual earnings information is available and mitigates the consequences of employment choices or the effects of macroeconomic conditions that would otherwise be adversely reflected in the debt measures, we have established a way for an institution to use BLS data under the recalculation process for the initial evaluation period. Doing so provides three more years for many institutions to acclimate to the use of actual earnings data from SSA by allowing those institutions to extend the eligibility of an otherwise failing program to at least FY 2015. For FY 2015, the students in the 2YP (students who completed a program in FYs 2011 and 2012) would have attended the institution contemporaneously with the development and publication of these regulations and, therefore, the "retroactive implementation" that some commenters identified will largely be mitigated.

Moreover, an institution may be able to extend the eligibility of a failing program beyond FY 2015 by using alternative earnings data from a State-sponsored data system or an NCES-based institutional survey. In either case, we believe that providing an institution the opportunity to extend a failing program's eligibility through or beyond the initial three-year window addresses the commenters' concerns that the regulations apply to students who have already graduated from or dropped out of a program.

With regard to the comments that SSA data fail to include comparable earnings for the self-employed or independent contractors, we note that there are two SSA files: One that includes only wage earners and another that provides earnings information on sole proprietors and independent contractors. SSA will provide combined earnings information for the debt-to-earnings ratios.

In response to the comment about using ERS data, we note that both BLS and ERS data are for groups. BLS provides data by occupation and ERS provides data by the location of the wage earner. It is not clear how either of these data sources would be better than actual earnings provided by SSA. While it is possible that a State longitudinal data system could also provide accurate earnings data, neither ERS nor BLS would achieve the same coverage or accuracy.

The Department recognizes that some graduates will work part-time, become unemployed, or opt out of the labor force. As a result, the actual earnings data regarding a program's graduates are likely to include some individuals who are not working full-time for the entire year. However, we believe that actual earnings should be used for the following reasons. First, the quality of the program may be related to its graduates' ability to find full-time employment. As a result, when examining a program that generates an unusually large number of graduates without full-time employment, it is difficult to separate individual choices from program performance. Second, the Department designed the debt-to-earnings ratio to identify programs where the majority of program graduates are carrying debts that far exceed levels recommended by experts. If an institution expects a program to generate large numbers of graduates who are not seeking employment or who are seeking only part-time employment, it should consider reducing their debt levels rather than expecting their students to bear even higher debt burdens. Finally, if a particular programs' loans are affordable, it should succeed under the repayment test even if many of its graduates are not working full time.

Changes: None in this section. However, many of the changes in the final regulations address the issues raised in this section.

Comment: Commenters noted that the Department did not indicate in the proposed regulations whether earnings data would include some or none of following: gross income, investment income, income from earnings, income minus expenses for self-employed individuals, or reported income.

Some commenters requested that the Department clarify how graduates with no income data in the SSA records would be treated in calculating the debt ratios. Other commenters suggested including unemployment benefits as part of actual average annual earnings.

Some commenters urged the Department to use BLS wage data instead of actual average earnings from SSA because (1) according to these commenters, earnings for self-employed individuals are not reported to SSA, and (2) for a sole proprietorship where the company receives the income, the employee/owner may receive only a modest salary.

Discussion: In response to the questions and comments about earnings, the Department will use the data reported by an institution under § 668.6(a) to compile a list of students who completed a program at the institution during the applicable two- or four-year period and submit that list to SSA. Based on the most recent earnings data available, SSA will provide the Department with the mean and median annual earnings of the students on that list.

SSA defines a person's earnings for a taxable year as the sum of pay for services as an employee plus all net earnings from self-employment (minus any net loss from self-employment). Earnings include:

- Most wages from employment covered by Social Security;
- All cash pay for agricultural and domestic work, even if it is not considered "wages";
- Cash tips which equal or exceed $20 a month from work for an employer;
- All pay for work not covered by Social Security if the work is done in the United States, including work for Federal, State, and local units of government; and
- All net earnings from self-employment, including those not covered by Social Security.

SSA data privacy requirements restrict access to earnings on an individual basis. Therefore, SSA will provide the Department with the mean and median earnings figures based on all completers. However, because neither the institution nor the Department has access to the earnings information for those individuals, the process for correcting errors is limited to ensuring that the institution provided an accurate list of program completers, that the list of program completers was accurate when it was provided to SSA, and that the calculation by SSA was made for those individuals. With respect to any concerns that the earnings information maintained by SSA is not accurate, it is the earnings information reported to the Federal government that is gathered, maintained and disseminated under strict legal standards to ensure its accuracy, quality, objectivity, utility, and integrity. SSA will provide safeguards pursuant to section 6103(p)(4) of the Internal Review Code of 1986, as amended (IRC) for all Federal returns and return information received from taxpayers and the Internal Revenue Service (IRS). Contractors receiving returns or return information from the SSA pursuant to section 6103(l)(5) of

the IRC, in conjunction with section 6103(n) or (m)(7) of the IRC, are also subject to the safeguard provisions in section 6103(p)(4) of the IRC. In addition, SSA employees, and contractors employed under section 6103(l)(5) of the IRC, in conjunction with section 6103(n) or (m)(7) of the IRC, are subject to criminal and civil penalties imposed by sections 7213, 7213A, and 7431 of the IRC. SSA will ensure that all uses and redisclosures of tax information will be in compliance with the appropriate disclosure authorities.

These legal standards also include compliance with the requirements of the Information Quality Act (IQA) (section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Public Law 106–554)), which obligates Federal agencies, including the SSA (see *http://www.ssa.gov/515/ssaguidelines.html*), to disseminate information in a manner that complies with the IQA. We are not aware of any authority that requires or even allows the Department to question the quality, objectivity, utility, and integrity of SSA's information under the provisions of the IQA or otherwise. Further, these data are used today by families to complete the Free Application for Federal Student Assistance and are considered as accurate income information for the purpose of determining aid eligibility. Therefore, the Department accepts this information as reliable, and limits corrections to the list of individuals for whom SSA calculates mean and median earnings. However, the Department has created an opportunity for institutions to provide alternative reliable earnings information, including BLS data (see discussion under the heading, *Draft debt measures and data corrections (§ 668.7(e)), Final debt measures (§ 668.7(f)), and Alternative earnings (§ 668.7(g)).*

With respect to the use of SSA data, we also wish to clarify that the data used will be for all program completers not just those receiving title IV, HEA program aid. Through these final regulations, the Department is establishing standards to determine the eligibility of a gainful employment program. These standards include calculating the median loan debt for all students enrolling in a program, including students who are not receiving title IV, HEA program funds. These students may be covering tuition costs from savings or scholarships, or their tuition may be paid by an employer, or through private educational loans that would be tracked by an institution and reported to the Department. We are therefore requiring institutions to collect this information and report it to the Department as a part of the determination of whether the gainful employment program is eligible for title IV, HEA program funds.

Changes: None.

Comments: Some commenters suggested that the Department adjust the SSA data because the actual income of students for the first three years after graduation does not provide a good or reliable measure of their overall salary levels. For example, many students graduate from school mid-year, many students may not be fully employed in their first year for numerous reasons unrelated to the quality of their programs, or there may be a sharp downturn in an economic sector or geographic region. Because institutions would bear the full risk that earnings will be under-reported in these circumstances, the commenters urged the Department to annualize the wage data.

Other commenters believed the proposed metrics should take into account high unemployment and underemployment rates by (1) not applying the metrics until the State or regional unemployment rate applicable to the institution (relevant unemployment rate) returns to the level existing on January 1, 2008 or some other earlier date preceding the start of the current economic malaise (reference date), or (2) adjusting the upper thresholds of the loan repayment rate and debt-to-earnings ratios to reflect the percentage change in the relevant unemployment rate since the reference date. For example, if the relevant unemployment rate is now 12 percent and it was 8 percent on the reference date, it has increased by 50 percent so the lowest acceptable loan repayment rate should be decreased by 50 percent from 35 percent to 17.5 percent and the maximum debt-to-earnings threshold should be increased from 12 percent to 18 percent and from 30 percent to 45 percent.

Similarly, other commenters believed that the Department should have a mechanism for considering the current economic conditions when determining the impact of repayment rates and debt-to-earnings results. The commenters recommended that the Department suspend or adjust the gainful employment calculations when the national unemployment rate is above seven percent, and suspend the regulations for States or regions that have more than a seven percent unemployment rate even when the national rate is less than seven percent.

Some commenters stated that a 10 percent unemployment rate and stagnant job growth may be a more important cause of a program's failure to satisfy the proposed metrics than the quality of the program. The commenters cautioned that further analysis is needed to gauge the impact of normal economic cycles on metrics used to determine program eligibility.

Other commenters believed that institutions would be inappropriately penalized when employment in a field is suddenly and adversely affected by regional economic downturns and when recently placed graduates refuse, or are economically unable, to relocate.

Discussion: In view of the suggestions to somehow adjust the debt measures to account for high unemployment or underemployment, we will use the higher of the mean or median annual earnings obtained from SSA to calculate the debt-to-earnings ratios. All things equal, the value of mean or median earnings is distribution dependent. In a prosperous economy where fewer people are unemployed and earnings are generally higher, average earnings are likely to be higher than median earnings. Conversely, during an economic downturn where more people are unemployed and earnings are depressed or stagnant, median earnings are likely to be higher than average earnings.

Programs that prepare students for jobs that suddenly become unavailable in a local community may begin to fail the debt measures unless the institution adjusts quickly to labor market conditions. By allowing programs to remain eligible until they have failed both measures three out of four FYs, the Department provides time for successful programs to adjust to market conditions.

Changes: Section 668.7(c)(3) has been revised to provide that the Department will obtain from SSA the most currently available mean and median annual earnings of the students who completed a program during the 2YP, the 2YP–R, the 4YP, or the 4YP–R. We will use the higher of the mean or median annual earnings to calculate the debt-to-earnings ratios.

Comment: Some commenters argued that program completers who are employed in mainly cash businesses, such as massage therapy and cosmetology, should not be included in the debt-to-earnings calculations because they may not fully report earnings to the IRS. Although the commenters did not condone the failure of individuals to report earnings accurately, they cited studies illustrating the magnitude of unreported or underreported earnings and urged the

Department to acknowledge this "underground" economy when formulating the debt-to-earnings ratio it will use as a measure of program quality. The commenters believed that using BLS earnings data, instead of actual reported earnings, would reduce the impact of program completers who do not report their full income.

Discussion: The Department does not condone any practice or behavior that leads to underreporting of earnings and will not otherwise encourage this behavior by adjusting SSA earnings. However, for a failing program, the Department provides flexibility for an institution to use alternative earnings data under the recalculation process (see the discussion under the heading, *Draft debt measures and data corrections (§ 668.7(e)), Final debt measures (§ 668.7(f)), and Alternative earnings (§ 668.7(g)).*

Changes: None.

Comment: With regard to the proposed debt measure based on discretionary income, some commenters recommended that the measure account for family size. The commenters noted that a family of one earning $33,000 a year would have $16,800 in discretionary income, but a family of four with the same income would have no discretionary income. Because 48 percent of all undergraduates at for-profit institutions have dependent children, and 28 percent have at least two children, the commenters suggested that the Department adjust the measure for family size to reflect the real burden on families with children by (1) determining discretionary income based on a family size of two instead of one, (2) limiting the use of the discretionary income measure to programs whose graduates have average earnings sufficiently high to guarantee that a family's basic expenses could be met, regardless of family size, or (3) eliminating the discretionary income measure entirely to avoid leaving families with children unprotected. On the other hand, some commenters believed that this measure improperly failed to consider total family income, most notably, spousal income.

Discussion: We do not believe that it would be feasible to account for family size in calculating the debt-to-earnings ratio based on discretionary income. The Department will not have information about the current or future family size of students who complete a program. The Department cannot adopt the commenters' alternate suggestion to use a family size of two, instead of one, because we will not have information about the earnings for any other member of the family, or whether there is another family member.

Changes: None.

Alternative Metrics

Comment: Some commenters argued that the proposed gainful employment metrics evaluate only one aspect of the quality of programs—whether a student's initial debt burden was reasonable—but fail to account for other longstanding measures of program quality or a student's long-term return on his or her educational investment. The commenters believed that structuring regulations in this manner may discourage institutions from offering training in jobs with the potential for long-term salary growth for fear of losing program eligibility. For example, according to the commenters, based on BLS data, entry-level salaries for graduates from programs for auto technicians range from $19,840–$25,970. According to the commenters, salaries for auto technicians may have long-term growth potential because it can take a technician 2 to 5 years after graduation to become fully qualified. Mastering additional complex specialties also requires the technician to have years of experience and advanced training. Applying the proposed gainful employment measures to these programs may prevent students from pursuing training in these necessary fields. The commenters offered that a more reasonable measure of the quality of an educational program would be the student's return on investment (ROI), not a first-year debt service calculation. The commenters argued that a student's initial capacity to service debt should be one consideration in judging educational program quality but is not the essential metric, and that the analysis of a program should also take into account a student's potential long-term benefits and earnings.

Other commenters believed that, according to finance theory, the only correct method for determining the value of a program would be a Net Present Value (NPV) approach that considers the present value of all incremental lifetime earnings stemming from the program and the present value of the total costs of the program. The commenters contended that even if it were economically rational to base the regulations on a non-NPV approach, the proposed regulations are economically irrational because the debt-to-earnings and loan repayment tests are based on arbitrary three- and four-year evaluation periods that are too short to fairly reflect the benefits of education.

Some commenters suggested a variety of alternatives to the proposed gainful employment regulations including using retention rates, employment/job placement rates adjusted for local and economic conditions, and completion and CDRs. Other commenters believed there was no need to further define gainful employment because (1) national accrediting agencies require that the majority of students graduate and find jobs in the field in which they were trained, or (2) students who pass State licensing examinations are gainfully employable. Some commenters suggested that the Department require for-profit institutions to refund 100 percent of the student loans for students who drop out of a program, or not impose penalties on institutions that make those refunds.

Other commenters suggested that the Department use a composite score based on default, graduation, and placement rates. The commenters argued that institutions with exceptional, industry-determined rates have proven their success in providing quality education and therefore should be allowed to continue serving their students without impediments. The commenters noted that Congressman Robert Andrews pioneered a composite index in the 1990s and suggested using default, graduation, and placement rates along with the number of Pell Grant recipients to determine an overall score for an institution. According to the commenters, factoring in Pell Grant information would acknowledge the unhappy truth that impoverished students are less likely to complete higher education programs. To avoid punishing schools for accepting these students into their programs, the commenters suggested that the Department use a sliding scale, or "grading on a curve", that would help to equalize the additional difficulties faced by lower socioeconomic students.

Some commenters supporting the composite index approach suggested weighting the placement rate at 50 percent, the CDR at 30 percent, and the graduation rate at 20 percent. These commenters also believed that the index would need to be adjusted to reflect the number of Pell Grant-eligible students at an institution. The commenters argued that the composite index approach is superior to the proposed debt approach in the following ways. First, the composite index would not rely on one characteristic (debt load) or a complex loan repayment rate, but on a number of outcomes, most importantly the employment of graduates. Second, the index could be implemented readily since cohort default and graduation

rates are already tracked by the Department, and the great majority of for-profit colleges already track student placement. Third, this approach is analogous to the currently used financial responsibility composite score that integrates a basket of three financial measures into one index. Finally, it measures outcomes at the institutional level, rather than the program level, which introduces complexity and difficulty in implementing a gainful employment standard. The commenters stated that the index approach could be implemented relatively rapidly without disrupting the market and risking unintended consequences. If the metrics need refinement, the commenters offered that the Department could implement the index, and over the next 36 months (1) redefine how default rates are measured (potentially moving to measuring the repayment of principal in dollars), (2) redefine how graduation rates are measured (potentially moving to track all students), or (3) apply the index at the program level after the relevant information is gathered and analyzed.

Discussion: While we appreciate the suggestion to incorporate a return on investment calculation into the measures, we believe there are significant theoretical and practical reasons for not doing so. Commenters noted that finance theory dictates an NPV approach for determining the value of a program offered by an institution. To be sure, an NPV approach helps to distinguish among competing investment opportunities. However, inherent in an NPV calculation is a specified discount rate so that all future cash flows (income as well as expenses) can be described in terms of present-day values. Thus the selection of an appropriate discount rate is key to this calculation. Those with experience in making investment decisions are likely to have a good understanding of their own discount rates. This cannot be said for those with limited or no experience in such matters. If the Department were to incorporate an NPV calculation into the measures, we would have no basis for establishing a discount rate for borrowers who make personal investment decisions with respect to pursuing postsecondary education programs.

The Department agrees that there are long-term benefits, in particular with respect to increased lifetime earnings, for those with formal education or training beyond high school. We know from The National Longitudinal Survey of Youth conducted by BLS that the length of time an employee remains with the same employer tends to be shorter for younger workers and that the average worker will have about 11 different jobs in the first 25 years of his or her working lifetime. However, we are unaware of any ongoing, long-term tracking of work-life earnings by specific occupation. Thus, we lack a means for measuring actual long-term benefits and earnings by occupation.

We likewise appreciate the suggestions to use retention rates, employment/job placement rates, and completion and CDRs as alternative measures to the proposed measures. While these are all valid and useful indicators for specific purposes, they do not directly measure whether, or the extent to which, a student benefits from taking a program intended to provide gainful employment. For example, placing a student in a job related to the training provided by a program is a good outcome, but without considering the student's earnings it is difficult to say whether the student made a worthwhile investment in taking the program or whether the student has sufficient earnings to make monthly loan payments. Moreover, the specific indicators suffer from important shortcomings: Default rates measure only a portion of the borrowers who have had difficulty repaying their loans, the statutory definition of graduation rate excludes transfer and part-time students, and placement rates are defined differently by accrediting agencies and States. Although the concept of a composite index is compelling, the suggested index uses some of the same indicators, which in our view fall short of directly evaluating gainful employment. That aside, applying a composite index at the institutional level would mask poor-performing programs because only the overall performance of the institution, not each program, would be evaluated. Moreover, if the institution's overall performance is subpar, the composite index would jeopardize the eligibility of the entire institution. By using purpose-built measures applied at the program level, these regulations effectively target poor-performing programs without necessarily placing the entire institution at risk because only those programs become ineligible for title IV, HEA funds.

Changes: None.

Small Numbers (§ 668.7(d))

Comment: Some commenters argued that program closures would be harmful to students, especially if the loan repayment rate is based on a small sample of borrowers. Similarly, other commenters requested that the Department clarify how the debt-to-earnings ratios would be calculated for a small number of program completers.

Discussion: We agree that a program with a small number of borrowers or completers should not lose its title IV, HEA program eligibility based on its small numbers and have adopted in § 668.7(d) the standard under the CDR provisions in § 668.197 relating to treatment of institutions with 30 or fewer borrowers.

Changes: See the changes described under the heading, *Definitions.*

Draft Debt Measures and Data Corrections (§ 668.7(e)), Final Debt Measures (§ 668.7(f)), and Alternative Earnings (§ 668.7(g))

Comment: Some commenters noted that in the Cohort Default Rate (CDR) Guide, the Department provides institutions with procedural rights to review and challenge NSLDS data that they believe is inaccurate. The commenters recommended that the Department provide a similar correction and appeal process for an institution that fails to meet the gainful employment standards. Another commenter recommended that the Department include additional regulatory language that would (1) define an institution's right to appeal inaccurate data and include a reasonable time for an institution to review the Department's data, and (2) establish a process by which an institution is allowed to review and correct data to ensure inaccurate data is not released to the public.

Other commenters believed that the proposed regulations did not provide a meaningful way for an institution to appeal or contest the use of SSA wage data. The commenters suggested that the Department include a provision that accounts for mitigating circumstances beyond an institution's control that affect earnings data and allows the institution to present data demonstrating the long-term salary potential of its program completers.

Some commenters urged the Department to return to the approach proposed during negotiated rulemaking under which the debt-to-earnings ratios would be calculated by using the higher of BLS earnings data or actual earnings of graduates. Specifically, some of the commenters requested that the Department use the higher of: (1) The most current BLS national or regional earnings data at the 50th percentile for persons employed in occupations related to training provided by a degree program and the most current BLS national or regional earnings data at the 25th percentile for persons employed in occupations related to training provided

by a non-degree program; or (2) actual earnings data submitted by the institution that demonstrate a substantial number of students who completed the program during the three-year period had earnings, from occupations related to the training provided by the program, that are higher than the BLS earnings data. The commenters recommended using BLS wage data because actual earnings data fail to capture wages in the occupation or occupations for which the program provided training to students. Under the commenters' approach, institutions would also have the opportunity to submit to the Department actual earnings data that they collect about students in a relevant occupational field. In addition, the commenters believed that a modest adjustment to the Department's negotiated rulemaking proposal would be necessary to account for inherent differences in the amount of debt that students in degree programs have compared to students in non-degree programs. The commenters argued that the inherently higher debt burden for students in degree programs is not offset by initial earnings immediately after students graduate because degree students are making a lifetime investment in their future. According to the commenters, BLS earnings data at the 50th percentile properly reflect this lifetime investment decision.

Commenters argued that the proposed debt-to-earnings calculations do not adequately take into account external factors that may affect earnings of program graduates. For example:

- A 10 percent unemployment rate and stagnant job growth may contribute more to a program's failure to satisfy the proposed metrics than the quality of the program. The commenters cautioned that further analysis is needed to gauge the impact of normal economic cycles on metrics used to determine program eligibility.
- For the three-year cohort of program completers, only the most recent annual earnings are used to calculate the debt-to-earnings ratios. However, completers in the cohort could work full-time for two years and then due to economic conditions may be able to work only part-time or may choose to work part-time.
- Using actual earnings data places on the institution all of the risk that students may underreport income to the Federal agency.

In view of these factors, the commenters suggested that the regulations provide for mitigating circumstances or allow institutions to use BLS data to comply with the debt-to-earnings metrics.

Discussion: We are persuaded that an institution should be able to correct the data used to calculate the debt-to-earnings and loan repayment rates for a program to determine with certainty whether the program meets the minimum standards and to guard against requiring institutions to publicly disclose incorrect rates. As suggested by the commenters, we are adopting a data challenge and correction process in these final regulations that is similar to the process used for CDRs.

We also agree that an institution should be able to use alternative, but reliable, earnings data to demonstrate that a program meets the minimum standards for the debt-to-earnings ratios. The data collected by SSA is used to determine the amount of Federal benefits that a wage earner will ultimately be eligible to receive. The data collected also are used as a primary source for earnings information for Federal income tax purposes. As a result, the data are extremely accurate and likely will be the best source of income data. The data the SSA collects, maintains, and disseminates is compliant with the requirements of the IQA. Therefore, the Department accepts this information as reliable, and in these final regulations will limit corrections to the list of individuals for whom SSA calculates mean and median earnings.

However, we understand that institutions will not have access to individual wage records maintained by the SSA. As a result, to provide institutions with additional assurance on the accuracy of the data and to provide greater flexibility for institutions, the Department will accept alternative reliable earnings data on a particular program's graduates from State longitudinal data systems and from institutional surveys conducted in accordance with NCES statistical standards.

In addition, the Department understands that data on typical earnings by occupation are already available from BLS, while SSA data will not be available for a number of months. Making earnings data available now will help institutions analyze the impact of the regulations on their programs and set targets for improvement. As a result, the Department is prepared to accept BLS earnings data under certain circumstances for debt measures calculated for FYs 2012, 2013, and 2014.

Under § 668.7(e), *Draft debt measures and data corrections,* we establish a two-step process whereby an institution first corrects information about the students that will be included in the draft debt-to-earnings ratios (pre-draft corrections) and then corrects information about borrowers and loan amounts after the Department issues draft debt measures (post-draft correction process).

In the pre-draft corrections process, an institution will be able to review and correct the information about the students that the Department intends to use to calculate the draft debt-to-earnings ratios. For each FY beginning with FY 2012, we will provide to the institution for each program a list of the students in the applicable two- or four-year period. Those lists will be based initially on the information provided by the institution under the program reporting requirements in § 668.6(a) but may be revised by the Department to account for students who are excluded from the ratio calculations under § 668.7(c)(5). We will identify the students that we exclude. After the lists are made available, the institution will have 30 days to provide evidence identifying the students who should be included on or removed from the list and to otherwise correct or update the identity information provided by the Department about each student. The institution may not correct any information about the students on a list after this 30-day period. If the information provided by the institution is accurate, that information is used to create the final list of students that the Department submits to SSA. The Department will calculate the draft debt-to-earnings ratios based on the mean and median earnings provided by SSA for the students on the final list. However, the institution may not challenge the accuracy of the mean or median annual earnings the Department obtained from SSA to calculate the draft debt-to-earnings ratios for the program.

We are establishing this process to make certain that the list identifying the students in the applicable two- or four-year period is accurate before transmitting the list to SSA. As discussed earlier in this preamble, SSA will perform an identity match to ensure that the earnings data it maintains are properly associated with the individuals on the list. In cases where the identity match fails, SSA will exclude those students from its calculation of the mean and median earnings for the program. Where these instances arise or for any other reason that SSA excludes students, the Department will adjust the median loan debt to compensate for the loss of earnings of the excluded students. Based on the Department's experience matching to SSA to determine student eligibility, we anticipate that identity mismatches or

other exclusions by SSA will be very limited—less than 2 percent of all students submitted to SSA. As a result, these mismatches will not materially impact the debt-to-earnings ratios for most programs. Therefore, as a practical matter we will limit the median loan adjustment to failing programs that have at least one mismatch. In these cases small variations in the ratio results could be the difference between a program failing and passing the measures. The Department will adjust the median loan debt for the program by removing the highest loan debt associated with the number of students excluded by SSA. For example, SSA excludes four students from the calculation. The Department identifies the students on the list with the highest loan debts and removes those four students from the calculation of the median loan debt for the program. We would then use the adjusted median loan debt to recalculate the debt-to-earnings ratios for the program.

In the post-draft corrections process, for each FY beginning with FY 2012, we will notify an institution of the draft results of the debt measures for each of its programs. No later than 45 days after the Department issues the draft results, the institution may challenge the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate, or the median loan debt for the program that was used for the numerator of the draft debt-to-earnings ratios. To challenge the information, the institution must submit evidence showing that the borrower loan data or the program median-loan debt is inaccurate. For the draft loan repayment rate, the institution may also challenge the accuracy of the list of borrowers included in the applicable two- or four-year period used to calculate the draft loan repayment rate by submitting evidence showing that a borrower should be included on or removed from the list, or by correcting or updating the identity information provided for a borrower on the list, such as name, social security number, or date of birth.

If the updated information provided by the institution is accurate, the information is used to recalculate the debt measures for the program. Like the CDR data challenges and appeals, no sanctions will be imposed on an institution during this corrections process.

We note that the 45-day correction period under the post-draft corrections process begins on the date the Department issues a particular draft result. For example, we may issue a draft loan repayment rate for a program on May 1 but not issue the draft debt-to-earnings ratios for that program until June 1. The 45-day correction period for the loan repayment rate would start on May 1 and a separate 45-day period for the debt-to-earnings ratios would start on June 1.

In § 668.7(f), *Final debt measures,* we specify that the recalculated debt measures, and any draft debt measures that are not challenged or are unsuccessfully challenged, become the final debt measures for the program. The Secretary will notify the institution of these final debt measures.

Under § 668.7(g), *Alternative earnings,* we provide that an institution may recalculate the final debt-to-earnings ratios for a failing program to show that the program would meet a debt-to-earnings standard by using the median loan debt for the program and alternative earnings data from: A State-sponsored data system, an institutional survey conducted in accordance with NCES statistical standards, or BLS.

State data. An institution may recalculate the final debt-to-earnings ratios under § 668.7(g)(2) using State data only if the institution obtains earnings data from State-sponsored data systems for more than 50 percent of the students in the applicable two- or four-year period, or a comparable two- or four-year period, and that number of students is more than 30. The institution must use the actual, State-derived mean or median earnings of the students in the applicable two- or four-year period and demonstrate that it accurately used the actual State-derived data to recalculate the ratios.

Currently, only about half of the States have longitudinal data systems and those systems track employment outcomes only for students who find jobs within a State. Consequently, it may be difficult for an institution to obtain State earnings data if it offers a program in several States or in States with no data systems or if its program graduates find employment outside the State in which the institution is located. Although we expect more States to implement these systems, to make it easier for an institution to use data from multiple State systems under this alternative:

(1) The regulations provide that the institution must obtain State earnings data for the majority of the students who completed a program (more than 50 percent), not for all the students who completed the program during the applicable two- or four-year period.

(2) For students who find employment in a State outside the State in which the institution is located, the institution may enter into an agreement with the other State in which the student is employed to obtain earnings data for those students, if the other State agrees to provide the data.

Survey using NCES Standards. An institution may also recalculate the final debt-to-earnings ratios for a failing program under § 668.7(g)(3) using reported earnings obtained from an institutional survey conducted of the students in the applicable two- or four-year period, or a comparable two- or four-year period, only if the survey data is for more than 30 students. The institution may use the mean or median annual earnings derived from the survey data. In addition, the institution must submit (1) a copy of the survey and certify that it was conducted in accordance with the statistical standards and procedures established by NCES and available at *http://nces.ed.gov,* and (2) an examination-level attestation by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the specified NCES standards and procedures. The attestation must be conducted in accordance with the general, field work, and reporting standards for attestation engagements contained in the GAO's Government Auditing Standards, and with procedures for attestations contained in guides developed by and available from the Department of Education's Office of Inspector General. The attestation is required to ensure that the survey was conducted properly, which allows for a more expedited review by the Department of the institution's recalculation submission.

The NCES standards were last revised in 2002. They comprise the statistical standards and guidelines for NCES, the principal statistical agency within the U.S. Department of Education. NCES' primary goal in establishing these standards was to provide high quality, reliable, useful, and informative statistical information to public policy decision makers and to the general public. In particular, the standards and guidelines described in the following paragraphs are intended for use by NCES staff and contractors to guide them in their data collection, analysis, and dissemination activities. The standards and guidelines serve to provide a clear statement for data users regarding how data should be collected in NCES surveys and the limits of acceptable applications and use.

In establishing the standards and guidelines, NCES articulated a view that other organizations involved in similar public endeavors would find the standards and guidelines useful in their work as well. Accordingly, we believe

that the application of this existing standard is appropriate given the need for high-quality data on earnings to use as an alternative source for earnings data.

In evaluating whether an institution has met the statistical standards and guidelines, the Department will look to determine particularly whether the institution met the NCES standard related to response rate. The purpose of this standard is to specify design parameters for survey response rates. The following is a summary of the key elements of the NCES response rate standard. High survey response rates help to ensure that the results are representative of the target population. Surveys conducted by or for an institution must be designed and executed to meet the highest practical rates of response and to ensure that nonresponse bias analyses are conducted when response rates suggest the potential for bias to occur.

When an institution collects data from all program completers—a universe data collection—it must be designed to meet a target unit response rate of at least 95 percent. A unit-level nonresponse bias analysis is recommended in the case where the universe survey unit response rate is less than 90 percent. When an institution conducts a sample survey, a unit response rate must be calculated without substitutions (see NCES Standard 1–3). A sample survey data collection must be designed to meet unit-level response rate parameters that are at least consistent with historical response rates from surveys conducted with best practices. The following parameters summarize current NCES historical experiences: For longitudinal sample surveys, the target school-level unit response rate should be at least 70 percent. In the base year and each follow-up, the target unit response rates at each additional stage should be at least 90 percent. For cross-sectional samples, the target unit response rate should be at least 85 percent at each stage of data collection.

Sample survey data collections must be designed to meet a target item response rate of at least 90 percent for each key item. For the purposes of meeting the requirements related to gainful employment, items related to placement and earnings would be considered key items. A nonresponse bias analysis is required at any stage of a data collection with a unit response rate less than 85 percent. If the item response rate is below 85 percent for any items used in a report, a nonresponse bias analysis is also required for each of those items (this does not include individual test items). The extent of the analysis must reflect the magnitude of the nonresponse. In longitudinal sample surveys, item nonresponse bias analyses need only be done once for any individual item, unless there is a substantial deterioration in the item response rate.

BLS Data. An institution may also recalculate the debt-to-earnings ratios under § 668.7(g)(4) using BLS earnings data only if the institution identifies and provides documentation of the occupation by SOC code, or combination of SOC codes, in which more than 50 percent of the students in the 2YP or 4YP were placed or found employment, and that number of students is more than 30. The institution may use placement records it maintains to satisfy accrediting agency or State requirements if those records indicate the occupation in which the student was placed. Otherwise, the institution must submit employment records or other documentation showing the SOC code or codes in which the students typically found employment.

For the identified SOC code or codes, the institution must use the most current BLS earnings data to calculate the debt-to-earnings ratio. If more than one SOC code is identified, the institution must calculate the weighted average earnings of those SOC codes based on BLS employment data or institutional placement data. In either case, the institution must use BLS earnings at no higher than the 25th percentile.

With regard to the 50 percent requirement, we believe that the BLS earnings data associated with the SOC codes must represent the majority of students that were placed or found employment to be used as an adequate proxy for the actual earnings of the program's graduates. For this reason, the Department may require the institution to submit all the placement, employment, and other records maintained by the institution for the program that the institution examined to determine whether those records identified the SOC codes for the students who were placed or found employment. In addition, for the same reasons we do not calculate debt measures for programs with small numbers of borrowers or completers, an institution may not use the BLS data-based recalculation if 30 or fewer of the program's graduates were placed or found employment during the applicable two- or four-year period.

Finally, for the reasons discussed under the heading, *Actual earnings from SSA and Bureau of Labor Statistics (BLS) wage data,* an institution may recalculate the ratios using BLS data only for FYs 2012, 2013, and 2014.

Under § 668.7(g)(5), an institution must notify the Department of its intent to use alternative earnings no later than 14 days after the date the institution is notified of its final debt measures and must submit all supporting documentation related to the recalculation of the debt-to-earnings ratios using alternative earnings no later than 60 days after the date the institution is notified of its final debt measures. Pending the Department's review of the institution's recalculation, the institution is not subject to the requirements arising from the program's failure to satisfy the debt measures, provided the submission was complete, timely, and accurate. If we deny the submission, we will notify the institution of the reasons for the denial. If the Department approves the institution's submission, the recalculated debt-to-earnings ratios become final for that FY.

Changes: New § 668.7(e), (f), and (g) have been added to provide for the data corrections, draft debt measures, final debt measures, and alternative earnings processes described in the *Discussion* section.

Debt Warning Disclosures (§ 668.7(j))

General

Comment: Commenters raised a number of concerns and questions regarding the debt warning disclosures described in proposed § 668.7(d). First, commenters asked the Department to clarify whether the prominent warning referenced in paragraph (d)(1) and the disclosure of repayment rates and debt-to-earnings measures referenced in paragraph (d)(2) applied to programs or institutions. The commenters believed that the proposed regulations could be interpreted to require disclosures for all programs and warnings for specific programs or to require disclosures and warnings for only restricted programs. Second, commenters questioned whether the debt warning disclosures should be included with, or made separately from, all other required disclosures, and whether enrolled students should be notified annually or only when a program is in restricted status. Third, some of the commenters requested additional information about the types of institutional materials that would have to contain the warnings. Giving the example of an institution that provides numerous programs, only some of which are subject to the debt warning disclosures, the commenters questioned whether the institution would have to list the programs subject

to the disclosures in all of its promotional, enrollment, registration, and other materials. Other commenters recommended that the Department revise the regulations to clarify that the warnings must be placed on all institutional materials that pertain to any program required to provide a debt warning. These commenters asked the Department to clarify the meaning of a "prominent warning" and whether the warning would have to be on every page of an institution's Web site or only on the institution's homepage.

Some commenters expressed concern that institutions would try to hide the required disclosures within their institutional materials and Web sites and suggested that the Department provide more specificity in the final regulations about the format and content of the disclosures to prevent this outcome.

Some commenters asked the Department to clarify the phrase "admissions meetings" and the types of interactions these meetings would include. Some of these commenters believed that this term could be interpreted to mean only in-person meetings and recommended specifying that in-person meetings and online or telephonic communications would all be covered under this phrase.

To improve the clarity of the regulations, commenters recommended technical changes such as changing the title of the paragraph from "debt warning disclosures" to "debt warnings and disclosures." These commenters argued that the suggested phrase would more accurately describe the substance of the requirements. The commenters further noted that it is appropriate to separate warnings and disclosures because the two are very different in nature: disclosures can provide information without judgment, while warnings can provide important context about what the information means.

Commenters also asked the Department to clarify the relationship between the proposed disclosure requirements and other disclosure requirements under the title IV, HEA regulations.

Discussion: See the discussion under the heading, *Implementation date.*

Concerns About Properly Disclosing the Debt Warnings

Comment: Some commenters supported our proposal to require debt warning disclosures. These commenters believed that the disclosures would help to ensure that prospective and enrolled students have adequate information to make decisions about where to pursue a program of study. However, the commenters believed that the proposed regulatory language was ambiguous, raising concerns that institutions would attempt to circumvent the regulations by (1) not providing students with enough contextual information to fully understand the meaning of a debt warning disclosure, (2) using language that would not be easily understood by prospective or enrolled students, or (3) manipulating the timing or delivery of the debt warning disclosures to pressure students to enroll. Specifically, the commenters were concerned that the proposed requirements would allow institutions to include only a bare minimum of information in the debt warning disclosure and that this information would not clearly convey to a student the risks of borrowing to attend a particular program.

To address the first issue, the commenters recommended that the Department require institutions to be more specific about a program's actual status. According to the commenters, this would help to ensure that students would have as much information as possible about the status of the program in which they were enrolling and of the potential impact that status could have on the student's Federal financial aid. The commenters believed that using this approach would better inform student choices about what programs to attend and would also encourage students to compare different programs. Some of the commenters suggested that, to facilitate student analysis of different programs, institutions' debt warning disclosures should also direct students to the Federal Web site *http://www.collegenavigator.gov,* which provides a comparison of college costs and programs. Similarly, other commenters recommended that the Department create a Web site that would list programs that are in compliance with the Federal requirements and programs that are not, thereby allowing students to compare programs at different educational institutions. These commenters recommended requiring institutions to include a reference to this Web site on the debt warning disclosure to ensure that students are aware of alternative school options, asserting that, as a result of marketing and sales strategies of some institutions, a student may erroneously believe that a particular school is unique in providing the flexibility or curricular training that the student needs.

With respect to the second issue regarding ensuring clarity and accessibility of the debt warning disclosure, commenters agreed that the Department should require that the language used in disclosures be as transparent as possible. However, there was disagreement among these commenters about how prescriptive the Department should be. Some of the commenters believed that it would be sufficient for the Department to specify the minimum content that must be included in a debt warning disclosure but that institutions should develop the disclosures. These commenters recommended that the Department develop and circulate examples of the language that could be used by institutions in lieu of mandating specific wording. They asserted that this would protect students by creating a minimum threshold for the types of information that must be included in the debt warning disclosures so that institutions would not have an opportunity to leave out important content, but would still provide necessary flexibility for institutions. Some of the commenters recommended that institutions be allowed to add context, such as the percentage of borrowers in a given program of study, to the disclosures to give students a better understanding of the rates. The commenters pointed out that a very small population of borrowers could dramatically skew the rates at an institution and stated that institutions should have the opportunity to explain this anomaly to prospective and current students. However, the commenters recommended that the Department monitor institutions providing this type of contextual information closely and strictly enforce existing regulations on misrepresentation.

Another group of commenters believed that the Department should be far more prescriptive in mandating the content, format, and location of the debt warning disclosures to limit institutions' ability to mislead students. In making these recommendations, some of these commenters noted that other agencies, such as the Federal Reserve Board, have prescribed specific formatting and layout standards for disclosure requirements, and they believed that the Department should adopt a similar approach. Some commenters recommended that the Department develop, through a collaborative process with students and institutions designed to determine the most effective language and delivery mode, a standardized disclosure form that explains to students the risks they face in choosing to attend a school that has failed to meet the Department's debt thresholds and advises students to enroll in a school that is in compliance with those thresholds.

Additionally, commenters stressed that the Department should require that

debt warning disclosures be made in understandable, plain English to ensure that the information is accessible to students and consumers. Some of these commenters further recommended that the Department require institutions to provide, to the extent practicable, the debt warning disclosures in a language or at a level that students can understand to ensure that students are not misled by the disclosures because they cannot fully access their meaning.

Some of the commenters also suggested that the Department require institutions to not only disclose the program's most recent loan repayment rate and debt measures, but also to define a "loan repayment rate" and to provide context with regards to the required repayment rates for program eligibility. The commenters believed that students would be misled or confused by the disclosures unless they understood what the terms meant and could compare the rates against the Department's regulations and the rates for similar programs at other schools.

With respect to the third issue regarding timing of disclosures, commenters were also concerned that institutions would undermine the intent of the regulations by unfairly manipulating the timing of their disclosures. Specifically, the commenters raised the possibility that students would not be provided with the debt warning disclosures early enough in the enrollment process or in a manner appropriate to inform their decisions about whether to enroll in a program. Some commenters suggested potential solutions to address this issue. For example, some commenters recommended that the Department require institutions to provide the disclosures to a student both orally (unless there is no oral communication) and in writing, at the first contact between the prospective student and the institution, rather than at the time of enrollment. The commenters argued that waiting to make the disclosure at the time of enrollment is too late to inform consumer decisions because the student likely already feels committed to the program at that point. They believed that it was necessary to provide the information orally because written information is too easily glossed over, particularly if it is mailed after the admissions meetings are held. Other commenters recommended requiring a delay of seven days between the time that an institution provides a student with a disclosure and the date that the institution may enroll the student. Citing the legal precedent set by the Mortgage Disclosure Improvement Act, which mandates that creditors abide by a seven-day cooling-off period before closing a loan, the commenters believed that the level of financial commitment required in financing a higher education is comparable to the commitment involved in taking on mortgage debt. Accordingly, they argued that consumers should be afforded the same sort of protections given to home buyers, particularly because student loan debt cannot be discharged in bankruptcy and may be collected from Federal tax refunds and social security payments. The commenters further believed that this waiting period is necessary because it would allow students time to digest the information and research other program options before enrolling, protecting students from the coercive enrollment techniques used at some institutions.

Discussion: See discussion under the heading, *Implementation date.*

Concerns about feasibility and burden of warnings

Comment: Some commenters believed that the proposed debt warning disclosures were not feasible. They asserted that it would be unduly burdensome for institutions to include the prominent warnings in every newspaper ad, television ad, and sign, and in all materials used in meetings with admissions representatives. The commenters further believed that including this information in their materials would potentially confuse students.

In addition to questioning the feasibility of implementing the proposed regulations, some of the commenters argued that the Department did not have the statutory authority to require a prominent warning, stating that this requirement was unprecedented and too broad in scope. The commenters noted that in the regulations governing other disclosure requirements under the HEA, the Department has not mandated a specific manner of disclosure, and they asserted that the Department therefore should not do so in this case.

As an alternative, some of the commenters suggested that the Department amend the proposed regulations to require institutions to only make these disclosures by providing written information to each applicant about its repayment rates prior to the student's enrollment. Other commenters recommended that the regulations require warnings to be clearly stated on the institution's Web site and on the enrollment agreement, and that the warnings be provided to the student in writing by the admissions representative before the prospective student signs an enrollment agreement.

Discussion: See discussion under the heading, *Implementation date.*

Implementation Date

Comment: Some commenters stressed that the Department should make the proposed provisions in § 668.7(d) effective as soon as possible to help inform consumer decisions. While noting that program level assessments may be unavailable immediately, the commenters suggested requiring institutions with both high rates of borrowing and defaults to place this information in a clear and conspicuous location on the institution's Web site and marketing materials as a stop-gap measure. The commenters argued that this transparency might accelerate efforts by institutions with at-risk programs to revise program content and instruction and provide more effective job counseling, job placement, and other support services that could reduce the risk to students and taxpayers.

Discussion: In view of these comments and other changes we are making in these regulations, we have made a number of changes to the proposed regulations on debt warnings and disclosures to students. We believe that this new approach appropriately distinguishes and clarifies the program disclosure and debt warning requirements, will help to ensure that students are provided with sufficient information about a program's continued eligibility for title IV, HEA funds, and addresses commenter concerns that institutions will undermine the intent of the regulations.

We agree that disclosures and warnings serve very different purposes and students should have basic, comparable information across all gainful employment programs. Accordingly, in these final regulations, we are separating the disclosure and warning requirements.

Under § 668.6(b) of the Program Integrity Issues final regulations, institutions are required to disclose, for each gainful employment program, the occupations that the program prepares students to enter, the on-time graduation rate, the tuition and fees charged to a student for completing the program within normal time, the placement rate for students completing the program, and the median loan debt incurred by students who completed the program, as well as any other information the Secretary provided to the institution about that program. Under § 668.7(f), or § 668.7(g) if the institution submitted a successful request for recalculation, of these final regulations, the Secretary will provide to each institution the final repayment

rate and debt-to-earnings ratios for each gainful employment program at that institution. Accordingly, an institution must disclose the final repayment rate and debt-to-earnings ratio (for total earnings) for each gainful employment program along with the other information required in § 668.6(b), regardless of whether the program passed the debt measures in § 668.7(a)(1).

With respect to the disclosures established in § 668.6(b)(1) in the Program Integrity Issues final regulations, we strongly encourage institutions to timely update the disclosures whenever a change occurs in the information. We believe that it is reasonable to expect that an institution will update this information on the program Web site as soon as administratively feasible, but no later than 30 days after the date the change occurs. For example, if at any point during the year, the institution changes the amount of tuition and fees that it charges a student for completing the program within normal time, the institution should update that information on the Web page for that program within 30 days. Similarly, when an institution receives its final repayment rate and debt-to-earnings ratios, it should update that information on the Web page for that program within 30 days. We encourage institutions to have procedures in place to update information on a regular basis to assure that students and consumers have accurate, current information for all of the gainful employment programs at an institution.

Under § 668.7(j) of these final regulations, institutions must issue debt warnings to prospective and enrolled students for each gainful employment program at the institution that is a failing program to ensure that students are aware of and understand that a particular program has a greater risk than another program. In response to the suggestion that we develop differentiated disclosure requirements based on a program's level of risk, we have developed a two-tiered warning system that we believe appropriately balances the needs of students with the level of risk that a program will fail to remain eligible for title IV, HEA program funds. On the one hand, knowledge of a program's failure to meet the debt thresholds will inform a student's decision about which institution to attend. On the other hand, we recognize that the number of times a program has failed translates into very different levels of risk. We address these considerations under this approach by differentiating between a warning after a first year failure ("first year warning") and a warning after a second year failure ("second year warning").

Under § 668.7(j)(1), if a failing program does not meet the debt measure minimum standards for a single FY, the institution must issue a warning that contains the following information. This first year warning must directly alert currently enrolled and prospective students that the program has failed to meet the minimum standards in § 668.7(a)(1), and, to ensure that students understand the meaning and context of this warning, the institution must in plain language and in an easy to understand format explain the debt measures and show the amount by which the program did not meet the minimum standards. The first year warning must further explain any steps that the institution plans to take to improve the program's performance under the debt measures. While this warning requires a direct communication with enrolled and prospective students, it is not a publicly disclosed warning. An institution must continue to provide this warning to enrolled and prospective students until the institution has been notified by the Secretary that the program has met one of the minimum standards or the institution is notified that it has not met the minimum standards a second time.

We believe that a program that has only failed the debt measures for one year is still capable of significantly improving, and we want to support the development or improvement of programs that provide strong, viable opportunities for students to earn high-value credentials. We are concerned that requiring too harsh a warning early on will result in unnecessary program closures. Accordingly, the first year warning provides basic information that will ensure that a student is aware of a program's performance on the debt measures, and is able to evaluate, based on the steps that the institution lays out for improvement, whether to remain in that program or explore other options.

An institution must issue a second year warning after a failing program fails to meet the minimum standards for two consecutive FYs or for two of the three most recently completed FYs. Given that a program in this situation has only one additional FY to meet the minimum standards, it is critical that students be made aware of the possibility that they will no longer receive aid to attend that program. In view of that, a second year warning must, in addition to the information required for a first year warning, further include: (1) A plain language explanation of the actions the institution plans to take in response to the second failure, including, if the institution plans to discontinue the program, the timeline for doing so and the options available to the student; (2) a plain language explanation of the risks associated with enrolling or continuing in the program, including the potential consequences for, and options available to, the student if the program becomes ineligible for title IV, HEA program funds; (3) a plain language explanation of the resources available, including *http://www.collegenavigator.gov,* that the student may use to research other educational options and to compare program costs; and (4) a clear and conspicuous statement that a student who enrolls or continues to enroll in the program should expect to have difficulty repaying his or her student loans. An institution must continue to provide this warning to enrolled and prospective students until the program has have met one or more of the minimum standards for two of the three most recently completed FYs. The following Table H illustrates the application of these requirements under several different scenarios.

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Table H: Illustrative Scenarios

Scenario #1

Performance on Debt Measures	Year 1	Year 2	Year 3	Year 4
Fail	1W			
Pass		--		
Fail			2w	
Fail				X

Scenario #2

Performance on Debt Measures	Year 1	Year 2	Year 3	Year 4
Fail	1W			
Fail		2W		
Pass			2w*	
Fail				X

***This (second) second year warning should be updated to reflect any changes in student options, etc.**

Scenario #3

Performance on Debt Measures	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Fail	1W					
Pass		--				
Fail			2W			
Pass				--		
Fail					2W*	
Pass						--

***This (second) second year warning should be updated to reflect any changes in student options, etc.**

Scenario #4

Performance on Debt Measures	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Fail	1W					
Pass		--				
Pass			--			
Fail				1W		
Fail					2W	
Fail						X

Scenario #5

Performance on Debt Measures	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7
Fail	1W						
Pass		--					
Pass			--				
Fail				1W			
Pass					--		
Fail						2W	
Fail							X

1W = provide 1st debt warning until next notified of final rate (including during recalculation)

2W = provide 2nd debt warning until next notified of final rate (including during recalculation)

-- = no warning required

X = no longer eligible

In general, an institution must provide a student with the information necessary to make reasoned and informed choices about pursuing an education. This includes any options that the institution will provide to the student. For example, in some cases, the student may be able to transfer into another program at the institution, or the student may be able to arrange to transfer credits to another institution in the area. In other cases, an institution may opt to permit a student to withdraw from the program with a full refund for the cost of the program. Whatever the options, the institution must explain them clearly to the student in an easily understandable manner. Under this approach, institutions have the responsibility, but also the flexibility, to create the best options for serving their students in failing programs. The institution must also describe the risk and potential consequences of remaining in the program, namely, that the student will still be liable for any student loan debt incurred if the student is unable to complete the program. Further, the institution must provide students with resources that they can use to research other education options and program costs. We have specified that an institution must direct students to *http://www.collegenavigator.com* as one resource available to students.

We agree with commenters that it would be helpful for the Department to separately publish information regarding a program's final debt measures. This information can complement other information about gainful employment programs to help students choose among well-performing programs and avoid poorly performing programs. Under § 668.7(g)(6), therefore,

we are providing that the Secretary may disseminate the final debt measures or information about, or related to, the final debt measures to the public in any time, manner, and form, including publishing information that will allow the public to ascertain how well programs perform under the debt measures and other appropriate objective metrics. While institutions are also required to disclose this information, we think that the Department's dissemination of this information will facilitate students' access to the information and their ability to draw comparisons of programs.

We are requiring in § 668.7(j)(5) that, if an institution voluntarily discontinues a failing program under § 668.7(l)(1), it must notify enrolled students at the same that it provides the written notice to the Department that it relinquishes the program's title IV, HEA program eligibility. We believe that this is necessary to ensure that enrolled students are notified promptly of any plans by the institution to discontinue a program so that they can make reasoned and informed choices about pursuing an education.

Under § 668.7(j)(4), for the second year warning, the institution must prominently display the debt warning on the home page of the program Web site and include the debt warning in all promotional materials related to the failing program that it makes available to prospective students. The Department considers promotional materials to include a wide range of materials pertaining to the program, from course catalogues, to brochures, to television ads, to poster advertisements. For example, if a poster advertisement on a public bus mentions a failing program, even as part of a list of programs offered at the institution, the warning must be included on that poster. If the poster advertises the institution as a whole, or other programs at the institution that have not failed the minimum standards for more than one of the three most recently completed FYs, then the institution is not required to include the warning in that material.

With respect to currently enrolled students, we have clarified under § 668.7(j)(3)(i) that an institution must provide the first or second year warnings to these students as soon as administratively feasible, but no later than 30 days after the date the Secretary notifies the institution that the program failed the minimum standards. We believe that this requirement balances the need for students to be informed as quickly as possible of the risk involved in remaining in a program with the recognition that in some cases, such as a program with a high number of students, it may take an institution more than a few days to comply with the debt warning requirement.

We agree with commenters that there should be no undue pressure on students to enroll in a particular program, and are requiring under § 668.7(j)(3)(ii) that an institution provide the first and second year warnings to a prospective student at the time the student first contacts the institution requesting information about the program. If the prospective student intends to use title IV, HEA program funds to attend the program, the institution may not enroll the student until three days after the debt warnings are first provided to the student. Additionally, if more than more 30 days passes from the date the debt warnings are first provided to the student and the date the student seeks to enroll in the program, the institution must provide the debt warnings again. In this situation, the institution may not enroll the student until three days after the debt warnings are most recently provided to the student under this section.

We believe that this approach will be more effective than requiring institutions to provide the debt warnings only at the time that the student enrolls in a program because, as some of the commenters noted, by that point a student most likely already feels committed to enroll in the program. Requiring that the debt warnings be given at a point in time close to but prior to the time that a student actually enrolls will ensure that the information is still fresh in the student's mind, particularly if this point in time is far removed from the first point of contact. It will also provide students a final chance to consider the commitment involved in taking on student loan debt without the pressure to enroll immediately. While we considered limiting this cooling-off period to seven days, as suggested by some of the commenters, we believe that the longer period of three to 30 days will allow and encourage students to digest the information in the debt warnings fully, compare that information to the information available from other institutions offering similar programs, evaluate the potential consequences of enrolling in the program, and research other education options. We also note that institutions are expected to comply with any applicable State laws including those requiring a cooling-off period.

In response to concerns that a warning may be difficult to find or understand, we have clarified the manner in which institutions must provide these warnings. First, we have specified that a first year warning must be delivered directly to the student orally or in writing in accordance with the procedures established by the institution. Delivering the debt warning directly to the student includes communicating with the student face-to-face or telephonically, communicating with the student along with other affected students as part of a group presentation, and sending the warning to the student's e-mail address. We would expect this direct warning to occur in the mode of correspondence that the institution typically uses to communicate with the student in order to ensure that the student has received the debt warning. For example, if an institution regularly corresponds with the student via electronic mail, it can be reasonably certain the student received the warning.

We are further providing in these final regulations that, if an institution chooses to communicate this first year warning to a student orally, the institution must maintain documentation of how that information was provided, including any materials the institution used to deliver the warning. We believe this would include such materials as a copy of the script or any other written materials used to deliver the warning. Further, if an institution provides the warning orally to a group of affected students, it would have to document each student's presence to demonstrate that the warning was given directly to each student. For a second year warning, an institution may use any of the methods described for the first year warning; however, it must at a minimum provide the warning to the student in writing. So, if an institution opts to provide the second year warning orally, it must be provided in written form as well. We believe that requiring that the warnings be given directly to the student will address the commenters' concerns that a student will overlook the warning because the institution must ensure that it is received.

Second, we have specified that both the first and second year warnings must be made in "plain language" and in an "easy to understand format" to require that the warnings be understandable the first time that an individual reads or hears them. Although we are not mandating the specific language that must be used in the debt warnings, we anticipate developing a model warning form through the information collection process under the Paperwork Reduction Act of 1995 (PRA) to guide institutions

in providing these debt warnings to students. In the meantime, the Web site, *http://www.plainlanguage.gov,* contains guidelines and numerous examples that will be helpful to institutions in complying with these regulations.

With respect to ensuring the prominence of the debt warnings, we are requiring in § 668.7(j)(4) that the second year warning included in an institution's promotional materials must be prominently displayed on the program home page of the institution' Web site. Institutions may not bury the warnings for a program on a Web site that students have to search for or are unlikely to look at. The requirement to prominently display the debt warning "on the program home page" means that the actual information must be found on that page. A link to a downloadable document or to another page with the information would not meet the requirements of this section. We believe that requiring the use of plain language, specifying the content that must be included, and prescribing where on the Web site the warnings must be located will go far to ensure that institutions cannot hide this important information from students.

Third, we have added a requirement in § 668.7(j)(6) that, to the extent practicable, an institution must provide alternatives to English-language warnings for those students for whom English is not their first language. We believe this is necessary because a student receiving a warning in a nonnative language may not be able to fully appreciate the gravity of the warning and its implications. This means that, for example, an institution that serves a large Hispanic population would be expected to provide the debt warnings in Spanish for students for whom English is not their first language. We have included the phrase "to the extent practicable" to acknowledge that an institution may serve students that speak a wide variety of languages and that it may not be feasible to provide the warnings in every single language or dialect. However, we believe that it is appropriate to require the alternatives wherever possible to ensure that students can understand the meaning of the debt warnings. We do not believe that it is necessary to require alternate warnings for students with lower literacy levels, as suggested by some of the commenters, because we believe that the "plain language" requirements address this issue. Using plain language requires that the warning be presented in simple, understandable terms that are accessible to all audiences, including students who have only basic literacy skills.

For the disclosures under § 668.6(b) that an institution must make for all of its gainful employment programs, an institution is strongly encouraged to maintain accurate electronic and printed materials. While the Program Integrity Issues final regulations do not specify a timeframe within which an institution must update the Web site and other promotional materials, the Department expects that institutions will make a good faith effort to maintain current information. We believe that it is reasonable to expect that any changes will be made by no later than 30 days after the date that the change in the information occurred. For the disclosure of the tuition and fees under § 668.6(b)(1)(iii), for example, we would expect an institution to update any electronic materials as soon as it is administratively feasible but no later than 30 days after the date that the Department notifies the institution that the program has failed. Along these lines, we strongly encourage institutions to include within any printed promotional materials a link to the electronic Web site that contains the current disclosure information and an explanation to students and consumers that while the information in the printed materials was accurate at the time of printing, that they may obtain more current information on the homepage of the program Web site.

With respect to the relationship between the disclosure requirements in §§ 668.6(b) and 668.41 through 668.49, the disclosure requirements in § 668.6(b) are more prescriptive than those under the Student Right to Know (SRK) provisions under § 668.41–.49. We specified in the Program Integrity Issues final regulations that the disclosures in § 668.6(b) must be prominently posted on the home page of the program Web site and that the institution must include a prominent and direct link on any other Web page containing general, academic, or admissions information about the program to the single Web page that contains all of the required information. By contrast, while the SRK disclosures must be given to enrolled or prospective students "through appropriate publications, mailings, or electronic media," they are not required to be included on the home page of a program Web site. Specifically, under § 668.41(b), an institution may satisfy the disclosure requirements by posting the information on an Internet Web site that is reasonably accessible to the individuals to whom the information must be disclosed. We remind institutions that the provisions in § 668.6(b) that were published in the Program Integrity Issues final regulations go into effect on July 1, 2011 in accordance with the master calendar. These disclosure requirements will provide students with a level of protection beginning this year. The changes in § 668.7(j) in these final regulations will go into effect one year later on July 1, 2012, and the debt warnings will enhance this protection going forward.

Finally, we disagree with the commenters who believed that the debt warning requirements are too broad in scope or that establishing them is beyond our statutory authority. As discussed earlier, the Department has broad authority to promulgate regulations regarding gainful employment programs. In the context of regulating these programs, we believe it is critical to require debt warnings because a program may lose its eligibility when the next set of debt measures becomes final, and an institution may recruit students to enroll in that program without restriction unless, and until, the program loses eligibility. By including the stricter warning in all promotional materials that mention the program by name, students will be in a better position to evaluate the marketing information describing the program before engaging in further contact with the institution or its representatives. This is particularly important when the institution is recruiting students to enroll in a program that may lose its title IV, HEA program eligibility soon after the student enrolls, since such a change could significantly impair the student's ability to complete the program. Institutions may also provide prospective students with information showing the improvements to the program that have been made and other similar actions taken to improve the outcomes for program graduates. We believe that requiring these debt warnings in the marketing materials is a reasonable step to protect students while permitting institutions to continue enrolling students in programs that are at risk of losing eligibility under the gainful employment metrics.

Changes: We have replaced proposed § 668.7(d) with new § 668.7(j). Under § 668.7(j)(1)(i), an institution must provide enrolled and prospective students in a failing program that has failed the minimum standards for one FY with a first year warning prepared in plain language and presented in an easy to understand format that explains the debt measures and shows the amount by which the program did not meet the minimum standards and describes any

actions the institution plans to take to improve the program's performance under the debt measures. Under § 668.7(j)(1)(ii), an institution must provide the debt warning orally or in writing directly to the student, in accordance with the procedures established by the institution. The regulation provides that delivering the warning directly to the student includes communicating with the student face-to-face or telephonically, communicating with the student along with other affected students as part of a group presentation, or sending the warning to the student's e-mail address. Under § 668.7(j)(1)(iii), an institution must maintain documentation of any warning that it gives to students orally, including any materials the institution used to deliver that warning and documentation of the student's presence at the time of the warning. Under § 668.7(j)(1)(iv), an institution must continue to provide the debt warning until it is notified by the Secretary that the failing program now satisfies one of the minimum standards in § 668.7(a)(1).

Under § 668.7(j)(2), an institution must, in addition to the information in § 668.7(j)(1)(i), provide enrolled and prospective students in a failing program that has not met the minimum standards for two consecutive FYs or for two out of the three most recently completed FYs a second year warning in writing that, in plain language and an easy to understand format, explains the actions the institution's plans to take in response to the second failure. If the institution plans to discontinue the program, the explanation must include the timeline for doing so and the options that students have available as a result of those plans; explains the risk associated with enrolling or continuing in the program, including the potential consequences for and options available to a student if the program becomes ineligible for title IV, HEA program funds; explains the resources available to students, including *http://www.collegenavigator.gov,* for the purpose of researching other educational options and comparing program costs; and states in a clear and conspicuous manner that a student who enrolls or continues in the program should expect to have difficulty repaying his or her student loans. This warning must be given in written form, in addition to any other method chosen by the institution.

Under § 668.7(j)(3), we have specified when an institution must provide prospective and enrolled students with the first and second year debt warnings. For an enrolled student, the institution must provide the debt warnings as soon as administratively feasible but no later than 30 days after the date the Secretary notifies the institution that the program has failed the minimum standards. For a prospective student, the institution must provide the debt warnings at the time the student first contacts the institution requesting information about the program. If the prospective student intends to use title IV, HEA program funds to attend the program, the institution may not enroll the student until three days after the debt warnings are first provided to the student. Additionally, if more than more 30 days pass from the date the debt warnings are first provided to the student and the date the student seeks to enroll in the program, the institution must provide the debt warnings again. The institution may not enroll the student until three days after the debt warnings are most recently provided to the student under this section. In § 668.7(j)(4), we have required institutions that must comply with the requirements in § 668.7(j)(2) to prominently display the debt warning on the program home page of its Web site and include the debt warning in all promotional materials it makes available to prospective students. These debt warnings may be provided in conjunction with the disclosures required under § 668.7(b)(2).

In § 668.7(j)(5), we have specified that if an institution voluntarily discontinues a failing program under § 668.7(l)(1), it must notify enrolled students at the same time that it provides the written notice to the Department that it relinquishes the program's title IV, HEA program eligibility. Finally, in § 668.7(j)(6), we have required institutions to provide alternatives to English-language debt warnings to students for whom English is not their first language, to the extent practicable.

In § 668.7(g)(6), we have provided that the Secretary may disseminate the final debt measures and information about, or related to, the debt measures to the public in any time, manner, and form, including publishing information that will allow the public to ascertain how well programs perform under the debt measures and other appropriate objective metrics.

Additional Concerns on Reporting

Comments: Some commenters believed that the final regulations should ensure that student debts are reasonable, both in relation to earnings and whether the debts are repaid, by discouraging borrowing altogether. Consequently, the commenters suggested that the Department provide incentives to colleges to offer low-tuition programs or other mechanisms that help students avoid borrowing. To that end, the commenters stated that in cases where fewer than 35 percent of a program's enrollees rely on Federal loans, the program should not be subject to any of the potential limitations under proposed § 668.7. The commenters reasoned that a program in which only a small percentage of students take out loans will, by definition, have a Federal median loan debt of zero, and therefore the program most likely would not be limited under these regulations. Therefore, the commenters believed it would be counterproductive and needlessly burdensome to subject institutions to further reporting requirements for such programs. According to the commenters, exempting these programs would ensure that Federal oversight efforts and institutional regulatory burden are efficiently balanced.

Discussion: Although programs with zero median loan debt will not be adversely impacted under these regulations, we do not agree that those programs should be exempt from the data reporting requirements under § 668.6 based solely on institutional burden. On the contrary, isolating those programs from an established reporting stream may be more burdensome for an institution. In any event, students choosing among programs should have access to information about the typical debt burdens associated with those programs, and the Department needs the data to determine whether programs satisfy the minimum standards for the loan repayment rate under § 668.7(b).

Changes: None.

Transition Year (Proposed § 668.7(f); Final § 668.7(k))

Comment: With respect to the proposal under which the Department would cap the number of ineligible programs, commenters were concerned that the proposed regulations did not provide any means for institutions to appeal or verify whether their programs were accurately placed below the cap. Commenters also requested that the Department clarify (1) that the 5 percent cap on ineligible programs applied only to the transition year (2012–13 award year), and (2) how the Department would select the ineligible programs falling below the cap based on the number of students who completed those programs. Other commenters proposed extending the 5 percent cap from one to two years as added insurance against unintended, negative consequences for students.

Commenters suggested that the Department treat the 2012–13 award

year as an "information" year and begin the actual "phase-in year" in award year 2013–14. Other commenters suggested a three-year transition period so that the Department and institutions have sufficient time to collect the required data and make accurate determinations. Similarly, some commenters suggested that the Department provide a three-year transition period, from July 1, 2012 to July 1, 2015, during which the Department would simply notify institutions of how their programs performed under the gainful employment metrics. Another commenter recommended a transition period of up to seven years to prevent loss of student access to educational programs, and to allow programs sufficient time to implement the new disclosure requirements under § 668.6(b) and other program changes that could affect 3-year or 4-year student cohorts entering repayment.

Finally, some commenters asked how the 5 percent cap would be applied. Specifically, the commenters asked whether the cap would be applied by sector or overall.

Discussion: In response to the question of how an institution can verify that a program fell below the 5 percent cap, under these regulations the institution may challenge the accuracy of the data used to calculate the repayment rate that is subsequently used by the Department to sort the ineligible programs under the cap provisions. The other data used for the cap, students completing programs, are reported by institutions and that data will be publicly available.

The Department does not believe that any additional time is needed beyond the first year of eligibility because, as discussed more fully under the heading, *Actual earnings from SSA and Bureau of Labor Statistics (BLS) wage data* an institution will have gainful employment data for several years before a program could become ineligible. The Department will apply the 5 percent cap for programs that become ineligible based on final debt measures for FYs 2012, 2013, and 2014. FY 2014 is now the first year that a program could become ineligible. As set forth in these final regulations, the cap is set at 5 percent but that percentage now applies to the total number of students who completed gainful employment programs in each of three institutional categories—public, private nonprofit, and proprietary, instead of the proposed categories. We made this change in response to concerns voiced by proprietary institutions that the impact of the new regulations would have the biggest impact on them as a sector. This change therefore allows no sector to bear more than 5 percent of the initial impact of the regulations.

With regard to how the Department will select programs falling under the cap, we assume the commenter is referring to a situation where the number of students completing a program crosses over the 5 percent mark. For example, a program is 10th on the list of programs with the lowest repayment rates. The total number of students completing programs in that institutional category is 100,000, so the 5 percent mark is 5,000. If the first nine programs totaled 4,900 students and 200 students completed the 10th program, the 10th program would not fall under the cap because including the 200 students who completed it would cross over the 5 percent mark and could not be subject to the sanctions specified in these final regulations.

Changes: We have redesignated proposed § 668.7(f)(2), transition year, to new § 668.7(k) and are providing that, based on final debt measures for FYs 2012, 2013, and 2014, the Department will cap the number of ineligible programs by first sorting all programs by category of institutions (public, private non-profit, and proprietary), then by loan repayment rate within that category from the lowest to the highest rate, and finally, starting with the ineligible programs with the lowest repayment rate, by determining ineligible programs accounting for a combined number of program completers during FY 2014 that does not exceed 5 percent of the total number of program completers in that category.

Additional Programs (Proposed § 668.7(g)(2) and (3)); Restrictions for Ineligible and Voluntarily Discontinued Failing Programs (Final § 668.7(l))

Background: The July 26, 2010 NPRM contained proposals regarding Department approval of the eligibility of new gainful employment programs. Because the Department was concerned that some institutions might attempt to circumvent the proposed gainful employment standards in § 668.7(a)(1) of the July 26, 2010 NPRM by adding new programs before those standards could take effect, we published the Gainful Employment/New Programs final regulations, which take effect on July 1, 2011. In the Gainful Employment/New Programs final regulations, we established requirements in 34 CFR 600.10 and 34 CFR 600.20 under which an institution must notify the Department at least 90 days before it intends to offer an additional gainful employment program. The notice must include a narrative explaining among other things how the institution determined the need for the program and how the program was designed to meet market needs. Under these requirements, an institution is not required to obtain approval from the Department to offer the program unless the Department alerts the institution at least 30 days before the program's first day of classes that the program must be approved for title IV, HEA program purposes. A summary of the comments, discussion, and the regulatory language supporting these requirements is contained in the Gainful Employment/New Programs final regulations and can be accessed at *http://www.ifap.ed.gov/fregisters/FR102910GainfulEmploymentFinal.html.*

We are not modifying this notification and approval process for new gainful employment programs in these final regulations; however, the Department is continuing to consider whether this process may be simplified and narrowed further after these new regulations are in place. We may address these issues in a separate rulemaking proceeding.

Note: We did not summarize or address in the Gainful Employment/New Programs final regulations the comments we received on proposed § 668.7(g)(2), regarding restricting approval of a program based on projected growth estimates and institutional ability to offer gainful employment programs, or (g)(3) regarding calculation of the debt measures if an additional program constitutes a substantive change based on program content. A summary of these comments and our responses are included in the following discussion.

Comments: Several commenters argued that limiting an institution's ability to establish new programs should only apply to an institution with a record of poor performance, such as an institution whose programs were restricted or determined in the previous three years to be ineligible under the debt measures. The commenters believed this approach would provide an incentive to institutions to keep their programs fully eligible and would reduce the burden on institutions that have a strong record of preparing students for gainful employment. One commenter suggested that the Department modify the proposed approval process so that it applies only to an institution where over 50 percent of the institution's programs are on a restricted status. Another commenter recommended that institutions be allowed to bypass Department approval entirely if programs representing 50 percent or more of the institution's total enrollment or programs representing 50 percent of the institution's enrollment

in the same job family are not restricted or ineligible.

Several commenters stated that additional programs should be allowed to prove their worth over time, and that the Department should not calculate debt measures until relevant data are available. Along the same lines, another commenter stated that an additional program should not be required to meet either the loan repayment rate or debt-to-earnings standards until the program has been in continuous operation for a period sufficient to calculate the program's three-year CDR.

Some commenters expressed concerns with proposed § 668.7(g)(3), under which an additional program's loan repayment rate and debt-to-earnings ratios would be based on data from the additional program and, for the first three years, loan data from all other programs currently or previously offered by the institution that are in the same job family as the additional program. (The BLS describes a job family as a group of occupations based on work performed, skills, education, training, and credentials and identifies the SOC code for each occupation in a job family at: *http://online.onetcenter.org/find/family*.) Under this proposal, if the additional program constituted a substantive change based solely on program content as provided in § 602.22(a)(2)(iii), the program's loan repayment rate and debt-to-earnings ratios would not be calculated until data were available.

Commenters expressed concern that applying the loan repayment rate and debt-to-earnings standards to additional programs in the same job family would inhibit or prevent an institution from improving, over time, the content and, by extension, the loan repayment rate and debt-to-earnings standards of gainful employment programs currently offered by the institution. Another commenter opined that improvements made to an existing gainful employment program over time might constitute a "substantive change" but was concerned that such a program would continue to be subject to the standards of other programs in the same job family instead of a loan repayment rate and debt-to-income measure that was unique to that program.

Other commenters argued that an institution's ability to offer effective and affordable additional programs would be stymied if the Department uses data from programs in the same job family to approve a new program. These commenters urged the Department to use data from the new programs as soon as it became available. One of the commenters cited an example of an institution that offers a new one-year certificate program in addition to or in place of a two-year associate's degree program in the same area. According to the commenter, under the Department's proposal, the metrics for the shorter certificate program would be based on data from the longer, more costly, associate's degree program, increasing the likelihood that the additional program would not be approved.

Another commenter expressed concern that the loan repayment rates and the debt-to-earnings ratios at new schools and existing schools that offer additional programs that constitute a substantive change based solely on program content may not be representative of the true repayment and income characteristics of the institution's students because the metrics would be based on the experience of recent graduates rather than experienced graduates with higher incomes and greater loan repayment rates. The commenter suggested that the Department permit an institution to rely on job family data from similar gainful employment programs at its institution or at affiliated institutions to approve a new program because these programs will have graduates who have higher incomes and higher loan repayment rates.

Another commenter expressed concern about the impact of the Department's proposals on the approval of new green technology education programs. The commenter objected to the Department's proposals because approval of new green technology programs would be based on data from programs currently or previously offered by the institution that are in the same job family; however, the term "same job family" does not exist for this category of programs. The commenter feared that applying this requirement to green technology programs would devastate the economy and provide no support to President Obama's stated goal of creating a new economic segment in emerging green technologies.

Commenters also asked the Department to clarify whether a gainful employment program would have to reestablish eligibility, or be treated as a new program, if the program became ineligible but was allowed to continue operating because it was ranked above the 5 percent threshold for the transition year.

Discussion: With regard to commenters' concerns about the use of job families, we believe that the due diligence undertaken by an institution in developing and designing a program that meets markets needs, as required under 34 CFR 600.20(d), mitigates the need to condition the initial performance of a new program based on the performance under the debt measures of related programs offered by the institution. Moreover, in view of the concerns raised that the proposed job-family approach may inhibit the development of new programs or not properly reflect the performance of new programs, we are adopting the suggestion made by the commenters that we calculate the debt measures for all new programs only when the data become available for those programs. So, in lieu of the job-family approach, we provide under § 668.7(a)(1)(iii) that a program is considered to provide training that leads to gainful employment if the data needed to determine whether the program satisfies the minimum standards are not available to the Secretary.

We generally agree with the commenters that restrictions on an institution's ability to offer new programs should be based on the performance of an institution's program under the debt measures. In keeping with the focus in these final regulations on the poorest performing programs, we believe it is appropriate to prevent an institution from immediately recycling an ineligible program or a failing program that the institution voluntarily discontinued. Therefore, in new § 668.7(l) we are providing that an ineligible or voluntarily discontinued failing program remains ineligible for title IV, HEA funds until the institution reestablishes the program's eligibility under 34 CFR 600.20(d).

With respect to failing programs, under these final regulations, we are providing that an institution may not reestablish the program's eligibility for two or three FYs following the FY the program was discontinued depending on when the institution voluntarily discontinued the program. And, with respect to ineligible programs, an institution may not reestablish the eligibility of that program or establish the eligibility of a substantially similar program until three FYs following the FY the program became ineligible.

The Department is establishing these "wait-out" periods to provide incentives for institutions to improve programs rather than allow programs to fail and lose eligibility for title IV, HEA funds. Consistent with our approach in defining the debt measures to identify the poorest performing programs, institutions should not be able to merely reestablish the eligibility of failed programs without taking the time to substantially improve those programs or making other adjustments to ensure that the programs do not fail again.

A program that becomes ineligible because it failed the measures three out of four FYs is required to wait three years before it may reestablish that program's eligibility or establish the eligibility of program that is a substantially similar program to the one that became ineligible. The three year wait-out period reflects the three years the program failed the debt measures and is severe enough that it provides an added incentive to an institution to take the actions needed to avoid a failing program from becoming ineligible. However, where a program becomes ineligible, the Department is concerned that an institution may attempt to evade the wait-out period by repackaging that program and establishing under 34 CFR 600.20(d) the eligibility of the repackaged program as a new program. Consequently, the wait-out period also applies to a "substantially similar program" to avoid the outcome where the repackaged program, in the guise of a new program, would not have any prior history under the debt measures. The wait-out period provides a material break in the program's eligibility for title IV, HEA program funds to mark that the prior history of that ineligible program under the debt measures will not be used if the program later reestablishes its eligibility. This approach ensures that students are not placed in a program that may be so similar to the failed program that they have a high likelihood of finding themselves in another failed program. We believe this temporary limitation on an institution's ability to seek eligibility for a program that is substantially similar to one that lost eligibility is a reasonable consequence of the institution's impaired capability to offer that program under the measures in these regulations.

An institution that voluntarily discontinues a failing program will be required to wait two or three years before the Department will allow the institution to reestablish the eligibility of that program. The wait-out periods generally reflect the number of years the program failed the debt measures. So, an institution that voluntarily discontinues a program after being required to provide the first-year debt warnings, or within 90 days of receiving a notice from the Department that it must provide second year debt warnings, will have to wait two years before it may seek to reestablish the eligibility of that program. On the other hand, an institution that voluntarily discontinues a failing program after the 90-day period could continue to offer the program up to the date that the program would otherwise become ineligible under the debt measures—three years. In this case, there would be no material difference between a failing program discontinued by the institution and an ineligible program. We note that an institution retains the ability to seek to establish the eligibility of a program substantially similar to a voluntarily discontinued program without any waiting period.

These temporary two or three year restrictions do not affect the eligibility of any other programs an institution already offers that are substantially similar to the program that lost eligibility, nor does it prevent an institution from seeking to establish the eligibility of new programs that are not substantially similar to the ineligible program. The effective date for reestablishing the eligibility of an ineligible program or failing program that was voluntarily discontinued is July 1, 2012. However, the Department will not issue FY 2012 final debt measures until calendar year 2013.

With regard to the comment on the status of an ineligible program measured for the transition year, that year is counted as a failing year even if the program's ranking is over the 5 percent cap. That year will count as a failing year for purposes of determining whether the program meets the eligibility requirements in subsequent years.

Changes: New § 668.7(l) provides that an ineligible program, or a failing program that an institution voluntarily discontinues, remains ineligible until the institution reestablishes the eligibility of the program under 34 CFR 600.20(d). For these purposes, an institution is considered to have voluntarily discontinued a failing program on the date the institution provides written notice to the Secretary that it relinquishes title IV, HEA program eligibility for the program.

We have also provided in § 668.7(l) that an institution may not seek to reestablish eligibility of a failing program it voluntarily discontinued until the end of the second FY following the FY the program was discontinued if the institution voluntarily discontinued the program at any time after the program is determined to be a failing program, but no later than 90 days after the date the Secretary notified the institution that it must provide the second year debt warnings under § 668.7(j)(2). For an institution that voluntarily discontinues the failing program more than 90 days after the date the Secretary notifies the institution that it must provide the second year debt warnings, the institution is prohibited from seeking to reestablish eligibility for the program until the end of the third FY following the FY the program was voluntarily discontinued.

In this new section, we also have provided that an institution may not seek to reestablish the eligibility of an ineligible program, or to establish the eligibility of a program that is substantially similar to the ineligible program until the end of the third FY following the FY the program became ineligible. Under the regulations, we consider a program to be substantially similar to an ineligible program if it has the same credential level and the same first four digits of the CIP code as that of the ineligible program.

Certification Procedures (Proposed § 668.13(c)(1))

General

Comment: Commenters noted that section 498(h)(1) of the HEA only authorizes the Secretary to provisionally certify an institution when considering the institution for initial certification, reviewing the institution's administrative capability and financial responsibility for the first time, reviewing an institution in connection with a change of ownership, or when reviewing the institution's application to renew its certification.

Therefore the commenters believe that placing an institution on provisional certification if a program is subject to the eligibility limitations under the gainful employment provisions in proposed § 668.7(e) or becomes ineligible under the gainful employment provisions in proposed § 668.7(f) has no foundation in the law and is not in line with other conditions under § 668.13(c) that could place in an institution on provisional certification.

Commenters objected to provisionally certifying an institution when a single program is determined ineligible for not meeting the standards for the gainful employment provisions in § 668.7(a). The commenters offered alternative methods for determining if an institution should be provisionally certified. For example, a commenter suggested the Department consider the relationship between the number of programs subject to gainful employment sanctions and the total number of programs offered or the average past enrollment in sanctioned programs compared to the enrollment in all eligible programs.

Discussion: Section 668.13(c) provides the circumstances for when the Department may provisionally certify an institution. We initially proposed to amend § 668.13(c)(1)(i) to provide that

the Department may provisionally certify an institution if one or more programs offered at the institution failed to prepare students for gainful employment in a recognized occupation in accordance with § 668.7.

We believe § 668.7, as revised in these final regulations, provides institutions whose programs fail the gainful employment debt measures with sufficient and comprehensive protections, such as the draft debt measures and data corrections in § 668.7(e) and the alternative earnings process specified in § 668.7(g), before any of its programs lose eligibility for title IV, HEA funds. Therefore, placing these institutions on provisional certification is no longer necessary.

Changes: We have removed proposed § 668.13(c)(1)(i)(F) from the regulations. Therefore, we are not amending current § 668.13.

Initial and Final Decisions (Proposed § 668.90(a)(3))

Comment: Commenters were concerned that the termination proceedings against a program that does not meet the standards for gainful employment in proposed § 668.7(a) would violate an institution's due process rights because the institution would not be allowed to examine the earnings of program completers maintained by another Federal agency. Some commenters referenced findings from several court cases noting that procedural due process requires that a party against whom an agency has proceeded to withdraw a benefit or service be allowed to rebut evidence offered by the agency. The commenters stated that it would be difficult for an institution to challenge data if the institution could not access the information against which it is being measured to determine if it is accurate data. The commenters believed the courts would support the position that not allowing an institution to examine the earnings of program completers maintained by another Federal agency would violate the institution's due process rights.

Some commenters questioned how the Department, SSA, or the hearing official could confirm that the list of program completers was accurate. Commenters suggested that the source of data used to calculate the debt-to-earnings ratios under § 668.7(c) should be data that can be made accessible to institutions.

Other commenters noted that the Department should clarify the evidence an institution would need to supply to document that its data is more reliable than the Federal data and specify the minimum standards that must be met. For example, the minimum standards might include income for all program completers that can be documented by employers unaffiliated with the institution.

Some commenters noted that under the Cohort Default Rate (CDR) Guide, the Department provides procedural rights to challenge NSLDS data that they believe is inaccurate. The commenters recommended that the Department provide a similar process for an institution that fails to meet the gainful employment standards. Another commenter recommended that language be added to the final regulations that would define an institution's appeal rights and establish a process by which an institution is allowed to review and correct data to ensure inaccurate data is not released to the public.

A commenter was concerned that the appeals process under proposed § 668.90(a)(3)(vii) may result in possible abuses and delays similar to problems experienced in the CDR sanction process. The commenter believed institutions were successful in changing the CDR process to expand the appeal process for reasons ranging from hardship to mitigating circumstances. The commenter stated that over time the definition of "default rate" was weakened and institutions continued to increase enrollment while delaying final action by appeals. The commenter suggested that the hearings be limited to appeals about the accuracy of the data and recommended that the Department clarify how an administrative law judge should consider alternative evidence to the government's data.

Other commenters noted that the Department did not specify who would appoint the hearing official or the required qualifications for this position and recommended that the hearing official be a trained, impartial administrative law judge with no affiliation to a proprietary institution.

Discussion: Section 668.90(a)(3) sets forth the limitations on the matters and decisions rendered in termination proceedings by a hearing official in accordance with subpart G of part 668. We initially proposed to add a provision under § 668.90(a)(3)(vii) that would allow a termination action against a program for not meeting the standards for gainful employment in § 668.7(a). The proposed regulations required the hearing official to accept as accurate the average annual earnings calculated by another Federal agency, i.e., SSA, for the list of program completers identified by the institution and accepted by the Department. An institution could provide the hearing official with a different average annual amount to be used to calculate the debt-to-earnings ratio for the same list of program completers that had been determined to be reliable.

In response to concerns raised by commenters about our proposal, we have developed an administrative process that implements many of the suggestions made by commenters. This process provides an institution with a reasonable amount of access to information and time to review draft debt measures and to challenge the accuracy of certain information used to calculate the debt measures (loan repayment rate and debt-to-earnings ratio) similar to the process used to review and challenge CDRs. For instance, an institution that questions the accuracy of the debt-to-earnings ratios may review the list of students that the Department will provide to SSA to determine that the correct cohort of students will be used by SSA to calculate the mean or median annual earnings. The institution may not challenge the accuracy of the mean or median annual earnings the Secretary obtains from SSA. However, an institution may challenge a final debt measure for a program that does not satisfy the debt-to-earnings ratios by using earnings data from BLS during a transitional period, a State-sponsored data system, or an institutional survey conducted in accordance with NCES standards.

With regard to the comment that the appeals process under proposed § 668.90(a)(3)(vii) may result in possible abuses and delays similar to problems experienced in the CDR sanction process, the proposed change to § 668.90(a)(3)(vii) has been replaced with procedures established under § 668.7. Section 668.7(d), (e), and (g) limits challenges to the data used to calculate the debt measures rather than allowing for the various circumstances under which an institution may challenge, adjust, and appeal decisions affecting the institution's CDRs. Therefore, we believe that the procedures established under § 668.7 will be less susceptible to abuse and delays than the CDR process. Also, by removing proposed § 668.90(a)(3)(vii), there is no longer a need to address in the final regulations the appointment or qualifications of the hearing official as requested by some commenters.

Details of the administrative process can be found under the preamble discussion under the headings, *Small numbers (668.7(d)),* and *Draft debt measures and data corrections (§ 668.7(e)), Final debt measures*

(§ 668.7(f)), and Alternative earnings (§ 668.7(g)).

Changes: We have removed § 668.90(a)(3)(vii) of the proposed regulations that would allow a termination action against a program that failed the gainful employment standards in § 668.7(a). Therefore, current § 668.90 will not be amended.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

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

The Department has also reviewed these regulations pursuant to Executive Order 13563, published on January 21, 2011 (76 FR 3821). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." In its February 2, 2011, memorandum (M–11–10) on Executive Order 13563, improving regulation and regulatory review, the Office of Information and Regulatory Affairs has emphasized that such techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these regulations only upon a reasoned determination that their benefits justify their costs and we selected, in choosing among alternative regulatory approaches, those approaches that maximize net benefits. Based on this analysis and for the additional reasons stated in the preamble, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

A detailed analysis, including the Department's Regulatory Flexibility Act Analysis, is found in Appendix A to these final regulations.

Paperwork Reduction Act of 1995

Section 668.7 contains information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of this section to OMB for its review. In general, throughout the preamble, we discuss debt-to-earnings ratios, repayment rates, draft rates and required disclosures of the final repayment rate and the debt-to-earnings ratios in the context of being calculated in or beginning in FY 2012. We have chosen in this section to reference FY 2013 so that our analysis can include critical data tied to second year failure of a debt measure and the level of debt warning notice required after a second year failure. We believe that only by including this data in our analysis can we provide complete and accurate information regarding burden under these final regulations.

Section 668.7(g)(6)(i) also contains information collection requirements. However, that burden is already reflected under OMB Control Number 1845–0107.

Section 668.7—Gainful Employment in a Recognized Occupation

Under § 668.7(c)(2)(i)(A)(*2*) of these final regulations, institutions are provided the option to report the total amount of tuition and fees the institution charged a student in a gainful employment program. The advantage of exercising this option occurs when the debt-to-earnings ratios are calculated. In cases where students borrowed more than the amount of tuition and fees (such as additional amounts for room and board, books and supplies, or for other living and personal costs), the amount of indebtedness used for the debt-to-earnings calculation is limited to the amount that the institution reported it charged for tuition and fees.

We estimate there will be a very high percentage of proprietary institutions that will exercise this option. We estimate that proprietary institutions will choose this option for 99 percent of the applicable 4,067,680 students for a total of 4,027,003 students. On average, we estimate that it will take the institution 2 minutes (.03 hours) per student to report this information for a total of 120,810 hours of additional burden under OMB Control Number 1845–0109.

We estimate there will be a high percentage of private non-profit institutions that will exercise this option. We estimate that private non-profit institutions will choose this option for 90 percent of the applicable 242,705 students for a total of 218,435 students. On average, we estimate that it will take the institution 2 minutes (.03 hours) per student to report this information for a total of 6,553 hours of additional burden under OMB Control Number 1845–0109.

We estimate there will be a moderately high percentage of public institutions that will exercise this option. We estimate public institutions will choose this option for 80 percent of the applicable 4,426,327 students for a

total of 3,541,062 students. On average, we estimate that it will take the institution 2 minutes (.03 hours) per student to report this information for a total of 106,232 hours of additional burden under OMB Control Number 1845–0109.

Collectively, we estimate that these reporting requirements will increase burden for institutions by 233,595 hours under OMB Control Number 1845–0109.

Under § 668.7(e)(1) in these final regulations, before issuing the draft debt-to-earnings ratios, the Secretary will provide to an institution a list of the students who will be included in the applicable two- or four-year period used to calculate the debt-to-earnings ratios beginning in FY 2012. No later than 30 days after the date the Secretary provides the list to the institution, the institution may (1) provide evidence showing that a student should be included on or removed from the list or, (2) correct or update the student identity information. While this will increase burden to institutions participating in the pre-draft data challenge, the increase is estimated to be modest. In many cases, institutions will be comparing the information that they have previously sent to the Department about their students in gainful employment programs with this pre-draft list. If the corrected and updated information is accurate, the corrected information will be used to create a final list that will be sent by the Department to SSA in order to calculate the draft debt-to-earnings ratios.

We estimate that only those institutions who have concerns that their programs may be failing or believe that they have a failing program will submit a pre-draft data challenge. Therefore, we are multiplying by two the total estimated number of failing programs that will submit a pre-draft data challenge.

We estimate that 601 gainful employment programs will initially fail the debt measures during FY 2013. We estimate that 323 gainful employment programs will fail the debt measures for the second time during FY 2013 for a total of 924 failing programs. We estimate that twice that number of failing programs or 1,848 pre-draft corrections will be submitted.

We estimate that proprietary institutions will submit a total of 1,552 pre-draft data challenges. On average, we estimate that institutional staff will take 1.5 hours per submission to analyze the draft data supplied by the Department to the institution and to submit the institution's pre-draft data challenge for a total of 2,328 hours of increased burden under OMB Control Number 1845–0109.

We estimate that private non-profit institutions will submit a total of 44 pre-draft data challenges. On average, we estimate that institutional staff will take 1.5 hours per submission to analyze the draft data supplied by the Department to the institution and to submit its pre-draft data challenge for a total of 66 hours of increased burden under OMB Control Number 1845–0109.

We estimate that public institutions will submit a total of 252 pre-draft data challenges. On average, we estimate that institutional staff will take 1.5 hours per submission to analyze the draft data supplied by the Department to the institution and to submit its pre-draft data challenge for a total of 378 hours of increased burden under OMB Control Number 1845–0109.

Collectively, under § 668.7(e)(1), we estimate pre-draft data challenges will increase burden for institutions by 2,772 hours under OMB Control Number 1845–0109.

Under § 668.7(e)(2) in these final regulations we will notify an institution of the draft results of the debt-to-earnings ratios for each gainful employment program. No later than 45 days after the Secretary issues the draft results of the debt-to-earnings ratios for a program and no later than 45 days after the Secretary issues the draft results of the loan repayment rate for a program, the institution may challenge the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate, or the median loan debt for the program that was used for the numerator of the draft debt-to-earnings ratios. Institutions submitting a post-draft corrections challenge will provide evidence showing that the borrower loan data or the program median loan debt is inaccurate. The institution may challenge the accuracy of the list of borrowers included in the applicable two- or four-year period used to calculate the draft loan repayment rate by submitting evidence showing that a borrower should be included on or removed from the list, or correcting or updating identity information provided for a borrower on the list, such as the name, social security number, or date of birth.

We estimate that 601 gainful employment programs will fail the debt measures issued for FY 2013. We estimate that 323 gainful employment programs will fail the debt measures issued for FY 2013 for the second time for a total of 924 failing programs.

We estimate that 776 programs will fail the draft debt measures at proprietary institutions. On average, we estimate that institutional staff will take 5 hours per program to analyze the draft data supplied by the Department to the institution and to submit its data challenge for a total of 3,880 hours of increased burden under OMB Control Number 1845–0109.

We estimate that 22 programs will fail the draft debt measures at private non-profit institutions. On average, we estimate that institutional staff will take 5 hours per program to analyze the draft data supplied by the Department to the institution and to submit its data challenge for a total of 110 hours of increased burden under OMB Control Number 1845–0109.

We estimate that 126 programs will fail the draft debt measures at public institutions. On average, we estimate that institutional staff will take 5 hours per program to analyze the draft data supplied by the Department to the institution and to submit its data challenge for a total of 630 hours of increased burden under OMB Control Number 1845–0109.

Collectively, under § 668.7(e), we estimate debt measures challenges will increase burden for institutions by 4,620 hours under OMB Control Number 1845–0109.

Under § 668.7(g), *Alternative earnings,* in these final regulations we provide that an institution may demonstrate that a failing program would meet a debt-to-earnings standard by recalculating the debt-to-earnings ratios using the median loan debt for the program as determined under § 668.7(c) and using alternative earnings from: A State-sponsored data system; an institutional survey conducted in accordance with NCES standards; or, for FYs 2012, 2013, and 2014, the Bureau of Labor Statistics (BLS).

Under § 668.7(g)(2) of these final regulations, for final debt-to-earnings ratios for a failing program, an institution may use State data to recalculate those ratios for a failing program only if the institution obtains earnings data from State-sponsored data systems for more than 50 percent of the students in the applicable two- or four-year period, or a comparable two- or four-year period, and that number of students is more than 30 students; and the institution uses the actual, State-derived mean or median earnings of the students in the applicable two- or four-year period. In the institution's submission, it must demonstrate that it accurately used the actual State-derived data to recalculate the ratios.

We estimate that 18 percent of the 776 failed programs during the FY 2013 period at proprietary institutions will choose to use State-sponsored system

data to provide alternative earnings. Based on this estimate, proprietary institutions will submit alternative earnings data from State-sponsored systems for 140 programs. On average, we estimate that institutional staff will take 2 hours per submission to acquire the alternative earnings data from State-sponsored systems, recalculate the ratios, and submit that data to the Department for a total of 280 hours of increased burden under OMB Control Number 1845–0109.

We estimate that 5 percent of the 22 failed programs during the FY 2013 period at private non-profit institutions will choose to use State-sponsored system data to provide alternative earnings. Based on this estimate, proprietary institutions will submit alternative earnings data from State-sponsored systems for one program. On average, we estimate that institutional staff will take 2 hours per submission to acquire the alternative earnings data from State-sponsored systems, recalculate the ratios, and submit that data to the Department for a total of 2 hours of increased burden under OMB Control Number 1845–0109.

We estimate that 10 percent of the 126 failed programs during the FY 2013 period at public institutions will choose to use State-sponsored system data to provide alternative earnings. Based on this estimate, proprietary institutions will submit alternative earnings data from State-sponsored systems for 13 programs. On average, we estimate that institutional staff will take 2 hours per submission to acquire the alternative earnings data from State-sponsored systems, recalculate the ratios, and submit that data to the Department for a total of 26 hours of increased burden under OMB Control Number 1845–0109.

Collectively, under § 668.7(g)(2), we estimate using State-sponsored system data for alternative earnings will increase burden for institutions by 308 hours under OMB Control Number 1845–0109.

Under § 668.7(g)(3) of these final regulations, for final debt-to-earnings ratios calculated by the Secretary for FY 2012 and any subsequent FY, an institution may use survey data to recalculate the ratios for a failing program only if the institution: (1) Uses reported earnings obtained from an institutional survey conducted of the students in the applicable two- or four-year period, or a comparable two- or four-year period, and the survey data is for more than 30 students; (2) submits a copy of the survey and certifies that it was conducted in accordance with the statistical standards and procedures established by NCES and available at *http://nces.ed.gov;* and (3) submits an examination-level attestation by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the specified NCES standards and procedures.

We estimate that 2 percent of the 776 failed programs during the FY 2013 period at proprietary institutions will choose to use survey data to provide alternative earnings. Based on this estimate, proprietary institutions will submit survey data to provide alternative earnings for 16 programs. On average, we estimate that institutional staff will take 40 hours per submission to attain survey data, to formulate the alternative earnings based upon that data, and to submit that data to the Department for a total of 640 hours of increased burden under OMB Control Number 1845–0109.

We estimate that 0 percent of private non-profit and public institutions will choose to submit alternative earnings data based upon an NCES compliant survey.

Collectively, under § 668.7(g)(3), we estimate the burden for institutions to use an NCES compliant survey for alternative earnings will increase burden by 640 hours under OMB Control Number 1845–0109.

Under § 668.7(g)(4) of these final regulations, for the final debt-to-earnings ratios calculated by the Secretary for FYs 2012, 2013, and 2014, an institution may use BLS earnings data to recalculate those ratios for a failing program only if the institution: (1) Identifies and provides documentation of the occupation by SOC code, or combination of SOC codes, in which more than 50 percent of the students in the 2YP or 4YP were placed or found employment, and that number of students is more than 30; (2) uses the most current BLS earnings data for the identified SOC code to calculate the debt-to-earnings ratio; and (3) submits, upon request, all the placement, employment, and other records maintained by the institution for the program under § 668.7(g)(4)(i) that the institution examined to determine whether those records identified the SOC codes for the students who were placed or found employment.

We estimate that 776 programs at proprietary institutions will fail the debt-to-earnings ratios issued for FY 2013 and choose to use BLS data to provide alternative earnings. We estimate that proprietary institutions will provide alternative earnings information using BLS data for 75 percent of the total number of failed programs which equals 582 alternative earnings submissions. On average, we estimate that institutional staff will take 5 hours per submission to formulate the alternative earnings based upon BLS data and submit that data to the Department for a total of 2,910 hours of increased burden under OMB Control Number 1845–0109.

We estimate that 22 programs at private non-profit institutions will fail the debt-to-earnings ratios issued for FY 2013 and choose to use BLS data to provide alternative earnings. We estimate that private non-profit institutions will provide alternative earnings information using BLS data for 55 percent of the total number of failed programs, which equals 12 alternative earnings submissions. On average, we estimate that institutional staff will take 5 hours per submission to formulate the alternative earnings based upon BLS data and submit that data to the Department for a total of 60 hours of increased burden under OMB Control Number 1845–0109.

We estimate that 126 programs at public institutions will fail the debt-to-earnings ratios issued for FY 2013 and choose to use BLS data to provide alternative earnings. We estimate that public institutions will provide alternative earnings information using BLS data for 80 percent of the total number of failed programs which equals 101 alternative earnings submissions. On average, we estimate that institutional staff will take 5 hours per submission to formulate the alternative earnings based upon BLS data and submit that data to the Department for a total of 505 hours of increased burden under OMB Control Number 1845–0109.

Collectively, under § 668.7(g)(4), we estimate using BLS data for alternative earnings will increase burden for institutions by 3,475 hours under OMB Control Number 1845–0109.

Under § 668.7(g)(5) of these final regulations, institutions must notify the Secretary of the institution's intent to use alternative earnings no later than 14 days after the date the institution is notified of its final debt measures. Additionally, institutions must submit all supporting documentation related to recalculation of the debt-to-earnings ratios using alternative earnings, no later than 60 days after the institution is notified of its final debt measures.

We estimate that proprietary institutions will notify the Secretary of their intent to use alternative earnings in the recalculation of the debt-to-earnings ratios and will submit their documentation in a timely manner for 776 programs that failed the debt measures issued for FY 2013. On

average, we estimate that it will take institutional staff 15 minutes (.25 hours) to notify the Secretary of the institution's intent to use alternative earnings no later than 14 days after the date the institution is notified of its final debt measures for a total of 194 hours of increased burden under OMB Control Number 1845–0109.

We estimate that private non-profit institutions will notify the Secretary of their intent to use alternative earnings in the recalculation of the debt-to-earnings ratios and will submit their documentation in a timely manner for 22 programs that failed the debt measures issued for FY 2013. On average, we estimate that it will take institutional staff 15 minutes (.25 hours) to notify the Secretary of the institution's intent to use alternative earnings no later than 14 days after the date the institution is notified of its final debt measures for a total of 6 hours of increased burden under OMB Control Number 1845–0109.

We estimate that public institutions will notify the Secretary of their intent to use alternative earnings in the recalculation of the debt-to-earnings ratios and will submit their documentation in a timely manner for 126 programs that failed the debt measures issued for FY 2013. On average, we estimate that it will take institutional staff 15 minutes (.25 hours) to notify the Secretary of its intent to use alternative earnings no later than 14 days after the date the institution is notified of its final debt measures for a total of 32 hours of increased burden under OMB Control Number 1845–0109.

Collectively, under § 668.7(g)(5), we estimate the burden for institutions to notify the Secretary of their intent to use alternative earnings to recalculate the debt-to-earnings ratios and submit the supporting documentation will increase burden by 232 hours under OMB Control Number 1845–0109.

Under § 668.7(j)(1) of these final regulations, the institution is required to provide for each enrolled and prospective student a warning prepared in plain language and presented either orally or in writing directly to the students when a program fails the debt measures for the first time. The initial warning explains the debt measures and shows the amount by which the program did not meet the minimum standards. In addition, the initial warning describes any actions the institution plans to take to improve the program's performance. To the extent that the institution delivers the initial warning orally, it must maintain documentation of how that information was provided, including any materials the institution used to deliver that warning and any documentation of the student's presence at the time of the warning.

Under § 668.7(j)(2) of these final regulations, an institution that has a program that has failed the debt measures for two consecutive FYs or for two out of the three most recently completed FYs, must provide the debt warning containing the requirements in § 668.7(j)(1) in writing, together with a plain language explanation of what actions the institution plans to take in response to the second failure. If the institution plans to discontinue the program, it must provide the timeline for doing so, and the options available to the student. The second debt warning must also explain the risks associated with enrolling or continuing in the program, including the potential consequences for, and options available to, the student if the program becomes ineligible for title IV, HEA program funds. Additionally, the second debt warning must include a plain language explanation of the resources available, including *http://www.collegenavigator.gov*, that the student may use to research other educational options and compare program costs, and include a clear and conspicuous statement that a student who enrolls or continues in the program should expect to have difficulty repaying his or her student loans.

Under § 668.7(j)(4) of these final regulations, the institution must prominently display the second-year debt warning on the program home page of the institution's Web site and include the warning in all promotional materials it makes available to prospective students. We do not expect that the following requirements will be overly burdensome for institutions: (1) Providing a plain language explanation of the actions the institution plans to take in response to the second failure; the risks associated with enrolling or continuing in the program; and the resources available, including *http://www.collegenavigator.gov*; (2) providing a clear and conspicuous statement that a student who enrolls in or continues in the program should expect to have difficulty repaying their student loan debt; and (3) posting that information on the program home page of the institution's Web site and in its promotional materials.

We estimate that 493 programs at proprietary institutions will fail the debt measures issued for FY 2013 for the first time. We estimate that an additional 283 programs at proprietary institutions will fail the debt measures for the second time during the same period of time. We estimate that on average, it will take institutional staff 30 minutes (.5 hours) to prepare and distribute a first or second year warning as required for a total of 776 affected programs, resulting in an increase in burden of 388 hours under OMB Control Number 1845–0109.

We estimate that 16 programs at private non-profit institutions will fail the debt measures issued for FY 2013 for the first time. We estimate that an additional 6 programs at private non-profit institutions will fail the debt measures for the second time during the same period of time. We estimate that on average, it will take institutional staff 30 minutes (.5 hours) to prepare and distribute a first or second year warning as required for a total of 22 affected programs times, resulting in an increase in burden of 11 hours under OMB Control Number 1845–0109.

We estimate that 92 programs at public institutions will fail the debt measures issued for FY 2013 for the first time. We estimate that an additional 34 programs at public institutions will fail the debt measures for the second time during the same period of time. We estimate that on average, it will take institutional staff 30 minutes (.5 hours) to prepare and distribute a first or second year warning for a total of 126 affected programs times, resulting in an increase in burden of 63 hours under OMB Control Number 1845–0109.

Collectively, we estimate that the burden for meeting these disclosure requirements will increase burden for institutions by 462 hours under OMB Control Number 1845–0109.

Under § 668.7(j)(5) of these final regulations, if an institution voluntarily discontinues a failing program, it must notify enrolled students at the same time that it provides the written notice to the Secretary that it relinquishes the program's title IV, HEA program eligibility.

We estimate that for the period from July 1, 2012 through June 30, 2013 proprietary institutions will have 493 programs that have failed the debt measures once and 283 programs that have failed the debt measures twice, totaling 776 failing programs. We estimate that 70 percent of that total number of failing programs or 543 programs will be voluntarily discontinued. On average, it will take institutional staff 10 minutes (.17 hours) to provide written notice to the Secretary that it relinquishes the program's title IV, HEA program eligibility for a total of 92 hours of increased burden under OMB Control Number 1845–0109.

We estimate that for the period from July 1, 2012 through June 30, 2013

private non-profit institutions will have 16 programs that have failed the debt measures once and 6 programs that have failed the debt measures twice, totaling 22 failing programs. We estimate that 10 percent of that total number of failing programs or 2 programs will be voluntarily discontinued. On average, it will take institutional staff 10 minutes (.17 hours) to provide written notice to the Secretary that it relinquishes the program's title IV, HEA program eligibility for a total of 1 hour of increased burden under OMB Control Number 1845–0109.

We estimate that for the period from July 1, 2012 through June 30, 2013 public institutions will have 92 programs that have failed the debt measures once and 34 programs that have failed the debt measures twice, totaling 126 failing programs. We estimate that 20 percent of that total number of failing programs or 25 program will be voluntarily discontinued. On average, it will take institutional staff 10 minutes (.17 hours) to provide written notice to the Secretary that it relinquishes the program's title IV, HEA program eligibility for a total of 4 hours of increased burden under OMB Control Number 1845–0109.

Collectively, under § 668.7(j)(5), we estimate the burden for institutions to notify the Secretary to relinquish the program's title IV, HEA program eligibility will increase burden by 97 hours under OMB Control Number 1845–0109.

We estimate that for FY 2013 there will be 8,736,711 students in 55,405 gainful employment programs which yields an average program size of 158 students per program.

We estimated above that there will be 543 proprietary programs that are voluntarily discontinued. Using the average of 158 students per program, proprietary institutions will be required to notify 85,794 students that the program is being discontinued. On average, we estimate that it will take a student 15 minutes (.25 hours) to read the notice provided by the institution and determine the impact on the completion of the program without title IV, HEA program assistance for a total of 21,449 hours of increased burden under OMB Control Number 1845–0109.

We estimated above that there will be 2 private non-profit programs that are voluntarily discontinued. Using the average of 158 students per program, private non-profit institutions will be required to notify 316 students that the program is being discontinued. On average, we estimate that it will take a student 15 minutes (.25 hours) to read the notice provided by the institution and determine the impact on the completion of the program without title IV, HEA program assistance for a total of 79 hours of increased burden under OMB Control Number 1845–0109.

We estimated above that 25 public programs will be voluntarily discontinued. Using the average of 158 students per program, public institutions will be required to notify 3,950 students that the program is being discontinued. On average, we estimate that it will take a student 15 minutes (.25 hours) to read the notice provided by the institution and determine the impact on the completion of the program without title IV, HEA program assistance for a total of 988 hours of increased burden under OMB Control Number 1845–0109.

Collectively, under § 668.7(j)(5), we estimate that for students to read the notice provided by the institution about the institution's decision to voluntarily a failing program will increase burden by 22,516 hours under OMB 1845–0109.

Under § 688.7(j)(5) of these final regulations, we estimate that 85,794 students will be enrolled at proprietary institutions in failing programs that are voluntarily discontinued. On average, we estimate that it will take institutional staff 10 minutes (.17 hours) per student to prepare and mail a notice provided by the institution indicating that the failing gainful employment program is being voluntarily discontinued and the date that title IV, HEA program assistance will no longer be available for a total of 14,585 hours of increased burden under OMB Control Number 1845–0109.

Under § 688.7(j)(5) of these final regulations, we estimate that 316 students will be enrolled at private non-profit institutions in failing programs that are voluntarily discontinued. On average, we estimate that it will take institutional staff 10 minutes (.17 hours) per student to prepare and mail a notice provided by the institution indicating that the failing gainful employment program is being voluntarily discontinued and the date that title IV, HEA program assistance will no longer be available for a total of 54 hours of increased burden under OMB Control Number 1845–0109.

Under § 688.7(j)(5) of these final regulations, we estimate that 3,950 students will be enrolled at public institutions in failing programs that are voluntarily discontinued. On average, we estimate that it will take institutional staff 10 minutes (.17 hours) per student to prepare and mail a notice provided by the institution indicating that the failing gainful employment program is being voluntarily discontinued and the date that title IV, HEA program assistance will no longer be available for a total of 672 hours of increased burden under OMB Control Number 1845–0109.

Collectively, under § 688.7(j)(5) of these final regulations, we estimate that it will take institutional staff a total of 15,311 hours of increased burden under OMB Control Number 1845–0109 to prepare and mail a notice provided by the institution indicating that the failing gainful employment program is being voluntarily discontinued and the date that title IV, HEA program assistance will no longer be available.

COLLECTION OF INFORMATION

Regulatory section	Information collection	Collection
668.7	This section provides institutions the option to submit the tuition and fee amount charged a student in a gainful employment program. This section also provides for draft data challenges whereby institutions will have the opportunity to challenge the accuracy of the information used to calculate the debt measures in the event that student identifying information was erroneously included or excluded. Institutions with programs that fail the debt measures will have an opportunity to provide alternative earnings data from BLS data, State-sponsored earnings data, or the results of an institutional earnings survey as long as the survey meets NCES standards and an independent public accountant or independent governmental auditor, as appropriate, has attested that the survey was conducted in accordance with the specific NCES standards and procedures. This section also provides for institutions to notify the Secretary of the institution's intent to use alternative earnings data. This section provides that institutions must disclose debt warnings for first year failures and second year failures to each enrolled student and prospective student in a gainful employment program. Institutions that choose to voluntarily discontinue a failing program must do so in writing to the Secretary relinquishing the program's title IV, HEA program eligibility and by notice to the enrolled students.	OMB Control Number 1845–0109. This will be a new collection. The burden will increase by 284,028 hours.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating regulations that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Please see the Regulatory Impact Analysis, attached as Appendix A, for a discussion of the budgetary impact of these final regulations.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, and based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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

List of Subjects in 34 CFR Part 668

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

Dated: June 1, 2011.

Arne Duncan,

Secretary of Education.

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

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

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

■ 2. Section 668.7 is added to read as follows:

§ 668.7 Gainful employment in a recognized occupation.

(a) *Gainful employment.* (1) *Minimum standards.* A program is considered to provide training that leads to gainful employment in a recognized occupation if—

(i) As determined under paragraph (b) of this section, the program's annual loan repayment rate is at least 35 percent;

(ii) As determined under paragraph (c) of this section, the program's annual loan payment is less than or equal to—

(A) 30 percent of discretionary income (discretionary income threshold); or

(B) 12 percent of annual earnings (actual earnings threshold); or

(iii) The data needed to determine whether a program satisfies the minimum standards are not available to the Secretary.

(2) *General.* For the purposes of this section—

(i)(A) A *program* refers to an educational program offered by an institution under § 668.8(c)(3) or (d) that is identified by a combination of the institution's six-digit OPEID number, the program's six-digit CIP code as assigned by an institution or determined by the Secretary, and credential level;

(B) The Secretary determines whether an institution accurately assigns a CIP code for a program based on the classifications and program codes established by the National Center for Education Statistics (NCES); and

(C) The credential levels for identifying a program are undergraduate certificate, associate's degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, and first-professional degree;

(ii) *Debt measures* refers collectively to the loan repayment rate and debt-to-earnings ratios described in paragraphs (b) and (c) of this section;

(iii) A *fiscal year* (FY) is the 12-month period starting October 1 and ending September 30 that is designated by the calendar year in which it ends; for example FY 2013 is from October 1, 2012 to September 30, 2013. That designation also represents the FY for which the Secretary calculates the debt measures;

(iv) A *two-year period* is the period covering two consecutive FYs that occur on—

(A)(*1*) The third and fourth FYs (2YP) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2012, the 2YP is FYs 2008 and 2009; or

(*2*) For FYs 2012, 2013, and 2014, the first and second FYs (2YP–A) prior to the most recently completed FY for which the loan repayment rate is calculated under paragraph (b) of this section. For example, if the most recently completed FY is 2012, the 2YP–A is FYs 2010 and 2011; or

(B) For a program whose students are required to complete a medical or dental internship or residency, as identified by an institution, the sixth and seventh FYs (2YP–R) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2012, the 2YP–R is FYs 2005 and 2006. For this purpose, a required medical or dental internship or residency is a supervised training program that—

(*1*) Requires the student to hold a degree as a doctor of medicine or osteopathy, or a doctor of dental science;

(*2*) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(*3*) Must be completed before the borrower may be licensed by the State and board certified for professional practice or service;

(v) A *four-year period* is the period covering four consecutive FYs that occur on—

(A) The third, fourth, fifth, and sixth FYs (4YP) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2017, the 4YP is FYs 2011, 2012, 2013, and 2014; or

(B) For a program whose students are required to complete a medical or dental internship or residency, as identified by an institution, the sixth, seventh, eighth, and ninth FYs (4YP–R) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2017, the 4YP–R is FYs 2008, 2009, 2010, and 2011. For this purpose, a required medical or dental internship or residency is a supervised training program that—

(*1*) Requires the student to hold a degree as a doctor of medicine or osteopathy, or a doctor of dental science;

(*2*) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(*3*) Must be completed before the borrower may be licensed by the State and board certified for professional practice or service; and

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

(b) *Loan repayment rate.* For the most recently completed FY, the Secretary calculates the loan repayment rate for a program using the following ratio:

$$\frac{\text{OOPB of LPF plus OOPB of PML}}{\text{OOPB}}$$

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

(ii) The OOPB includes FFEL and Direct Loans that first entered repayment during the 2YP, the 2YP–A, the 2YP–R, the 4YP, or the 4YP–R. The OOPB does not include PLUS loans made to parent borrowers or TEACH Grant-related unsubsidized loans.

(iii) For consolidation loans, the OOPB is the OOPB of the FFEL and Direct Loans attributable to a borrower's attendance in the program.

(iv) For FYs 2012, 2013, and 2014, the Secretary calculates two loan repayment rates for a program, one with the 2YP and the other with the 2YP–A, so long as the 2YP–A represents more than 30 borrowers whose loans entered repayment. Provided that both loan repayment rates are calculated, the Secretary determines whether the program meets the minimum standard under paragraph (a)(1)(i) of this section by using the higher of the 2YP rate or the 2YP–A rate.

(2) *Loans Paid in Full (LPF).* (i) LPF are loans that have never been in default or, in the case of a Federal Consolidation Loan or a Direct Consolidation Loan, neither the consolidation loan nor the underlying loan or loans have ever been in default and that have been paid in full by a borrower. A loan that is paid through a Federal Consolidation loan, a Direct Consolidation loan, or under another refinancing process provided for under the HEA, is not counted as paid-in-full for this purpose until the consolidation loan or other financial instrument is paid in full by the borrower.

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

(3) *Payments-Made Loans (PML).* (i) PML are loans that have never been in default or, in the case of a Federal Consolidation Loan or a Direct Consolidation Loan, neither the consolidation loan nor the underlying loan or loans have ever been in default, where—

(A)(*1*) Payments made by a borrower during the most recently completed FY reduce the outstanding balance of a loan, including the outstanding balance of a Federal Consolidation Loan or Direct Consolidation Loan, to an amount that is less than the outstanding balance of the loan at the beginning of that FY. The outstanding balance of a loan includes any unpaid accrued interest that has not been capitalized; or

(*2*) If the program is a post-baccalaureate certificate, master's degree, doctoral degree, or first-professional degree program, the total outstanding balance of a Federal or Direct Consolidation Loan at the end of

the most recently completed FY is less than or equal to the total outstanding balance of the consolidation loan at the beginning of the FY. The outstanding balance of the consolidation loan includes any unpaid accrued interest that has not been capitalized;

(B) A borrower is in the process of qualifying for Public Service Loan Forgiveness under 34 CFR 685.219(c) and submits an employment certification to the Secretary that demonstrates the borrower is engaged in qualifying employment and the borrower made qualifying payments on the loan during the most recently completed FY; or

(C)(*1*) Except as provided under paragraph (b)(3)(i)(C)(*2*) of this section, a borrower in the income-based repayment plan (IBR), income contingent repayment plan (ICR), or any other repayment plan makes scheduled payments on the loan during the most recently completed FY for an amount that is equal to or less than the interest that accrues on the loan during the FY. The Secretary limits the dollar amount of these interest-only or negative amortization loans in the numerator of the ratio to no more than 3 percent of the total amount of OOPB in the denominator of the ratio, based on available data on a program's borrowers who are making scheduled payments under these repayment plans.

(*2*) Until the Secretary determines that there is sufficiently complete data on which of the program's borrowers have scheduled payments that are equal to or less than accruing interest, the Secretary will include in the numerator 3 percent of the OOPB in the denominator.

(*3*) Notwithstanding paragraph (b)(3)(i)(C)(*1*) of this section, with regard to applying the percent limitation on the dollar amount of the interest-only or negative amortization loans, the Secretary may adjust the limitation by publishing a notice in the **Federal Register.** The adjusted limitation may not be lower than the percent limitation specified in paragraph (b)(3)(i)(C)(*1*) of this section or higher than the estimated percentage of all outstanding Federal student loan dollars that are interest-only or negative amortization loans.

(ii) The OOPB of PML in the numerator of the ratio is the total amount of OOPB for the loans described in paragraph (b)(3)(i) of this section.

(4) *Exclusions.* For the most recently completed FY, the OOPB of the following loans is excluded from both the numerator and the denominator of the ratio:

(i) Loans that were in an in-school deferment status during any part of the FY.

(ii) Loans that were in a military-related deferment status during any part of the FY.

(iii) Loans that were discharged as a result of the death of the borrower under 34 CFR 682.402(b) or 34 CFR 685.212(a).

(iv) Loans that were assigned or transferred to the Secretary that are being considered for discharge as a result of the total and permanent disability of the borrower, or were discharged by the Secretary on that basis under 34 CFR 682.402(c) or 34 CFR 685.212(b).

(c) *Debt-to-earnings ratios.* (1) *General.* For each FY, the Secretary calculates the debt-to-earnings ratios using the following formulas:

(i) Discretionary income rate = Annual loan payment/(Mean or Median Annual Earnings − (1.5 × Poverty Guideline)).

(ii) Earnings rate = Annual loan payment/Mean or Median Annual Earnings.

(2) *Annual loan payment.* The Secretary determines the annual loan payment for a program by—

(i) Calculating the median loan debt of the program by—

(A) For each student who completed the program during the 2YP, the 2YP–R, the 4YP, or the 4YP–R, determining the lesser of—

(*1*) The amount of loan debt the student incurred, as determined under paragraph (c)(4) of this section; or

(*2*) If tuition and fee information is provided by the institution, the total amount of tuition and fees the institution charged the student for enrollment in all programs at the institution; and

(B) Using the lower amount obtained under paragraph (c)(2)(i)(A) of this section for each student in the calculation of the median loan debt for the program; and

(ii) Using the median loan debt for the program and the current annual interest rate on Federal Direct Unsubsidized Loans to calculate the annual loan payment based on—

(A) A 10-year repayment schedule for a program that leads to an undergraduate or post-baccalaureate certificate or to an associate's degree;

(B) A 15-year repayment schedule for a program that leads to a bachelor's or master's degree; or

(C) A 20-year repayment schedule for a program that leads to a doctoral or first-professional degree.

(3) *Annual earnings.* The Secretary obtains from the Social Security Administration (SSA), or another Federal agency, the most currently available mean and median annual earnings of the students who completed the program during the 2YP, the 2YP–R, the 4YP, or the 4YP–R. The Secretary calculates the debt-to-earnings ratios using the higher of the mean or median annual earnings.

(4) *Loan debt.* In determining the loan debt for a student, the Secretary—

(i) Includes FFEL and Direct loans (except for parent PLUS or TEACH Grant-related loans) owed by the student for attendance in a program, and as reported under § 668.6(a)(1)(i)(C)(*2*), any private education loans or debt obligations arising from institutional financing plans;

(ii) Attributes all the loan debt incurred by the student for attendance in programs at the institution to the highest credentialed program subsequently completed by the student at the institution; and

(iii) Does not include any loan debt incurred by the student for attendance in programs at other institutions. However, the Secretary may include loan debt incurred by the student for attending other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(5) *Exclusions.* For the FY the Secretary calculates the debt-to-earnings ratios for a program, a student in the applicable two- or four-year period that completed the program is excluded from the ratio calculations if the Secretary determines that—

(i) One or more of the student's loans were in a military-related deferment status at any time during the calendar year for which the Secretary obtains earnings information under paragraph (c)(3) of this section;

(ii) The student died;

(iii) One or more of the student's loans were assigned or transferred to the Secretary and are being considered for discharge as a result of the total and permanent disability of the student, or were discharged by the Secretary on that basis under 34 CFR 682.402(c) or 34 CFR 685.212(b); or

(iv) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c)(3) of this section.

(d) *Small numbers.* (1) The Secretary calculates the debt measures for a program with a small number of borrowers or completers by using the 4YP or the 4YP–R, as applicable, if—

(i) For the loan repayment rate, the corresponding 2YP or the 2YP–R represents 30 or fewer borrowers whose loans entered repayment after any of

those loans are excluded under paragraph (b)(4) of this section; or

(ii) For the debt-to-earnings ratios, the corresponding 2YP or the 2YP–R represents 30 or fewer students who completed the program after any of those students are excluded under paragraph (c)(5) of this section.

(2) In lieu of the minimum standards in paragraph (a)(1) of this section, the program satisfies the debt measures if—

(i)(A) The 4YP or the 4YP–R represents, after any exclusions under paragraph (b)(4) or (c)(5) of this section, 30 or fewer borrowers whose loans entered repayment or 30 or fewer students who completed the program; or

(B) SSA did not provide the mean and median earnings for the program as provided under paragraph (c)(3) of this section; or

(ii) The median loan debt calculated under paragraph (c)(2)(i) of this section is zero.

(e) *Draft debt measures and data corrections.* For each FY beginning with FY 2012, the Secretary issues draft results of the debt measures for each program offered by an institution. As provided under this paragraph, the institution may correct the data used to calculate the draft results before the Secretary issues final debt measures under paragraph (f) of this section.

(1) *Pre-draft corrections process for the debt-to-earnings ratios.* (i) Before issuing the draft results of the debt-to-earnings ratios for a program, the Secretary provides to an institution a list of the students who will be included in the applicable two- or four-year period for calculating the ratios. No later than 30 days after the date the Secretary provides the list to the institution, in accordance with procedures established by the Secretary, the institution may—

(A) Provide evidence showing that a student should be included on or removed from the list; or

(B) Correct or update the identity information provided for a student on the list, such as name, social security number, or date of birth.

(ii) After the 30 day correction period, the institution may no longer challenge whether students should be included on the list or update the identity information of those students.

(iii) If the information provided by the institution under paragraph (e)(1)(i) of this section is accurate, the updated information is used to create a final list of students that the Secretary submits to SSA. The Secretary calculates the draft debt-to-earnings ratios based on the mean and median earnings provided by SSA for the students on the final list.

(iv) An institution may not challenge the accuracy of the mean or median annual earnings the Secretary obtained from SSA to calculate the draft debt-to-earnings ratios for the program.

(2) *Post-draft corrections process for the debt measures.* No later than 45 days after the Secretary issues the draft results of the debt-to-earnings ratios for a program and no later than 45 days after the Secretary issues the draft results of the loan repayment rate for a program, respectively, in accordance with procedures established by the Secretary, an institution—

(i) May challenge the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate, or the median loan debt for the program that was used for the numerator of the draft debt-to-earnings ratios, by submitting evidence showing that the borrower loan data or the program median loan debt is inaccurate; and

(ii) May challenge the accuracy of the list of borrowers included in the applicable two- or four-year period used to calculate the draft loan repayment rate by—

(A) Submitting evidence showing that a borrower should be included on or removed from the list; or

(B) Correcting or updating the identity information provided for a borrower on the list, such as name, social security number, or date of birth.

(3) *Recalculated results.* (i) *Debt measures.* In general, if the information provided by an institution under paragraph (e)(2) of this section is accurate, the Secretary uses the corrected information to recalculate the debt measures for the program.

(ii) *Debt-to-earnings ratios.* For a failing program, if SSA is unable to include in its calculation of the mean and median earnings for the program one or more students on the list finalized under paragraph (e)(1)(iii) of this section, the Secretary adjusts the median loan debt by removing the highest loan debt associated with the number of students SSA is unable to include in its calculation. For example, if SSA is unable to include three students in its calculation, the Secretary removes the loan debt for the same number of students on the list that had the highest loan debt. The Secretary recalculates the debt-to-earnings ratios for the program based on the adjusted median loan debt.

(f) *Final debt measures.* The Secretary notifies an institution of any draft results that are not challenged, or are recalculated or unsuccessfully challenged under paragraph (e) of this section. These results become the final debt measures for the program.

(g) *Alternative earnings.* (1) *General.* An institution may demonstrate that a failing program, as defined under paragraph (h) of this section, would meet a debt-to-earnings standard by recalculating the debt-to-earnings ratios using the median loan debt for the program as determined under paragraph (c) of this section, and alternative earnings from: a State-sponsored data system; an institutional survey conducted in accordance with NCES standards; or, for FYs 2012, 2013, and 2014, the Bureau of Labor Statistics (BLS).

(2) *State data.* For final debt-to-earnings ratios calculated by the Secretary for FY 2012 and any subsequent FY, an institution may use State data to recalculate those ratios for a failing program only if the institution—

(i) Obtains earnings data from State-sponsored data systems for more than 50 percent of the students in the applicable two- or four-year period, or a comparable two- or four-year period, and that number of students is more than 30;

(ii) Uses the actual, State-derived mean or median earnings of the students in the applicable two- or four-year period under paragraph (g)(2)(i) of this section; and

(iii) Demonstrates that it accurately used the actual State-derived data to recalculate the ratios.

(3) *Survey data.* For final debt-to-earnings ratios calculated by the Secretary for FY 2012 and any subsequent FY, an institution may use survey data to recalculate those ratios for a failing program only if the institution—

(i) Uses reported earnings obtained from an institutional survey conducted of the students in the applicable two- or four-year period, or a comparable two- or four-year period, and the survey data is for more than 30 students. The institution may use the mean or median annual earnings derived from the survey data;

(ii) Submits a copy of the survey and certifies that it was conducted in accordance with the statistical standards and procedures established by NCES and available at *http://nces.ed.gov;* and

(iii) Submits an examination-level attestation by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the specified NCES standards and procedures. The attestation must be conducted in accordance with the general, field work, and reporting standards for attestation engagements contained in the GAO's

Government Auditing Standards, and with procedures for attestations contained in guides developed by and available from the Department of Education's Office of Inspector General.

(4) *BLS data.* For the final debt-to-earnings ratios calculated by the Secretary for FYs 2012, 2013, and 2014, an institution may use BLS earnings data to recalculate those ratios for a failing program only if the institution—

(i) Identifies and provides documentation of the occupation by SOC code, or combination of SOC codes, in which more than 50 percent of the students in the 2YP or 4YP were placed or found employment, and that number of students is more than 30. The institution may use placement records it maintains to satisfy accrediting agency or State requirements if those records indicate the occupation in which the student was placed. Otherwise, the institution must submit employment records or other documentation showing the SOC code or codes in which the students typically found employment;

(ii) Uses the most current BLS earnings data for the identified SOC code to calculate the debt-to-earnings ratio. If more than one SOC code is identified under paragraph (g)(4)(i) of this section, the institution must calculate the weighted average earnings of those SOC codes based on BLS employment data or institutional placement data. In either case, the institution must use BLS earnings at no higher than the 25th percentile; and

(iii) Submits, upon request, all the placement, employment, and other records maintained by the institution for the program under paragraph (g)(4)(i) of this section that the institution examined to determine whether those records identified the SOC codes for the students who were placed or found employment.

(5) *Alternative earnings process.* (i) In accordance with procedures established by the Secretary, the institution must—

(A) Notify the Secretary of its intent to use alternative earnings no later than 14 days after the date the institution is notified of its final debt measures under paragraph (f) of this section; and

(B) Submit all supporting documentation related to recalculating the debt-to-earnings ratios using alternative earnings no later than 60 days after the date the institution is notified of its final debt measures under paragraph (f) of this section.

(ii) Pending the Secretary's review of the institution's submission, the institution is not subject to the requirements arising from the program's failure to satisfy the debt measures, provided the submission was complete, timely, and accurate.

(iii)(A) If the Secretary denies the institution's submission, the Secretary notifies the institution of the reasons for the denial and the debt measures under paragraph (f) of this section become the final measures for the FY; or

(B) If the Secretary approves the institution's submission, the recalculated debt-to-earnings ratios become final for that FY.

(6) *Dissemination.* After the Secretary calculates the final debt measures, including the recalculated debt-to-earnings ratios under this section, and provides those debt measures to an institution—

(i) In accordance with § 668.6(b)(1)(v), the institution must disclose for each of its programs, the final loan repayment rate under paragraph (b) of this section, and final debt-to-earnings ratio under paragraph (c)(1)(ii) of this section; and

(ii) The Secretary may disseminate the final debt measures and information about, or related to, the debt measures to the public in any time, manner, and form, including publishing information that will allow the public to ascertain how well programs perform under the debt measures and other appropriate objective metrics.

(h) *Failing program.* Except for the small numbers provisions under paragraph (d) of this section, starting with the debt measures calculated for FY 2012, a program fails for a FY if its final debt measures do not meet any of the minimum standards in paragraph (a)(1)(i) or (ii) of this section.

(i) *Ineligible program.* Except as provided under paragraph (k) of this section, starting with the debt measures calculated for FY 2012, a failing program becomes ineligible if it does not meet any of the minimum standards in paragraph (a)(1) of this section for three out of the four most recent FYs. The Secretary notifies the institution that the program is ineligible on this basis, and the institution may no longer disburse title IV, HEA program funds to students enrolled in that program except as permitted using the procedures in § 668.26(d).

(j) *Debt warnings.* Whenever the Secretary notifies an institution under paragraph (h) of this section of a failing program, the institution must warn in a timely manner currently enrolled and prospective students of the consequences of that failure.

(1) *First year failure.* (i) For a failing program that does not meet the minimum standards in paragraph (a)(1) of this section for a single FY, the institution must provide to each enrolled and prospective student a warning prepared in plain language and presented in an easy to understand format that—

(A) Explains the debt measures and shows the amount by which the program did not meet the minimum standards; and

(B) Describes any actions the institution plans to take to improve the program's performance under the debt measures.

(ii) The warning must be delivered orally or in writing directly to the student in accordance with the procedures established by the institution. Delivering the debt warning directly to the student includes communicating with the student face-to-face or telephonically, communicating with the student along with other affected students as part of a group presentation, and sending the warning to the student's e-mail address.

(iii) If an institution opts to deliver the warning orally to a student, it must maintain documentation of how that information was provided, including any materials the institution used to deliver that warning and any documentation of the student's presence at the time of the warning.

(iv) An institution must continue to provide the debt warning until it is notified by the Secretary that the failing program now satisfies one of the minimum standards in paragraph (a)(1) of this section.

(2) *Second year failure.* (i) For a failing program that does not meet the minimum standards in paragraph (a)(1) of this section for two consecutive FYs or for two out of the three most recently completed FYs, the institution must provide the debt warning under paragraph (j)(1) of this section in writing in an easy to understand format and include in that warning—

(A) A plain language explanation of the actions the institution plans to take in response to the second failure. If the institution plans to discontinue the program, it must provide the timeline for doing so, and the options available to the student;

(B) A plain language explanation of the risks associated with enrolling or continuing in the program, including the potential consequences for, and options available to, the student if the program becomes ineligible for title IV, HEA program funds;

(C) A plain language explanation of the resources available, including *http://www.collegenavigator.gov,* that the student may use to research other educational options and compare program costs; and

(D) A clear and conspicuous statement that a student who enrolls or

continues in the program should expect to have difficulty repaying his or her student loans.

(ii) An institution must continue to provide this warning to enrolled and prospective students until the program has met one of the minimum standards for two of the last three FYs.

(3) *Timely warnings.* An institution must provide the warnings described in this paragraph to—

(i) An enrolled student, as soon as administratively feasible but no later than 30 days after the date the Secretary notifies the institution that the program failed; and

(ii) A prospective student at the time the student first contacts the institution requesting information about the program. If the prospective student intends to use title IV, HEA program funds to attend the program—

(A) The institution may not enroll the student until three days after the debt warnings are first provided to the student under this paragraph; and

(B) If more than 30 days pass from the date the debt warnings are first provided to the student under this paragraph and the date the student seeks to enroll in the program, the institution must provide the debt warnings again and may not enroll the student until three days after the debt warnings are most recently provided to the student under this paragraph.

(4) *Web site and promotional materials.* For the second-year debt warning in paragraph (j)(2) of this section, an institution must prominently display the debt warning on the program home page of its Web site and include the debt warning in all promotional materials it makes available to prospective students. These debt warnings may be provided in conjunction with the disclosures required under § 668.6(b)(2).

(5) *Voluntarily discontinued failing program.* An institution that voluntarily discontinues a failing program under paragraph (l)(1) of this section, must notify enrolled students at the same time that it provides the written notice to the Secretary that it relinquishes the program's title IV, HEA program eligibility.

(6) *Alternative language.* To the extent practicable, the institution must provide alternatives to English-language warnings for those students for whom English is not their first language.

(k) *Transition year.* For programs that become ineligible under paragraph (i) of this section based on final debt measures for FYs 2012, 2013, and 2014, the Secretary caps the number of those ineligible programs by—

(1) Sorting all programs by category of institution (public, private nonprofit, and proprietary) and then by loan repayment rate, from the lowest rate to the highest rate; and

(2) For each category of institution, beginning with the ineligible program with the lowest loan repayment rate, identifying the ineligible programs that account for a combined number of students who completed the programs during FY 2014 that do not exceed 5 percent of the total number of students who completed programs in that category. For example, the Secretary does not designate as ineligible a program, or two or more programs that have the same loan repayment rate, if the total number of students who completed that program or programs would exceed the 5 percent cap for an institutional category.

(l) *Restrictions for ineligible and voluntarily discontinued failing programs.* (1) *General.* An ineligible program, or a failing program that an institution voluntarily discontinues, remains ineligible until the institution reestablishes the eligibility of that program under the provisions in 34 CFR 600.20(d). For this purpose, an institution voluntarily discontinues a failing program on the date the institution provides written notice to the Secretary that it relinquishes the title IV, HEA program eligibility of that program.

(2) *Periods of ineligibility.* (i) *Voluntarily discontinued failing programs.* An institution may not seek under 34 CFR 600.20(d) to reestablish the eligibility of a failing program that it voluntarily discontinued until—

(A) The end of the second FY following the FY the program was voluntarily discontinued if the institution voluntarily discontinued the program at any time after the program is determined to be a failing program, but no later than 90 days after the date the Secretary notified the institution that it must provide the second year debt warnings under paragraph (j)(2) of this section; or

(B) The end of the third FY following the FY the program was voluntarily discontinued if the institution voluntarily discontinued the program more than 90 days after the date the Secretary notified the institution that it must provide the second year debt warnings under paragraph (j)(2) of this section.

(ii) *Ineligible programs.* An institution may not seek under 34 CFR 600.20(d) to reestablish the eligibility of an ineligible program, or to establish the eligibility of a program that is substantially similar to the ineligible program, until the end of the third FY following the FY the program became ineligible. A program is substantially similar to the ineligible program if it has the same credential level and the same first four digits of the CIP code as that of the ineligible program.

(Approved by the Office of Management and Budget under control number 1845–0109)

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

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

Appendix A—Regulatory Impact Analysis

Introduction

Institutions providing gainful employment programs offer important opportunities to Americans seeking to expand their skills and earn postsecondary degrees and certificates. In too many instances, however, programs leave large numbers of students with unaffordable debts and poor employment prospects. The Department of Education (the Department) has a particularly strong interest in ensuring that institutions that are heavily reliant on Federal funding promote successful student academic and career opportunities. When colleges earn profits, they should do so in the process of helping their students achieve success.

These final gainful employment regulations include a number of changes from the proposed regulations published on July 26, 2010, reflecting the extensive public input received by the Department. The changes are intended to give failing programs an opportunity to improve, rather than immediately removing their eligibility, and to identify accurately the worst-performing gainful employment programs. However, the final regulations require that all federally funded gainful employment programs meet minimal standards because students and taxpayers have too much at stake.

This Regulatory Impact Analysis is divided into nine sections. In *Need for Regulatory Action,* the Department discusses the problems of high debt and poor employment prospects at some postsecondary programs. This information complements the analysis presented in the notice of proposed rulemaking (NPRM) and the preamble to these final regulations. This section also provides an overview of the Department's efforts to improve the functioning of the market for postsecondary training by informing student choices, collecting new information and setting minimum performance standards.

The section titled *Summary of Changes From the NPRM* summarizes the most important revisions the Department made in these final regulations. These changes were informed by the Department's consideration of over 90,000 public comments. The changes are intended to give failing programs an opportunity to improve, target the worst performing programs, improve the repayment rate and debt-to-earnings measurements, and improve the information available to students. At the time the Department

released the NPRM, it estimated that approximately 5 percent of programs would lose student aid eligibility. Because the final regulations give programs an opportunity to improve, only 2 percent of programs are expected to lose eligibility (based upon the revised model described in this document and excluding programs that are too small to measure accurately). Under the final regulations, 8 percent of programs subject to the debt measures would fail them at least once.

Under *NPRM Comment Review,* the Department presents its statistical analysis of one claim heard frequently in the comments: That the NPRM would have threatened access to education for low-income students and members of racial and ethnic minorities. The Department does not believe that enrolling large numbers of disadvantaged students justifies leaving those students with debts they cannot afford. We also present data demonstrating that student body characteristics explain a small amount of the variation in performance on the debt measures, and many programs perform well even if a large percentage of their students come from disadvantaged backgrounds—suggesting that certain programs do a better job than others of working with these populations. Under this section, the Department also discusses two economic analyses submitted as comments on the NPRM.

In *Analysis of Final Regulations,* the Department first describes the data and analytic tools it developed to estimate the impact of these regulations. It then presents the estimated impact on programs, students, and revenues under two sets of assumptions.

The *Discussion of Costs and Benefits* section considers the implications of these estimates for students, businesses, the Federal Government, and State and local governments. In some cases, these costs and benefits are difficult to quantify. The benefits of the final regulations for students that are discussed in this section include:

- Improved market information and development of measures linking programs to labor market outcomes;
- Improved retention, graduation and default rates; and
- Better return on money spent on education.

The overall costs of the rule fall into three categories: An increase in educational expenses when students transfer from failing programs to succeeding programs, paperwork costs associated with complying with the regulations, and other compliance costs that may be incurred by institutions as they attempt to improve their programs to avoid losing their eligibility for title iv Higher Education Act funds.

We also looked at distributional issues associated with the impact of this regulation. For institutions, the impact of the final regulations is mixed. Institutions with failing programs, including programs that lose eligibility, are likely to see lower revenues. On the other hand, institutions with high-performing programs are likely to see growing enrollment and revenue and to benefit from additional market information that permits institutions to demonstrate the value of their programs.

The impact of the regulations on Federal, State, and local tax revenue is difficult to estimate reliably. Tax revenues could fall to the extent that companies that provide postsecondary education and training pay less in corporate taxes and lay off employees and fewer students earn credentials. On the other hand, tax revenues could rise due to growth in programs with higher completion rates that offer credentials that carry greater economic benefits. Overall, however, as discussed further in the Net Budget Impacts section, we estimate that the final regulations will save the Federal Government between $23 million and $51 million on an annualized basis.

Under *Paperwork Burden Costs,* the Department estimates the paperwork burden of these regulations on institutions and students.

Under *Net Budget Impacts,* the Department presents its estimate that the final regulations will save the Federal Government between $23 million and $51 million per year. The largest factor in these savings is a reduced expenditure on Pell Grants.

The *Alternatives Considered* section describes different approaches for defining "gainful employment" proposed by commenters. Some of these approaches, including graduation and placement rates, a higher repayment rate threshold, an index, alternative debt measures, and default rates, were previously discussed by the Department in the negotiated rulemaking process, the NPRM, or both.

Finally, the *Final Regulatory Flexibility Analysis* considers issues relevant to small businesses and nonprofit institutions.

Pursuant to the terms of the Executive Order 12866, issued on September 30, 1993, we have determined that this regulatory action will have an annual effect on the economy of more than $100 million. Notwithstanding this determination, we have assessed the potential costs and benefits—both quantitative and qualitative—of this regulatory action. The agency believes that the benefits justify the costs.

The Department has also reviewed these regulations pursuant to Executive Order 13563, issued on January 18, 2011. Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." In its February 2, 2011, memorandum (*M–11–10*) on Executive Order 13563, the Office of Information and Regulatory Affairs within the Office of Management and Budget emphasized that such techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these regulations only upon a reasoned determination that their benefits justify their costs and that we selected, in choosing among alternative regulatory approaches, those approaches that maximize net benefits. Based on the analysis below, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

I. Need for Regulatory Action

Executive Order 12866 emphasizes that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." In this case, there is indeed a compelling public need for regulation. The Department's goal in regulating is to ensure that programs eligible for funding under title IV of the Higher Education Act of 1965, as amended (HEA), are preparing students for gainful employment, students seeking postsecondary training are not left with unaffordable debts and poor employment prospects, and the Federal investment of student aid dollars is well spent. Existing Federal law attempts to meet these aims through the required disclosure by institutions of information to prospective and current students on a range of issues including: cost of attendance, net price, graduation rates, and student financial aid (HEA Sec. 485 and Sec. 132). Nonetheless, there is evidence that students have significant misperceptions about the economic returns of pursuing a college education, tending to significantly overestimate their expected earnings as a college graduate.[1] Students and their families also lack access to critical information needed to navigate a nuanced higher education marketplace in order to make more optimal choices about where to pursue a postsecondary education.[2] Additionally,

[1] Christopher Avery and Thomas Kane, "Student Perceptions of College Opportunities," *http://www.nber.org/chapters/c10104.pdf.*

[2] C. Anthony Broh and Dana Ansel, "Planning for College: A Consumer Approach to the Higher Education Marketplace," Mass INC, February 2010,

limitations exist on the availability of comparison indicators for educational quality that help families balance the increased risks associated with financing college.

Though the HEA does not enumerate individual educational quality indicators that students and families would need in order to properly assess the value of college, it does stipulate that vocationally oriented programs must prepare students for "gainful employment in a recognized occupation." While institutions in all sectors offer programs that are subject to this requirement, for-profit institutions represent a disproportionately large share of programs that must meet this standard, as it appears in the HEA. According to the Department's analysis of data from the Integrated Postsecondary Education Data System (IPEDS), for-profit institutions represent 7 percent of higher education programs nationally and 12 percent of students enrolled in postsecondary education. But for-profit institutions account for 46 percent of students enrolled in programs that would be subject to the final debt measures and for 38 percent of programs that would be subject to the final debt measures. Moreover, data collected by the Department and other organizations, which are detailed below, highlight a number of issues that suggest many programs at for-profit institutions are not providing students with training leading to gainful employment in a recognized occupation, leaving them with debts they cannot afford and poor employment prospects. These issues include: Greater relative costs; high default rates that lead to significantly deleterious effects on borrowers; low completion and retention rates; and high-pressure sales and marketing tactics and a lack of access to information that deprive potential students of the opportunity to make thoughtful decisions.

Though for-profit institutions are a diverse, innovative, and fast-growing group of institutions that typically offer flexible course schedules and online programs that serve nontraditional students, they generally charge higher tuitions than their public and private nonprofit counterparts. According to the College Board's 2010 Trends in College Pricing report, students attending for-profit institutions faced an average tuition and fee charge of $13,935—more than $6,300 higher than the average cost of tuition and fees at a public 4-year institution and over five times the cost of a public 2-year institution.[3] And even though for-profit institutions do not have to contend with the loss of tax revenue and growing budget deficits that have caused States to reduce support for public higher education and raise tuition, the average cost to attend a for-profit institution increased by $524 and $124 more than public 2- and 4-year institutions, respectively, from 2009–10 to 2010–11.

Not only do students attending for-profit institutions face higher tuition and fee charges, but on average they receive less grant assistance to lower their expenses. According to an analysis of the 2007–08 National Postsecondary Student Aid Study (NPSAS 2008) conducted by the National Center for Education Statistics (NCES), students attending for-profit institutions received on average just $3,200 in total grant aid, which includes Federal, State, local, institutional, and all other sources.[4] By contrast, students at 4-year public and private, nonprofit institutions on average received $5,200 and $10,200, respectively.

As a result of higher tuition and lower grant assistance, students are significantly more likely to assume debt in order to attend a for-profit institution than any other type of college or university. According to NPSAS, 91.6 percent of students at for-profit institutions borrowed to finance their education in 2007–08. By contrast, the sector with the next highest borrowing rate was at 4-year private nonprofit institutions, where 58.9 percent of students borrowed. At public 2- and 4-year institutions just 13.2 percent and 46.2 percent, respectively, of students borrowed. Not only do students at for-profit institutions borrow at a greater rate than their peers, on average, the amount they borrow is greater than all but one sector. Students at for-profit institutions on average borrowed $8,100 compared to $6,600 for students at public 4-year institutions and $4,100 for students at public 2-year institutions. That said, students attending private nonprofit 4-year institutions did borrow $1,000 more on average, but this fails to capture the fact that the most popular programs at proprietary institutions are typically closer in length to those offered at community colleges, rather than at 4-year universities.

Burdened with higher borrowing rates and larger debt levels, borrowers at for-profit institutions have worse repayment outcomes than their peers at other institutions. For the 2008 cohort year, 46 percent of the student loans (weighted in dollars) that are borrowed by students at 2-year for-profit institutions are expected to default over the life of the loan, compared to 16 percent across all types of institutions. Similarly, the Department's cohort default rate shows that for-profit institutions account for a disproportionate share of defaults. In the 2008 cohort, students at for-profit institutions represented just 12 percent of students, but they accounted for 26 percent of borrowers and over 46 percent of students who defaulted within three years of leaving school.[5] In fact, for-profit institutions produced a larger share of students who defaulted on their loans than the entire public sector of higher education combined.

Former students who cannot afford to repay their loans face very serious challenges. Discharging Federal student loans in bankruptcy is very rare, and the common consequences of default include large fees and interest charges; struggles to rent or buy a home, buy a car, or get a job; aggressive actions by collection agencies, including lawsuits and garnishment of wages; and the loss of tax refunds and even Social Security benefits. Collection costs can add 25 percent to the outstanding loan balance, borrowers are no longer entitled to any deferments or forbearances, and students may be ineligible for any additional student aid until they have reestablished a good repayment history.

Retention and graduation rates vary considerably among institutions and types of institutions. According to NPSAS data, just 27.8 percent of students at for-profit institutions who entered a bachelor's degree program in the 2003–04 academic year attained that credential by 2009; the figures at public and private nonprofit institutions were 62.3 percent and 69.0 percent, respectively.[6] Though students entering associate's degree programs at for-profit institutions earned that credential at a rate slightly above their peers at public sector institutions, even then, for every student who began at an associate's degree program at a for-profit institution and earned that credential, there were almost two others who had left with no degree to show for their time. As discussed more fully under the *Discussion of Costs and Benefits* heading, institutions with low repayment rates also have lower retention and graduation rates and higher default rates. These results are not surprising, as multiple research studies have demonstrated that program completion is one of the most predictive factors of whether or not a student will default on his or her loans.[7] This finding suggests that students who enrolled but did not graduate have lower income prospects than those who do. There are also a number of studies that have also found that borrowers with lower incomes are more likely to default than those with higher incomes.[8]

There is also evidence that for-profit institutions have engaged in high-pressure or deceptive sales tactics. In recent years, evidence surfaced about some for-profit institutions illegally paying their representatives bonuses or commissions based upon the number of students they recruit or enroll. The Government Accountability Office and other investigators have also found evidence of high-pressure

http://www.massinc.org/~/media/Files/Mass%20Inc/Research/Executive%20Summary%20PDF%20files/report_ES.ashx.

[3] College Board, "Tuition and Fee and Room and Board Charges, 2010–11," available at *http://trends.collegeboard.org/college_pricing/report_findings/indicator/Tuition_and_Fee_and_Room_and_Board_Charges_2010_11.*

[4] National Center for Education Statistics, "Trends in Student Financing of Undergraduate Education: Selected Years, 1995–96 to 2007–08," available at *http://nces.ed.gov/pubs2011/2011218.pdf,* Page 17.

[5] Department analysis of unduplicated headcount data from IPEDS and three-year cohort default rate information from the Office of Federal Student Aid.

[6] Analysis of NPSAS data using the PowerStats data analysis tool at *http://nces.ed.gov/datalab/powerstats/output.aspx.*

[7] For a review of research on the connection between program completion and default, see Jacob P.K. Gross, Osman Cekic, Don Hossler, and Nick Hillman, "What Matters in Student Loan Default: A Review of the Research Literature," Journal of Student Aid, Volume 39, No. 1, *http://www.nasfaa.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=1312,* Page 7.

[8] Lance Lochner & Alexander Monge-Naranjo, Education and Default Incentives with Government Student Loan Programs, 2002; Robin McMillion, "Student Loan Default Literature Review," Texas Guaranty Agency, 2004.

and deceptive recruiting practices at for-profit institutions.[9]

Students enrolling in a postsecondary program often have limited information, little or no experience choosing among postsecondary programs, and asymmetric information relative to the educational institution. Studies indicate that these gaps in information sometimes lead to students and their families making suboptimal choices in their educational pursuits, including what institution to attend, how to weigh the costs and benefits of attending, and how to finance their postsecondary education.[10] The complexity of the choice structure falls short of allowing students and their families to appropriately weigh the costs and benefits of their educational decisions. In this environment, straightforward measures of a student's educational pursuits in relation to their educational outcomes would promote more optimal choices.

Executive Order 13563, Section 4, notes that "Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. These approaches include warnings, appropriate default rules, and disclosure requirements as well as provision of information to the public in a form that is clear and intelligible." Consistent with this section of the Executive Order the Department is enhancing the information available to prospective and enrolled students through both these final regulations and earlier regulations released last year. The Department began with efforts to help students make good choices, including disclosure requirements, the provision of information, and warnings. On October 29, 2010, the Department published regulations (75 FR 66832) (Program Integrity Issues final regulations) requiring institutions with programs that prepare students for gainful employment in a recognized occupation to disclose key performance information on their Web site and in promotional materials to prospective students. The required elements include the on-time completion rate, placement rate, median loan debt, program cost, and other information. The Department is developing a disclosure form with the benefit of public comment.

In addition, subject to § 668.7(g)(6) as established by these regulations, the Secretary may disseminate the final debt measures calculated under these regulations at any time and in any manner and form. The information provided in the repayment rate, graduate earnings, and the debt-to-earnings ratio is currently unavailable to most students from any source. The Department is considering steps to provide these metrics and other key indicators to facilitate access to the information and the comparison of programs.

Another strategy to improve decision-making is the requirement that failing programs provide debt warnings to prospective and enrolled students under § 668.7(j) of these final regulations. After a program fails the minimum standards one time, the institution must alert prospective and enrolled students that the program has failed, explain the debt measures, show the amount by which the program did not meet the minimum standards, and describe any steps the institution plans to take to improve the program's performance under the debt measures. After a program fails the minimum standards in two consecutive fiscal years (FY) or in two of the three most recent FYs—and thus is one year away from a potential loss of eligibility—the institution must provide prospective and enrolled students with the same information as well as its plans in response to the second failure, including any plans to discontinue the program, the risks for students if the program loses title IV, HEA eligibility, the resources available to students to research other educational options, and a clear and conspicuous statement that a student who enrolls or continues to enroll in the program should expect to have difficulty repaying his or her student loans.

Despite the efforts described above, the Department recognizes that information alone is insufficient to ensure that students are well served by their educational programs. Exacerbating these challenges is a failure to align institutional incentives with student success because the amount of aid students receive is based upon their enrollment. While loan defaults cost students and taxpayers, generally there are no consequences for institutions (except in the rare instances where at least 25 percent of their students default within two years of entering repayment for three consecutive years).[11] Recognizing students' challenges in choosing among available programs and the poor alignment of incentives, the Department is setting minimum performance standards for gainful employment programs receiving Federal funding.

To provide an additional layer of protection for students and taxpayers and ensure that institutions consider the affordability of the loans provided to their students, the Department is defining a set of measures that identifies the lowest performing programs in terms of the ability of students to repay their student loan debt. The repayment rate threshold and the debt-to-earnings ratios set minimum standards and are designed to allow programs an opportunity to improve before losing title IV, HEA eligibility.

II. Summary of Changes From the NPRM

Definition of a Program

In response to uncertainty concerning the definition of a program, the Department has clarified that a program would be defined by the combination of the six-digit Office of Postsecondary Education ID (OPEID), six-digit Classification of Instructional Programs (CIP) code, and credential level. A program offered at multiple locations reporting under the same six-digit OPEID would be evaluated as one program, and the credential levels to be considered are undergraduate certificate, associate's degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, and first-professional degree.

To estimate the number of programs for this analysis, the Department identified the six-digit CIP code and credential combinations for which awards were granted at each institution in the IPEDS data set generated for the final regulations. For the approximately 92 institutions that did not have program information available, the average number of regulated programs per institution for their sector was applied.

Small Numbers Provision

The small numbers provision finalized in § 668.7(d) requires at least 30 completers in the evaluation pool for the debt-to-earnings measure and at least 30 borrowers entering repayment in the evaluation period for calculation of the repayment rate in order to determine whether a program satisfies the debt measures. Under the NPRM, the treatment of programs with a small number of completers was not fully determined. Under the final regulations, programs that do not meet the minimum threshold of 30 completers in the 2YP or the 2YP–R will be evaluated for a four-year period consisting of years three to six in repayment (4YP) or years six to nine in repayment (4YP–R). Programs that do not meet the 30 completer or borrower requirement in the 4YP or 4YP–R will not be evaluated for ineligibility. Ultimately, if there are insufficient observations, we will not assess an institution's performance against the debt measures. Table 1 summarizes the estimated number of total and regulated programs by sector and the application of the small numbers provision.

[9] U.S. Government Accountability Office, "For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices," GAO–10–948T, available at *http://www.gao.gov/products/GAO-10-948T.*

[10] Bridget Terry Long, "Grading Higher Education," Center for American Progress, December 2010, *http://www.americanprogress.org/issues/2010/12/pdf/longpaper.pdf.*

[11] In 2014, the two-year cohort default rate will be replaced with a three-year cohort default rate.

Table 1: Gainful Employment Programs by Sector and Size

	Total Programs	Gainful Employment Programs	Gainful Employment Programs Exempted by Small Numbers Provision*	Gainful Employment Programs Subject to Debt Measures**		
				Number of Programs	Number of Students	Share of Enrollment in All Gainful Employment Programs
4-year Institutions						
Public	59,367	4,943	3,644	1,299	271,126	84%
Private Nonprofit	60,123	4,400	3,548	851	142,716	85%
Private For-profit	4,246	4,243	1,902	2,341	2,441,217	98%
2-year Institutions						
Public	59,922	30,232	20,684	9,548	3,367,772	87%
Private Nonprofit	903	394	187	207	26,913	94%
Private For-profit	4,762	4,754	1,929	2,825	677,823	97%
Less-than-2-year Institutions						
Public	2,061	2,043	1,013	1,030	108,619	95%
Private Nonprofit	305	279	101	177	35,233	98%
Private For-profit	4,126	4,117	1,347	2,770	643,925	99%
Total	195,816	55,405	34,356	21,049	7,715,344	

*Defined as programs with 30 or fewer completers or students entering repayment in a four-year period.
**Programs that had more than 30 completers and students entering repayment in a four-year period.
Source: National Student Loan Data System (NSLDS) and the Integrated Postsecondary Education Data System (IPEDS).

This small numbers provision is designed to address the greater risk of statistical fluctuation in measuring the performance of programs with small numbers of borrowers or completers, the reduced risk to students or taxpayers posed by these programs, and the need to protect the privacy of individual student borrowers. While the 30 completer and borrower standards remove a number of programs from possible ineligibility under the debt measures, they reduce the chance that the performance of one or two borrowers could result in large variability in a program's performance on the debt measures from year to year. Additionally, while the percentage of programs affected by the small numbers provision is high, especially at 4-year institutions, the remaining regulated programs still represent approximately 92 percent of all students enrolled in gainful employment programs.

Program Eligibility for Continued Funding

Under § 668.7(i), a failing program becomes ineligible after failing the minimum standards for three out of the last four most recently completed FYs—a change from the proposed regulations in which a program became ineligible after failing the minimum standards in one year. Whenever that occurs, the Department notifies the institution that the program is ineligible and that the institution may no longer disburse title IV, HEA program funds to students enrolled in or attending that program for any payment period that begins after the date of the Department's notice, except as permitted using the procedures in 34 CFR 668.26(d). This is a change from the proposed regulations, which allowed institutions to disburse title IV, HEA program funds to students already enrolled in programs for an additional year beyond the payment period in which the notice was received.

Repayment Rate Thresholds

Instead of the three-tiered approach proposed in the NPRM that would have established a restricted zone for programs with repayment rates of at least 35 percent but less than 45 percent, the regulations establish a single, 35 percent repayment rate threshold for eligibility.

Repayment Rate Evaluated Cohorts

The repayment rate calculated for the NPRM evaluated borrowers one to four years into repayment. For most programs, the final regulations will evaluate borrowers three to four years into repayment, so the rate calculated with FY 2012 data and released in 2013 will be based on borrowers who entered repayment in FYs 2008 and 2009. For a program whose students are required to complete a medical or dental internship or residency, a two-year period is the sixth and seventh FYs (2YP–R) prior to the most recently completed FY for which the repayment rates are calculated. For example, if the most recently completed FY is 2012, the 2YP–R is FYs 2005 and 2006. Finally, to provide an alternative for institutions that take immediate steps to improve a program's loan repayment rate, we will calculate the repayment rate based on a two-year period (2YP–A) that includes loans for borrowers who entered repayment during the first and second FYs prior to the current FY. These programs will be evaluated based on the repayment rate from the 2YP or 2YP–A, whichever is higher.

Repayment Rate Balance Comparison

The total balance (principal plus interest) of a borrower's loans associated with a program will be evaluated for the borrower's inclusion in the numerator of the repayment rate calculation instead of the approach described in the NPRM of using only the principal balance.

Borrowers in Alternative Repayment Plans

The final regulations limit the dollar amount of loans in negative amortization or for which the borrower is paying accrued interest only that will be included in the numerator as Original Outstanding Principal Balance (OOPB) of Payments-Made Loans (PML) to no more than 3 percent of the total

amount of OOPB in the denominator of the ratio, instead of the approach described in the NPRM. For the loans associated with a particular program at an institution for which the Department has actual data on borrower repayment plans and scheduled payment amounts, that data will be used to calculate the amount to be included in the OOPB of PML. For programs at institutions for which the Department does not yet have sufficient actual institutional data on a program's borrowers because the loans are not held and serviced by the Department, 3 percent of the OOPB of PML will be included in the numerator. The Department may increase the 3 percent limitation through a notice published in the **Federal Register** if borrowers increase their reliance on interest-only or negative amortization loans over time, except that the limitation may not exceed the estimated percent of all outstanding Federal student loan dollars that are interest-only or negative amortization loans.

Consolidation Loans of Students at Post-Baccalaureate Programs

When calculating the repayment rate for post-baccalaureate programs, we will consider a borrower with a consolidation loan to be successfully repaying his or her loans if the outstanding balance does not increase over the course of the most recently completed FY.

Data Corrections for Repayment Rates

No later than 45 days after the Secretary issues the draft loan repayment rate for a program, in accordance with procedures established by the Secretary, an institution may challenge the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate by submitting evidence showing that the borrower loan data is inaccurate. An institution may also challenge the accuracy of the list of borrowers included in the applicable two- or four-year period used to calculate the draft loan prepayment rate by submitting evidence showing that a borrower should be included on or removed from the list or correcting or updating the identity information provided for a borrower on the list, such as name, Social Security Number, or date of birth. If the information provided by the institution through the data correction process is accurate, the Secretary will use the corrected information to recalculate the repayment rate for the program. The Secretary notifies an institution of any draft results that are not challenged, are recalculated, or are unsuccessfully challenged under the data correction process described above. These results become the final repayment rates for the program.

Debt-to-Earnings Ratios Evaluated Cohorts

The debt-to-earnings ratios will now be calculated based on program completers three to four years after completion. For example, if the most recently completed FY is 2012, the 2YP is FYs 2008 and 2009. For a program whose students are required to complete a medical or dental internship or residency, a two-year period is the sixth and seventh FYs (2YP–R) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2012, the 2YP–R is FYs 2005 and 2006.

Payment Amortization

Under the proposed regulations, a 10-year amortization schedule would be used to calculate the payment associated with the program's median debt. Under the final regulations, the amortization schedule will be 10 years for certificates and associate's degrees, 15 years for bachelor's and master's degrees, and 20 years for first-professional and doctoral degrees.

Mean or Median Earnings

Both measures will be obtained for programs' pools of completers and the higher figure will be used in evaluation of the program.

Debt Limited to Tuition and Fees

Institutions will have the option to submit the tuition and fees charged for each student in a gainful employment program. Student debt included in the calculation of the program's median debt will be limited to that used to pay tuition and fees.

Data Corrections and Challenges for Debt-to-Earnings Ratios

Before issuing the draft results of the debt-to-earnings ratios for a program, the Secretary provides a list to an institution of the students that will be included in the applicable two- or four-year period for calculating the ratios. No later than 30 days after the date the Secretary provides the list to the institution, in accordance with procedures established by the Secretary, the institution may provide evidence showing that a student should be included on or removed from the list, or correct or update the identity information provided for a student on the list, such as name, Social Security Number, or date of birth. After the 30-day correction period, the institution may no longer challenge the accuracy of the students included on the list or update the identity information of those students. If the updated information is accurate, it is used to create a final list of students that the Secretary submits to SSA. The Secretary calculates the draft debt-to-earnings ratios based on the mean and median earnings provided by SSA for the students on the final list.

No later than 45 days after the draft debt-to-earnings results have been issued, an institution may challenge the accuracy of the median loan debt for the program that was used for the numerator of the draft debt-to-earnings ratios by submitting evidence showing the program's median loan debt is inaccurate. An institution may not challenge the accuracy of the mean or median annual earnings the Secretary obtained from SSA to calculate the draft debt-to-earnings ratios for the program. This limitation is a practical implication of using privacy-protected SSA data, as the Department will not receive individual student earnings data. But institutions will have the ability to challenge the list of students sent over to SSA for earnings information and may also use alternative reliable earnings information, including use of state data, survey data, or, during a transition period, Bureau of Labor Statistics (BLS) data so long as the measures chosen meet the requirements outlined in § 668.7(g).

In general, the Secretary uses the corrected information obtained through the challenges to the draft results to recalculate the debt-to-earnings ratios for the program. For a failing program, if SSA is unable to include in its calculation of the mean and median earnings for the program one or more students on the list finalized under the 30-day data correction process, the Secretary adjusts the median loan debt by removing the highest loan debt associated with the corresponding number of students on the list. For example, if SSA is unable to include three students in its calculations, the Secretary removes the loan debt for the same number of students on the list that had the highest loan debt. The Secretary recalculates the debt-to-earnings ratios for the program based on the adjusted median loan debt.

The Secretary notifies an institution of any draft results that are not challenged, are recalculated, or are unsuccessfully challenged under the challenge process described above. These results become the final debt-to-earnings ratios for the program.

Proprietary Institutions Under Common Ownership or Control

Loan debt does not include any loan debt incurred by the student for attendance in programs at other institutions, except if the current institution and the other institutions share common ownership or control. For these final regulations, we clarify that the exception is limited to proprietary institutions, which have different ownership structures than either private nonprofit institutions or public institutions. We generally do not include educational loan debt from institutions students previously attended because those students made individual decisions to enroll at other institutions where they completed a program. Companies that own more than one institution offering similar programs might have an incentive under these regulations to shift students between those institutions to shield some portion of the educational loan debt from the debt included in the debt measures under these final regulations. This provision will negate that incentive by permitting the Department to include debt from institutions under common ownership in the analysis. These regulations provide that a determination of common ownership or control will be made using the definitions and concepts that the Department routinely uses to review changes of ownership, financial responsibility determinations, and identifying past performance liabilities at institutions.

Summary of Results for the Final Regulations

Table 2 represents estimated changes to the number of ineligible programs and the number of students in ineligible programs. Under the final regulations, we allow institutions an opportunity to improve after initially failing both measures. As a result, when combined with the small numbers provision, results in approximately 8 percent of programs initially failing both measures,

but not losing Title IV, HEA eligibility. Ultimately, under the final regulations we estimate that approximately 2 percent of programs will be deemed ineligible and approximately 1.3 percent of students will be in those ineligible programs. The information presented below for the final regulations represents the results at the end of a four-year period and the percent of students in ineligible programs described below are net of those who dropped out or transferred the first two times the program failed the debt measures.

Table 2: Summary of Estimated Effects of the Final Regulations, 2012-2015*

	Final Regulations, Excluding Small Programs	Final Regulations, All Programs	NRPM
Percentage of Programs:			
Failing at least Once	8%	3%	5%
Losing Eligibility	2%	1%	5%
Percentage of Students**			
In a Program that Fails at least once	8%	7%	8%
In a Program that loses eligibility	1%***	1%***	8%

*Percentages calculated at end of four-year cycle.

** Estimate based on 12month headcount.

*** Based on 2015 enrollments. Does not include those who dropped out or transferred from programs after the first two failures.

Source: NSLDS, IPEDS, Beginning Postsecondary Student Longitudinal Study 2004/09 (BPS: 04/09), National Postsecondary Student Aid Study: 2008 (NPSAS: 2008), and the Missouri Department of Higher Education (MDHE).

III. NPRM Comment Review

Student Demographics

Several commenters discussed the potential effect of the regulations on low-income, minority, female, and first-generation students. As indicated in the NPRM and the submitted comments, the average share of Pell Grant recipients and minority students is higher in the for-profit sector than the public and private nonprofit sectors. Many supporters of the regulations point to the high concentration of disadvantaged students in gainful employment programs in certain sectors as a reason the regulations are needed to protect disadvantaged students. Conversely, many opponents of the regulations believe access to education for disadvantaged students would be threatened by the loss of eligibility of programs serving them.

Several commenters observed a link between the demographics of an institution's student population and either its repayment rate or debt-to-earnings ratios. Some commenters believed that the debt measures are primarily determined by the characteristics of a program's student body, rather than the program's performance. Others said the debt-to-earnings ratio penalizes programs serving disadvantaged students because these individuals—particularly minority and female students—earn less than their white and male counterparts. They argued that access would be negatively affected because the proposed thresholds would act as a disincentive to admitting disadvantaged students. Other commenters acknowledged that other factors contribute to institutions' repayment rate performance, but urged the Department to review the effect of the regulations on low-income, first-generation, and minority students.

The Department does not believe that enrolling large numbers of students from disadvantaged backgrounds legitimizes leaving those students with unaffordable debts and poor employment prospects. As described in the preamble, the debt measures identify programs where (1) typical student debt service exceeds recommended levels by more than 50 percent, and (2) fewer than 35 percent of students are paying down the balance of their loans (with consideration given to the variation in amounts borrowed). Programs that help disadvantaged students earn credentials and well-paying jobs are performing a valuable service, but programs that routinely leave their students with debts they cannot afford to repay are not.

Moreover, many programs across the country succeed in serving students from the most challenging backgrounds. As explained in further detail below, student body characteristics explain a small share of the variation in repayment rates among institutions. Even among programs serving the highest proportions of disadvantaged students, many have repayment rates above 35 percent. As a result, all students have choices among many programs that are capable of serving them well. The following paragraphs provide greater detail on the interaction between demographics and institutions' repayment rates and debt-to-earnings ratios.

Repayment Rates and Demographics

Some commenters described very high correlations between student body demographics and repayment rates. In particular, several commenters cited one analysis of the NPRM, which suggested that the repayment rate specified in the NPRM was highly correlated with the percentage of students receiving Pell Grants.

This analysis, which used a regression model based on the repayment rate specified in the NPRM, demonstrated a nearly linear relationship between the make-up of an institution's student body and its repayment rate. However, because this analysis reduces the data for thousands of institutions into quintiles, it failed to capture the amount of variation in repayment rates among institutions serving a similar group of students. As described below, when this variation is taken into account, the data

reveal a much lower correlation between an institution's concentration of students receiving Pell Grants and its repayment rate. Moreover, Table 3 demonstrates that most institutions have repayment rates that exceed 35 percent, including many serving large numbers of Pell Grant recipients.

Table 3: Share of Institutions Passing or Failing Repayment Rate Test, by Pell Grant Quintile

	Pell Concentration Quintile				
	Lowest	Second Lowest	Middle	Second Highest	Highest
Share Passing	**79%**	**82%**	**82%**	**75%**	**48%**
Share Failing	**21%**	**18%**	**18%**	**25%**	**52%**
Max Pell Concentration	14%	22%	31%	48%	80%

Source: NSLDS and IPEDS.

To examine the relationship between repayment rates and student body demographics more carefully, the Department performed a series of multivariate regression analyses, analyzing each institutional sector separately. The dependent (predicted) variable in each analysis was repayment rate. The independent (predictive) variables in each analysis were informed by comments received through the rule-making process, and included:

Student Body Characteristics

(1) Percent of student body identified as racial/ethnic minorities,

(2) Percent of student body receiving Pell Grants,

(3) Percent of student body identified as female,

(4) Percent of student body identified as being under 25 years of age.

Institutional Characteristics—Resources

(5) Per capita instructional expenses,

(6) Per capital core expenses,

(7) Growth rate, 2006 to 2009.

Institutional Characteristics—Graduation Rate

(8) Graduation rate.

Because of the variables selected, only institutions identified as enrolling undergraduate students were included in the regression analyses. Other factors, such as missing data on predictors, also excluded some institutions from analysis.

Summary of Results of Regression

As noted above nine separate, sector-wise models were run to explore the relationship between repayment rates and student- and institution-level factors. Models ran from being wholly non-predictive (i.e., less-than-2-year public institutions) to explaining more than half of the potential variance in repayment rates (i.e., 72 percent for 4-year public institutions; 57 percent for 2-year nonprofit institutions; and 56 percent for 4-year nonprofit institutions). The modeling is summarized below. For each sector, three facets of the modeling is detailed: (1) Whether the full model was statistically significant overall and the proportion of variance in repayment rate the model could explain; (2) the proportion of variance explained by the percent of an institution's student body receiving Pell Grants when that variable was the sole predictor in the model; and (3) the proportion of variance explained by the percent of an institution's student body identified as a racial/ethnic minority, when that variable was the sole predictor in the model.

Table 4: Summary of Multivariate Regression Analyses

	Full Model		Pell Only		Race/Ethnicity Only	
	Predictive?	Percent of Total Variance Explained	Predictive?	Percent of Total Variance Explained	Predictive?	Percent of Total Variance Explained
4-year Institutions						
Public	Yes	72	Yes	49	No	
Private Nonprofit	Yes	56	Yes	41	Yes	1
Private For-profit	Yes	22	Yes	7	No	
2-year Institutions						
Public	Yes	13	Yes	3	Yes	1
Private Nonprofit	Yes	57	No	39	Yes	13
Private For-profit	Yes	44	Yes	26	No	
Less-than-2-year Institutions						
Public	No		No		Yes	4
Private Nonprofit	Yes	39	Yes	29	No	
Private For-profit	Yes	27	Yes	16	No	
Overall						
All Institutions	Yes	46	Yes	23	Yes	1

Source: NSLDS and IPEDS.

For the nine models, the findings suggest that the relationship between repayment, racial/ethnic composition, and Pell Grant receipt varies considerably from sector to sector. For example, the predictive power of Pell Grants varied widely when entered as the sole variable in the model, from 3.3 percent (2-year public institutions) to 49.2 percent (4-year public institutions). Similarly, in four of the nine models, the proportion of an institution's student body that was represented by students identified as racial/ethnic minorities was a statistically significant predictor. However, in no case did it explain more than approximately 13 percent of variance in repayment rates.

Additional context for the results detailed below comes from considering the "scope" of the proposed regulations, in particular the types of institutions likely to offer gainful employment programs. For example, although Pell Grant receipt explained approximately 26 percent of the variance in repayment rates at 2-year private for-profit institutions, that sector enrolled only 3 percent of all students in postsecondary education in 2008–09.[12] Student indebtedness at exit, another key component to the proposed regulation, is discussed in more detail in the next section of this filing (see *Debt-to-Earnings Ratios and Demographics*).

Results for 4-Year Public Institutions

In academic year 2008–09, four-year public institutions enrolled 9.0 million students, approximately 33 percent of all students enrolled in postsecondary education (46 percent of all students enrolled in public institutions). The full regression model explained 72 percent of the variance in repayment rate, with the strongest single predictor being the percentage of students enrolled who received a Pell Grant.[13] When used as a sole predictor, the percentage of Pell Grant recipients explained 49 percent of the variance in repayment rate. However, when used as a sole predictor, the percentage of Pell Grant recipients was not a statistically significant predictor.

Results for 4-Year Private Nonprofit Institutions

In academic year 2008–09, 4-year private nonprofit institutions enrolled 4.5 million students, approximately 16 percent of all students enrolled in postsecondary education (98 percent of all students enrolled in private nonprofit institutions). The full regression model explained 56 percent of the variance in repayment rate, and, as was the case among 4-year public institutions, the strongest single predictor in the model was the percentage of students who received a Pell Grant (which explained 41 percent of the variance in repayment rates when used as a standalone predictor). Similarly, the racial/ethnic composition of an institution's student body was predictive of repayment rates for 4-year nonprofit institutions, but as a sole predictor it explained less than 2 percent of variance in repayment rates.

Results for 4-Year Private For-Profit Institutions

In academic year 2008–09, 4-year private for-profit institutions enrolled 2.1 million students, approximately 8 percent of all students enrolled in postsecondary education (82 percent of all students enrolled in for-profit institutions). Approximately 22 percent of the variance in repayment rates among 4-year private for-profit institutions was explained by the full regression model. Unlike other 4-year institutions, the most predictive variable in the model was the percentage of undergraduate enrollees who were under 25 years of age. The racial/ethnic composition of an institution's student body was not a statistically significant predictor when used alone to model repayment rates, and, although the percentage of students receiving Pell Grants was predictive, it explained only 7 percent of the variance in repayment rates.

Results for 2-Year Public Institutions

In academic year 2008–09, 2-year public institutions enrolled 10.5 million students, approximately 38 percent of all students enrolled in postsecondary education. Our model predicted 13 percent of the variance in repayment rates found at 2-year public institutions. While the share of racial/ethnic minority enrollment and Pell Grant receipt were both predictive when entered in their own models, both explained relatively little variance (around 1 percent and 3 percent, respectively).

[12] Enrollment figures here and in the following sections describing the model can be found in See Table 10 in Knapp, L. (2010). Postsecondary Institutions and Price of Attendance in the United States: Fall 2009 and Degrees and Other Awards Conferred: 2008–09, and 12–Month Enrollment 2008–09 (NCES 2010–161). Washington, DC: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics.

[13] Based upon the standardized metric (i.e., beta) regression coefficient.

Results for 2-year private nonprofit institutions

In academic year 2008–09, 2-year private nonprofit institutions enrolled 59,000 students, less than 1 percent of all students enrolled in postsecondary education. About 57 percent of the variance in repayment rates at 2-year private nonprofit institutions was explained by our model. Net of other variables in the model, the percentage of students receiving Pell Grants was the strongest single predictor of repayment rates. When used as the only predictor of repayment rates, racial/ethnic minority share of enrollment predicted approximately 13 percent of the potential variance. The percentage of the student body receiving Pell Grants explained 39 percent of the variance in repayment rates when used as the sole predictor.

Results for 2-year private for-profit institutions

In academic year 2008–09, 2-year private for-profit institutions enrolled 674,000 students, approximately 3 percent of all students enrolled in postsecondary education. Our regression model explained 44 percent of the variance found in repayment rates at 2-year private for-profit institutions. Pell Grant receipt was the single strongest predictor in the full model and, when used as a sole predictor, explained 26 percent of the variance in repayment rates. Share of racial/ethnic minority enrollment was not a statistically significant predictor when used in its own model to predict repayment rates.

Results for less-than-2-year public institutions

In academic year 2008–09, less-than-2-year public institutions enrolled 107,000 students, less than 1 percent of all students enrolled in postsecondary education. Overall, our regression model was not statistically significant for less-than-2-year public institutions. When used as the only predictor of repayment rates, share of racial/ethnic minority enrollment was statistically significant, explaining approximately 4 percent of the potential variance. The share of students receiving Pell grants was not statistically significant in its stand alone model.

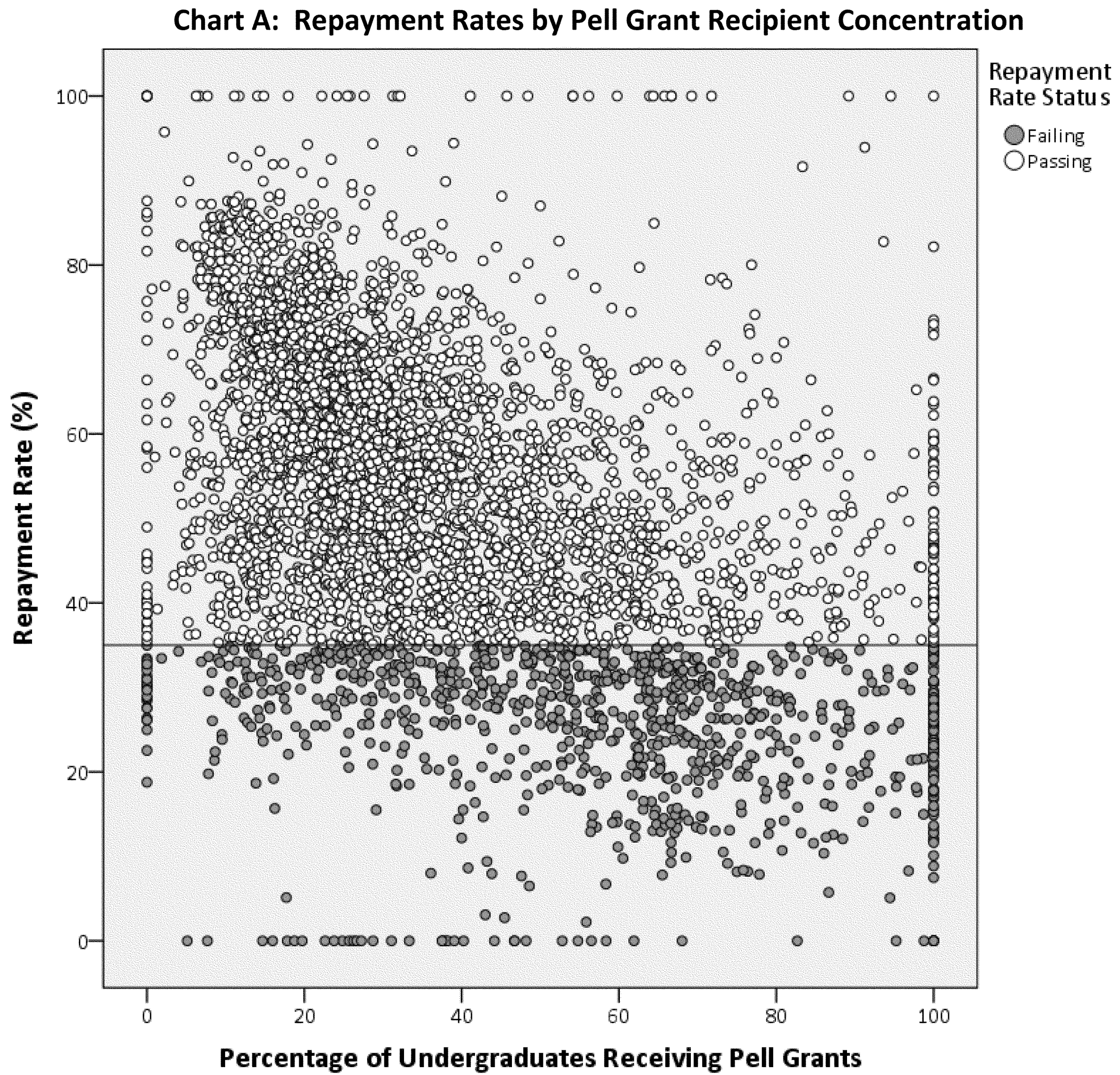
Results for less-than-2-year private nonprofit institutions

In academic year 2008–09, *less-than-2-year private nonprofit* institutions enrolled 24,000 students, less than 1 percent of all students enrolled in postsecondary education.[2] Our regression model explained 39 percent of the variance in repayment rates, with the share of students receiving Pell Grants being the single strongest predictor in the full model. When used as the sole predictor of repayment rates, the percentage of students receiving Pell Grants explained approximately 29 percent of the potential variance. Share of racial/ethnic minority enrollment was not a statistically significant predictor.

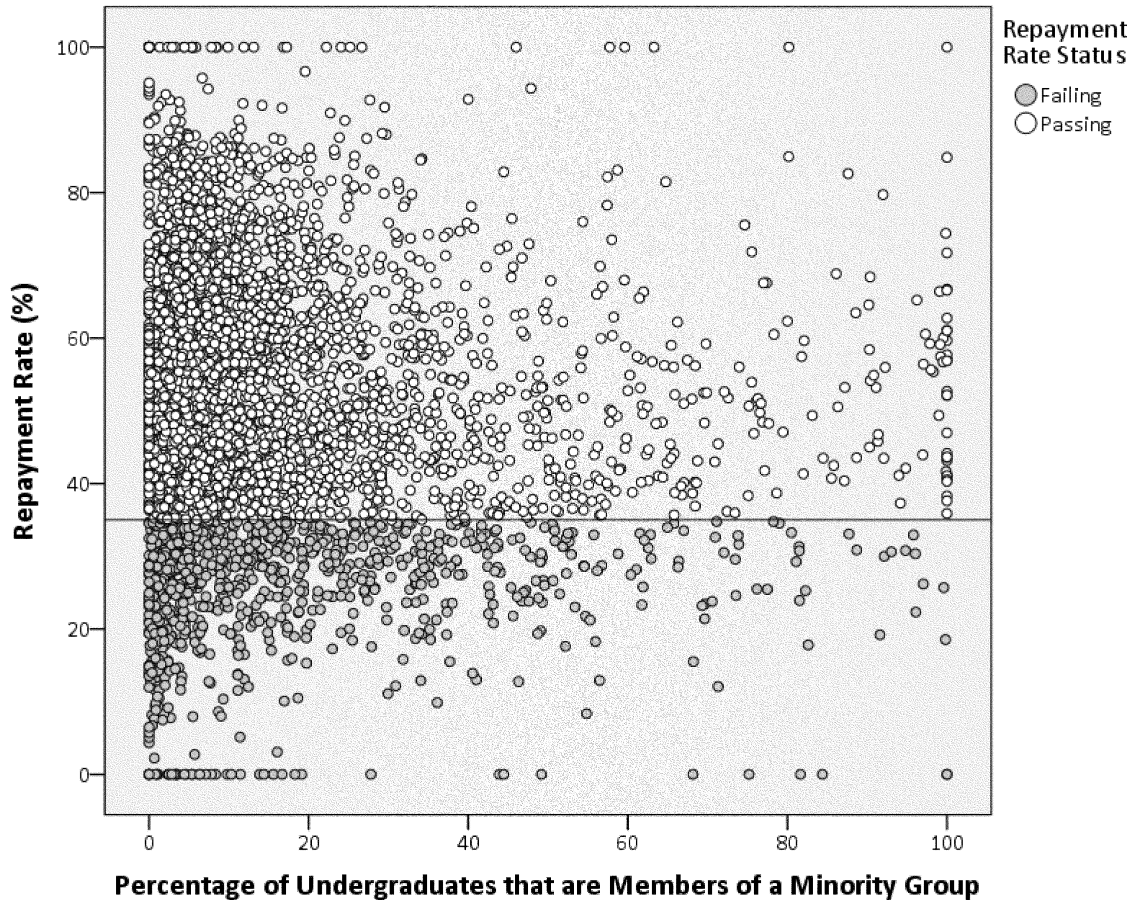
Results for Less-Than-2-Year Private For-Profit Institutions

In academic year 2008–09, *less-than-2-year private for-profit* institutions enrolled 466,000 students, approximately 2 percent of all students enrolled in postsecondary education. Approximately 27 percent of the variance noted in the repayment rates of less-than-2-year private for-profit institutions could be explained by our model. The strongest single predictor was the percentage of students receiving Pell Grants. In its stand alone model, the percentage of students receiving Pell Grants predicted 16 percent of the variability in repayment rates among these institutions. The percentage of students identified as racial/ethnic minorities was not statistically significant.

A visual representation, as seen in Chart A, more clearly illustrates that there is only a modest relationship between repayment rates and an institution's student demographics. As noted above, the percentage of students receiving Pell Grants explains 23 percent of the total variance in repayment rates. Chart B presents similar data on the relationship between the percentage of the students that are members of a minority group at an institution and its repayment rate. The percentage of the students that are members of a minority group explains 1 percent of the total variance in repayment rates.



Source: NSLDS and IPEDS.



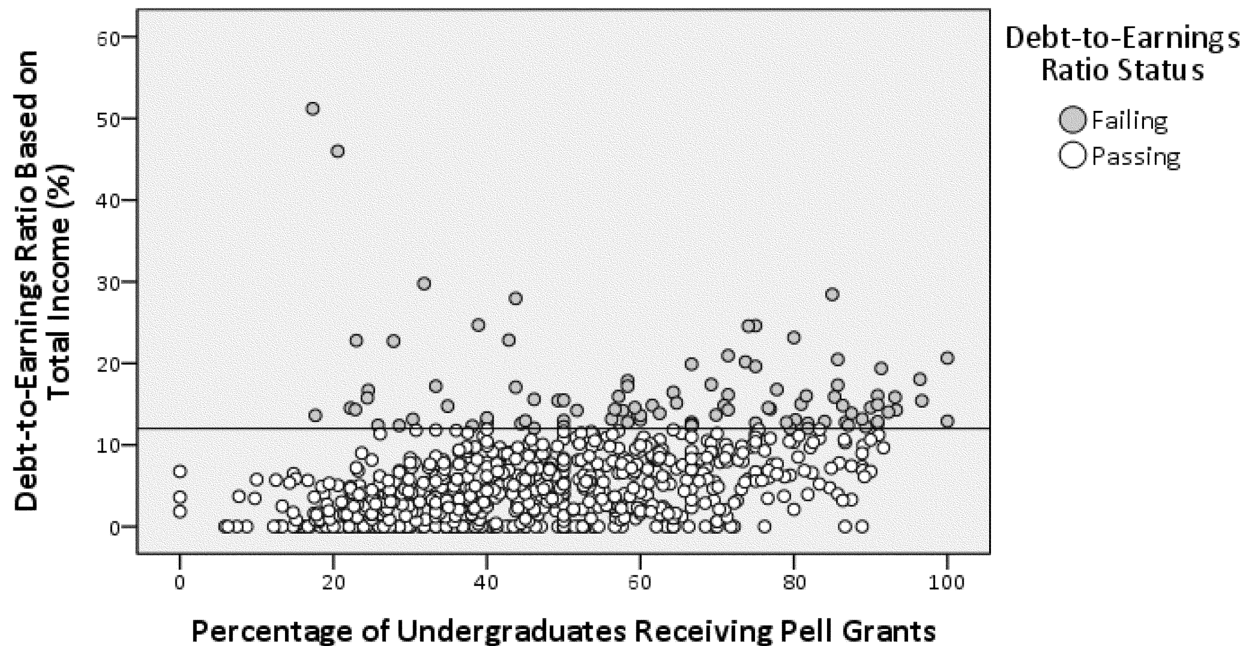
Source: NSLDS and IPEDS.

Debt-to-Earnings Ratios and Demographics

The Department also examined the implications of the debt-to-earnings ratio on students. Programs fail the debt-to-earnings ratio if the debts for the majority of students exceed both measures of affordability by at least 50 percent. While the Department recognizes that some groups may face greater obstacles in the labor market than others, we do not agree that the appropriate response to those obstacles is to accept that disadvantaged students will bear even higher debt burdens.

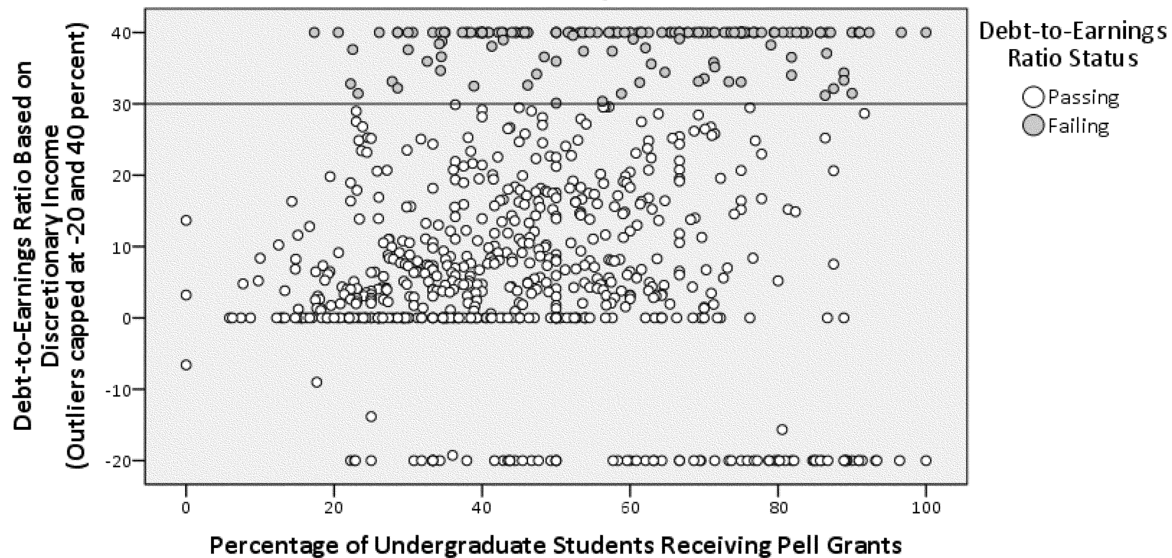
Moreover, similar to the repayment rate, earnings and debt data from the Missouri Department of Higher Education reveal a wide variation in performance on the debt-to-earnings ratio among programs serving similar groups of students. As shown in Chart C, many programs serving large numbers of Pell Grant recipients have debt-to-earnings ratios below 12 percent of total income or 30 percent of discretionary income. Each circle in the chart represents a program.

Chart C-1: Debt-to-earnings Ratios Based on Total Earnings, by Percentage of Students Receiving a Pell Grant



Source: **MDHE and NSLDS.**

Chart C-2: Debt-to-earnings Ratios Based on Discretionary Earnings, by Percentage of Students Receiving a Pell Grant



Source: **MDHE and NSLDS.**

Nor is it true that all low-income students will face higher debt-to-earnings ratios after graduation. While low-income students are more likely to borrow money for college, the amount of those loans is similar to those borrowed by their higher-income peers. As shown in Table 5, students who received a Pell Grant and those who did not typically graduate with similar levels of debt.

Table 5: Average Cumulative Student Loan Debt for 2007-08 Graduating Undergraduates, by Pell Grant Receipt and Sector

	Received Pell		Did Not Receive Pell	
	Average Debt	Percent of Students Who Borrow	Average Debt	Percent of Students Who Borrow
4-year Institutions				
Public	21,741	84	17,475	46
Nonprofit	28,435	90	26,277	58
For-Profit	24,735	99	24,346	93
2-year Institutions				
Public	11,253	56	9,164	24
Nonprofit	15,484	63	13,839	66
For-Profit	17,145	98	17,911	96
Less-than-2-year Institutitons				
Public	11,198	52	8,442	22
For-Profit	10,089	90	10,235	75

Source: NPSAS 2008.

Review of Submitted Analyses

Two comments written by economists included detailed alternative estimates of the impact of the regulations proposed in the NPRM. The first, submitted by Jonathan Guryan and Matthew Thompson of Charles River Associates, questioned whether the proposed regulations properly addressed problems they are attempting to solve and presented other ways to measure the returns to education.[14] The report also critiqued the cost estimates proposed in the NPRM, provided alternative numbers of the number of students and programs that would be affected, and provided some suggestions for how the regulations should be changed.

The Charles River Associates report argued that an analysis of earnings should focus on income gains over a longer time period because students take this into consideration when making cost/benefit decisions about whether to enroll in postsecondary education and whether to use loans to finance its cost. The report argues that it is appropriate to use longer periods to measure the benefits from schooling because research shows that the annual earnings benefit for each year of schooling is between 7 and 15 percent, meaning that a student could recapture the value of his or her education debt over time because of the greater earning power associated with each year of higher education. These alternative measurements are discussed in the *Alternatives Considered* section of this RIA.

The Charles River Associates report included its own estimate of the effects of the NPRM using data from member institutions from the Association of Private Sector Colleges and Universities (then known as the Career College Association), representing 308 institutions, 450 campuses, 10,000 programs, and 600,000 students. Student and loan level information was available based on the population included in the 2006, 2007, and 2008 Cohort Default Rate calculations. Adjustments were made based on IPEDS and data from the 2008 NPSAS, both conducted by the NCES, for students who did not take out any loans and for students who borrowed private loans in addition to Federal loans. The Charles River Associates report approximated the debt-to-earnings tests by using information on specific occupations from the Current Population Survey. It calculated repayment rates by using information about loans in repayment from the cohort default rate files provided by surveyed institutions.

The report's initial results found that 7.1 percent of the programs for which data were available would be ineligible under the proposed regulations, a designation that would affect 7.5 percent of students in the report's sample. After making some adjustments to estimated repayment rates so that they conformed more to the repayment rates released by the Department, the report revised its estimate to say that 8.8 percent of programs in its sample would be ineligible, affecting 13.0 percent of students. These findings are similar to the Department's estimates that under the proposed regulations 16 percent of for-profit programs would lose eligibility.

The report questioned the Department's estimates of the number of students that would leave postsecondary education altogether as a result of the regulations, without providing any data that would support alternative assumptions. Using different assumptions about the percentage of students that would drop out and whether any programs in the then-proposed restricted category would shut down, the report estimated that between 1.1 million and 2.4 million students would be impacted by the regulations over a 10-year period. The Department carefully considered the likely behavior of students enrolled in failing and ineligible program and is confident that it has adopted a reasonable set of assumptions. We have described the data and analysis we relied upon in the section of this RIA titled *Estimation of Effects on Students* under *Analysis of Final Regulations.*

Finally, the Charles River Associates report discussed the implications of "restricted" status, the regulations' impact on new programs, the regulations' potential impact on low-income students and members of racial and ethnic minorities, and several concerns about the implementation of the regulations. These comments are discussed in the *Analysis of Comments and Changes* section of the preamble and the section of this RIA titled *Student Demographics.*

In a second analysis, Roger Brinner of the Parthenon Group argued that the Department should have adjusted the Missouri sample data to account for debt level, income level, and repayment rate.[15] Using those adjustments, the study estimates that 30 percent of all students enrolled in programs subject to gainful employment regulations would be in ineligible programs, compared to the Department's estimate of 8 percent. The Parthenon Group study attributed the difference between its estimate and the Department's estimate to the Parthenon Group's inclusion of private student loan debt and students without any earnings in the debt-to-earnings calculation. The study relied upon a BLS estimate that 17 percent of students were out of the workforce the whole year and therefore had zero income, apparently based on the assumption that

[14] The Charles River Associates report may be found at: *http://www.regulations.gov/#!documentDetail;D=ED-2010-OPE-0012-13610.1.*

[15] Roger Brinner, The Parthenon Group, *Assessment of Missouri Estimate of Impact,* September 9, 2010, available at *http://www.regulations.gov/#!documentDetail;D=ED–2010–OPE–0012–12859.1.*

students completing career education programs were no more likely to be employed than other young adults.

In its analysis of the final regulations, the Department revised its estimation methodology to account for private student loan debt and graduates without earnings. The Federal debt in the data was adjusted to an estimated total debt for a program, including private loans, using NPSAS information by institutional sector for the 2007–08 year. The earnings amounts were adjusted to include 25 percent of exiters with zero earnings and to represent earnings three to four years into employment. These adjustments are also described in the section of this RIA titled *Analysis of Final Regulations.*

The Parthenon Group study also questioned the Department's estimates of the number of students who would decide to transfer or drop out after their program lost eligibility, asserting that for-profit and public institutions would face capacity constraints that would prevent more than about 60 percent (or 600,000) of the 1 million displaced students from reenrolling elsewhere. The Department does not agree with these pessimistic projections. For-profit institutions are capable of rapid growth. The sector has recently grown by hundreds of thousands of students a year, and its total enrollment continued to grow in the mid-1990s, even as hundreds of institutions lost student aid eligibility due to their cohort default rates. The Parthenon Group's conclusion that access would be constrained is dependent on its belief that a large number of students will leave their current program. Its estimate that existing programs could accommodate 600,000 additional students in a year, for example, would appear to support a conclusion that large numbers of students could switch programs before limits are reached.

Finally, the Parthenon Group study estimated that these 400,000 students would experience 15 percent lower income levels due to not having a postsecondary education, which would decrease government tax revenues by $400 million. Looking at student-to-employee ratios and economic modeling multipliers, the study further estimated that 95,000 employees would lose their jobs due to the 400,000 students leaving postsecondary education, and that those lost jobs would decrease government tax revenues by $2.9 billion. For students who would continue their educations at public and nonprofit schools, the study argued that it costs taxpayers more for students to attend public and private nonprofit schools than for-profit institutions. The study estimated that students transferring to the public and private nonprofit sectors would cost taxpayers $2 billion based upon other projected adjustments. While the final regulations differ in a number of significant respects from the proposal analyzed by the Parthenon Group, the Department has considered the approach and estimates in the study when formulating its own estimates of the impact of the final regulations on the number of college graduates, jobs, and government budgets. The economic consequences outlined in the analysis are dependent on the Parthenon Group's estimates of the number of programs that will lose eligibility and the number of students who will leave postsecondary education. Moreover, the analysis fails to consider the benefits to students, taxpayers, and the economy as a whole from better performing programs that are tied more closely to labor market demands, lead to lower debt levels, and typically achieve higher retention and graduation rates. The Department presents its view of the costs and benefits of the final regulations in the *Discussion of Costs and Benefits* section of this RIA.

IV. Analysis of Final Regulations

Data and Methodological Changes

The Department developed a set of data analysis tools to assist in developing the debt measures used in these regulations to define compliance with the gainful employment requirements for covered postsecondary education and training programs. Briefly, the Department examined two internal data sets that it controls— NSLDS, maintained by the Office of Federal Student Aid (FSA), and IPEDS, maintained by NCES. Additionally, the Department entered into a data sharing agreement with the Missouri Department of Higher Education (MDHE) that provided us with critical information aggregated at the program level—including work income—for certain persons who participated in identified postsecondary education and training programs in public and for-profit institutions in Missouri between 2006 and 2008.

The Department obtained from NSLDS the total number of borrowers who attended a particular institution and entered repayment in FY 2006 or 2007, and identified the borrowers in each group who had paid their loans in full or had made payments sufficient to reduce the outstanding balance on their loans through FY 2010.[16] We retrieved, for these borrowers, the school-level total loan balance upon entering repayment, and the school-level total balance of loans upon entering repayment for borrowers who paid their loans in full or made payments sufficient to reduce principal. We also retrieved information regarding borrowers who were repaying their loans under one of the income-sensitive repayment plans (e.g., income-contingent repayment (ICR), income-based repayment (IBR), and graduated plans). The Department conducted further analysis of the consolidation loans taken by those borrowers to attribute the loans that were consolidated to the respective institutions the borrower attended when the loans were made.

The Department extracted a series of data elements from IPEDS for use in the gainful employment analysis. Owing to the nature of IPEDS, all information was developed at the institutional level from data reported by the institutions themselves. The institution-specific information included enrollment, the number of Pell Grant recipients, identification of institutions that offered a single program of study (mono-line institutions), certain programmatic (based on CIP code) information, revenues, expenses, and graduation rates. The Department merged these two data sets to produce a single, institution-by-institution analysis file comprised of the data elements described in the preceding paragraph.

The MDHE provided information on individuals who exited education and training programs at public and private for-profit postsecondary institutions in the State between 2006 and 2008. These data were aggregated by program of study within institutions and include both education-related and wage data. Additional education-related data—provided by the Department from NSLDS—include the number of program exiters who had Federal student loan debt, were in repayment or default, and were Pell Grant recipients. These data also included mean and median student loan debt and Pell Grant amount for program exiters. Wage data included the number of exiters captured in the Missouri Department of Labor and Industrial Relations' Unemployment Insurance program (UI) database, and average annual wage and quartile distribution of annual wages for these exiters. In constructing this analysis file for the Department's use, MDHE employed a protocol that appropriately shielded personally identifiable information.

The characteristics of the individuals represented in the MDHE-developed database were generally comparable to the same characteristics of the U.S. population across several dimensions, including population demographics such as age; race/ethnicity; and enrollment in elementary, secondary, and postsecondary education; as well as income and race/ethnicity of persons attending public and for-profit postsecondary institutions. These comparisons can be found in Table F of the Regulatory Impact Analysis published with the NPRM. The comparisons, as well as other details regarding the MDHE-provided data set, can also be found in the document entitled, "Gainful Employment Analysis—Missouri Methodological Notes" available on the Department's Web site.[17]

The primary data set used to analyze the regulations consists of 5,474 institutions defined by a six-digit OPEID taken from IPEDS and available at the gainful employment Web site.[18] Key information available in this file includes enrollment, revenues, expenses, graduation rates, percentage of undergraduates with a Pell Grant, and other characteristics. Repayment rate information calculated from NSLDS was added to the IPEDS information through the OPEID and allowed institutions to be classified according to an initial year of repayment rate performance.

In matching the data sets, there were approximately 710 institutions where no repayment rate was generated, of which a little over 30 percent came from the private

[16] For an explanation of the NSLDS repayment rate query, please see the repayment rate calculation file available on the Department's gainful employment Web site, *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html.*

[17] *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html*

[18] *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html.*

for-profit less-than-2-year sector and another 29 percent came from public 2-year institutions. Many of these institutions did not participate in the loan programs during the period covered for this repayment rate calculation, and others may represent newer institutions in the IPEDS data or branches whose information has been captured under an aggregated OPEID. For the analysis, institutions with no repayment rate have been treated as eligible as they will not fail under the regulations. A second set of approximately 1,115 institutions appeared in the repayment rate file but not in the IPEDS data set. After accounting for foreign institutions, closed schools, and schools with changes in affiliation, approximately 145 institutions remained, of which 78 percent would have a repayment rate borrower count too small to be evaluated and thus could not fail under the regulations. The matching of repayment rates and IPEDS data was necessary for this analysis, but will not be required when program-level data is available as the regulations are implemented.

Adjustments to Missouri Data

In response to comments and changes in the regulations, the Department made some adjustments to the Missouri data that was used to provide some information on the relationship between a program's debt-to-earnings performance and the school's repayment rate performance. Specific adjustments were made to the data to better represent the regulations and are included in the data file available on the Department's gainful employment Web site.[19] The earnings amounts were adjusted to include 25 percent of exiters with zero earnings and to represent earnings three to four years into employment. The Federal debt in the data was adjusted to an estimated total debt for a program, including private loans, using sector-level information from NPSAS 2008. Data from NPSAS 2008 were also used to limit the debt to tuition and fees only. Finally, depending upon the award level associated with the program, a 10-, 15-, or 20-year amortization period was applied to calculate the payment to be evaluated. The relationship between repayment rates and debt performance in the Missouri data provides guidelines for the debt performance distribution described under the heading *Summary of the Model* of this RIA. The model, however, assigned a greater share of schools, programs, and students to the failing debt categories to take into account the unavailability of data for some sectors and possible differences in performance between programs in Missouri and elsewhere.

Estimated Number of Affected Students

In the analysis for the NPRM, the number of students subject to the regulations was estimated using the applicable percentage for each sector, with the percentage of certificates awarded providing a guideline for the public and private nonprofit sectors. For the NPRM analysis, the estimated 3.2 million students affected was based on the 12-month full-time equivalent (FTE) enrollment, and in this analysis those data have been updated to the 12-month headcount enrollment to better represent the number of students potentially subject to the regulations. In the base data set with IPEDS information for 2008–09, the total 12-month enrollment is approximately 27.4 million students, of whom 7.3 million are estimated to attend programs subject to the regulations. When inflated by the estimated enrollment growth specified in the RIA Appendix for each scenario (RIA Appendix A–1, RIA Appendix A–2, and RIA Appendix A–3) to represent the first calculation in FY 2012, the number of students subject to the regulations is approximately 8.4 million. As observed by some of the analysts that commented on the data used to estimate the effect of the proposed regulation, the change to head count enrollment better describes the potential impact of the final regulation. This number is derived from the percentage of credentials granted in regulated programs compared to the total credentials granted at an institution. If program information was not available for an institution, the average percentage for that sector was used.

Summary of the Model

Significant changes were made to the analysis done for the NPRM to estimate the effects of the requirement that a program fail three out of four FYs to be ineligible. These changes are described below. The assumptions and results related to each scenario are presented in the RIA Appendix A–1, RIA Appendix A–2, and RIA Appendix A–3.

Data and Model Limitations

NSLDS has sufficient data to support the calculation of a repayment rate for each school participating in the Federal student loan programs. NSLDS does not currently collect enough data to allow this calculation by program at an institution. The model starts with school-level data, aggregates to the sector level, and tracks numbers of schools, programs, and students. The Department has estimated debt-to-earnings ratios for programs from the Missouri data set. The model combines the Missouri debt-to-earnings data with the national repayment rate data with assumptions about the relationship between the two measures grounded in data from Missouri, where available. Repayment rate data are available for a single year. The model calculates transitions from year to year based on rates specified by the user that are informed by the distribution of available repayment rate data. Detailed tables of the assumptions for each scenario are available in the Appendix for each scenario.

There are several aspects of the regulations that could not be incorporated into the analysis. In particular, while the model does allow students to transfer from failing programs and separately allows programs to shift between repayment categories, it does not model an interaction between those transitions and does not attempt to predict the effect of the transferring students on the receiving programs' performance on the gainful employment measures in subsequent years. Other items that cannot be fully analyzed should only improve a program's performance and reduce the effects estimated in this RIA. One item is the option to calculate the repayment rate for FYs 2012, 2013, and 2014 using borrowers one to two years in repayment. This option would allow institutions to demonstrate program improvements more quickly. In general, our data suggest that the repayment rates calculated with borrowers three to four years into repayment are higher, but under this option, the Department would calculate the rate using both sets of borrowers and use the higher one, which could only help programs. The Department does not have any repayment rate data for borrowers in the first two years of repayment that reflects any potential improvements in performance as a result of the regulations and decided to describe this factor that may reduce the effects of the regulations instead of quantifying it. Additionally, the repayment rates used for modeling the effects of these regulations do not include in the numerator of the repayment rate the consolidation loans with a balance that remained the same in the most recent fiscal year of borrowers in a post-baccalaureate degree or certificate program.

The results presented below also do not take into account the 5 percent cap on ineligibility for the first year programs could lose eligibility. The Secretary will cap the number of ineligible programs by first sorting institutions by category of institutions (public, private nonprofit, and for-profit), then by loan repayment rate within that category, and finally, starting with the lowest repayment rate, by determining ineligible programs accounting for a combined number of program completers during FY 2014 that does not exceed 5 percent of the total number of program completers in that category. Finally, the limited availability of data related to repayment plans did not allow us to determine the effect of the provision treating all borrowers eligible for Public Service Loan Forgiveness as successfully in repayment or the revised policy allowing the OOPB of up to 3 percent of borrowers' balances in alternative repayment plans and not paying down principal to be included in the numerator of the repayment rate calculation. To account for the treatment of loans in interest-only and negative amortization repayment plans, graduate student consolidation loans with a balance that remains the same, the loans eligible for Public Service Loan Forgiveness, and the ability of schools to take action to increase their repayment rates before the first official calculation with FY 2012 data, the model boosts the rates calculated from NSLDS by 5 percentage points. We believe this adjustment is conservative in light of the fact that up to 3 percent of OOPB will receive adjustments for interest-only or negative amortization status, the potentially large numbers of borrowers eligible for Public Service Loan Forgiveness, and a published estimate that improved debt counseling could boost repayment rates by 2 to 5 percentage points.[20]

[19] *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html.*

[20] Paul Ginocchio and Adrienne Colby, Deutsche Bank, "Post 3Q Update on PE Drivers and Gainful Employment," November 12, 2010.

Initial Model State

The model starts with data for schools that have programs subject to the gainful employment regulations. These data include the repayment rate calculated from NSLDS, the estimated number of programs subject to the regulations, and the number of students enrolled in these programs. The repayment rate is classified into three levels: Passing, Near Failing, and Failing based on the 35 percent and 45 percent thresholds used in the NPRM. School, program, and student counts are then grouped by school sector and repayment rate category.

Year One School Assessment

The outcome for each year depends upon both repayment rate and debt-to-earnings ratios. The latter is imputed using a specified relationship between the two measures. This relationship is assumed to vary by sector, and to be static across years. The specification is informed by schools from the Missouri data for which both measures are available.

The imputation process returns the debt-to-earnings ratios classified into three levels, similar to the repayment rate. The relationship is specified by loading rates into a three-dimensional array indexed by sector, repayment category, and debt category. These rates indicate the relative likelihood that a school in a given sector with a given repayment category will exhibit a debt ratio falling into each of the three categories. The model allocates schools, programs, and students to the debt categories according to the specified rates.

Schools for which both measures are in the third (Failing) category are classified as failing to provide gainful employment. The others are classified as passing.

Baseline Enrollment Growth Year One to Year Two

The user specifies baseline enrollment growth factors for each sector. These are stored in a one-dimensional array indexed by sector. The model applies the appropriate factor to the student counts recorded for the end of Year One to yield projected enrollment by sector for Year Two. These projections do not consider behavioral changes associated with the students' reactions to the Year One outcomes.

Year Two Student Reaction to Year One Assessment

The user specifies transition rates for Year Two students who would have attended failing schools, but transfer to passing schools or forego enrollment in reaction to the Year One outcome. The rates are stored in a two-dimensional array indexed by starting school sector and student choice. The students who would have attended a school with a history of failure are assumed to choose among 11 different options. The assumed choices consist of enrolling in a school with no prior failures in one of the nine sectors, foregoing enrollment, or ignoring the prior year outcomes and enrolling in a school in the same sector and with the same outcomes. The model re-allocates Year Two students to new sectors and Year One outcomes according to the specified rates.

School Transition and Year Two Assessment

The user specifies transition rates among repayment categories for Year Two schools. The rates are stored in a two-dimensional array indexed by Year One repayment category and projected Year Two repayment category. The model re-allocates schools, programs, and students among new repayment categories according to the specified rates.

The model then invokes a user-specified debt imputation array to assign a debt category for Year Four according to the school's sector, repayment category, and prior year's performance on the debt-to-earnings ratios. The model allocates schools, programs, and students to the Year Two debt categories according to the specified rates. Schools for which both measures are in the third (Failing) category are classified as failing for Year Two, and the others are classified as passing for Year Two.

Baseline Enrollment Growth Year Two to Year Three

The user specifies baseline enrollment growth factors for each sector. These are stored in a one-dimensional array indexed by sector. The model applies the appropriate factor to the student counts recorded for the end of Year Two to yield projected enrollment by sector for Year Three. These projections do not consider behavioral changes associated with the students' reactions to the prior year outcomes.

School Transition and Year Three Assessment

The user specifies transition rates among repayment categories for Year Three schools. The rates are stored in a three-dimensional array indexed by Year One repayment category, imputed Year Two repayment category, and projected Year Three repayment category. The model re-allocates schools, programs, and students among new repayment categories according to the specified rates.

The model then invokes a user-specified debt imputation array to assign a debt category for Year Four according to the school's sector, repayment category, and prior year's performance on the debt-to-earnings tests. The model allocates schools, programs, and students to the Year Three debt categories according to the specified rates. Schools for which both measures are in the third (Failing) category are classified as failing for Year Three, and the others are classified as passing for Year Three. Schools that failed in each of the three years are classified as ineligible after Year Three.

Baseline Enrollment Growth Year Three to Year Four

The user specifies baseline enrollment growth factors for each sector. These are stored in a one dimensional array indexed by sector. The model applies the appropriate factor to the student counts recorded for the end of Year Three to yield projected enrollment by sector for Year Four. These projections do not consider behavioral changes associated with the students' reactions to the prior year outcomes.

Year Four Student Reaction to Prior Year's Assessment

The user specifies transition rates for Year Four students who would have attended failing schools, but transfer to better-performing schools or forego enrollment in reaction to the Year One, Year Two, and Year Three outcomes. The rates are stored in a three-dimensional array indexed by the school's prior year outcomes (failed once, twice, or three times), starting sector, and student choice. The students who would have attended a school with a history of failure are assumed to choose among 20 different options. The assumed choices consist of enrolling in a school with no prior failures in one of the nine sectors, foregoing enrollment, enrolling in a school with one prior failure in one of the nine sectors, or ignoring the prior year outcomes and enrolling in a school in the same sector and with the same outcomes. The model re-allocates Year Four students to new sectors and prior year outcomes according to the specified rates.

School Transition and Year Four Assessment

The user specifies transition rates among repayment categories for Year Four schools. The rates are stored in a four-dimensional array indexed by Year One repayment category, imputed Year Two repayment category, imputed Year Three repayment category, and projected Year Three repayment category. The model re-allocates schools, programs, and students among new repayment categories according to the specified rates.

The model then invokes a user-specified debt imputation array to assign a debt category for Year Four according to the school's sector, repayment category, and prior year's performance on the debt-to-earnings tests. The model allocates schools, programs, and students to the Year Four debt categories according to the specified rates. Schools for which both measures are in the third (Failing) category are classified as failing for Year Four, and the others are classified as passing for Year Four. Schools that failed in Years One, Two, and Four are classified as ineligible after Year Four.

Baseline Enrollment Growth Year Four to Year Five

The user specifies baseline enrollment growth factors for each sector. These are stored in a one-dimensional array indexed by sector. The model applies the appropriate factor to the student counts recorded for the end of Year Four to yield projected enrollment by sector for Year Five. These projections do not consider behavioral changes associated with the students' reactions to the prior year outcomes.

Year Five Student Reaction to Prior Year's Assessment

The user specifies transition rates for Year Five students who would have attended failing schools, but transfer to better-performing schools or forego enrollment in reaction to the Year One, Year Two, Year Three, and Year Four outcomes. The rates are stored in a three-dimensional array indexed by the school's prior year outcomes (failed

once, failed twice, ineligible after Year Three, and ineligible after Year Four), starting sector and student choice. The students who would have attended a school with a history of failure are assumed to choose among 20 different options. The assumed choices consist of enrolling in a school with no prior failures in one of the nine sectors, foregoing enrollment, enrolling in a school with one prior failure in one of the nine sectors, or ignoring the prior year outcomes and enrolling in a school in the same sector and with the same outcomes. The model re-allocates Year Five students to new sectors and prior year outcomes according to the specified rates.

Estimation of Effects on Students

In developing the gainful employment regulations, we established a model to estimate the number of programs and students that would be affected. As part of that analysis, we considered whether students enrolled at programs that were failing or lost eligibility would transfer to another institution, leave postsecondary education entirely, or (if the program was failing but remained eligible) remain enrolled.

Before we could estimate these responses, we first had to account for the high degree of turnover that already occurs within the various higher education sectors. For example, data from the latest BPS show that over 36 percent of students who begin at 2-year for-profit institutions leave without completing or transferring within one year. An additional 13.6 percent of students at those institutions transfer within one year. Applying our estimates of student behavior before accounting for this significant egress from institutions would overstate the effects of the regulations and obscure some of the very problems that they target.

Therefore, our estimates of the effects of the regulations in terms of student transfer, retention, and drop out are applied after taking into account the movement that would have occurred anyway. In other words, we sought to ascertain what effect our regulations would have on students who would not have transferred out, already completed, or dropped out. Below we discuss some of the ways we modeled this initial student movement.

We used BPS data to estimate the number of students who would have transferred regardless of the regulations. BPS is the best data source for this purpose because it is student-based, allowing us to track individuals across multiple types of institutions. As a result, we can better see the movement of transfer students within and between sectors. By contrast, information reported in other databases like IPEDS come from institutions and provide selective information on the rate at which students transfer out, but contain no data on the type of institution at which they end up. The BPS survey also considers a more expansive set of students, including those who attend part time or enroll at times other than the fall semester, that are excluded from other national databases.

To create our estimate for transfer rates, we first looked at the percentage of students who first enrolled in 2003–04, stayed for at least four months, and had transferred by the 2004–05 academic year, broken down by institution control. This information gave us an estimate for what percentage of students would have transferred regardless of our regulations and was used for contextualizing our transfer rates for one year of failure. The rates of those who entered in 2003–04 and transferred by 2005–06 and 2006–07 were used to contextualize our estimates of those who transferred after two failures and ineligibility, respectively.

These data also provided guidance for our estimates of how students would transfer between and within sectors in response to the regulations. To do this, we selected only those students who had stayed for at least four months and had transferred by July 2004 to determine their first institution type and the type of institution they transferred in to. These results, which are depicted in Table 6, showed us the dispersion pattern of students who did transfer and demonstrated the importance of public institutions as receiving entities. However, we expect for-profit institutions to have the flexibility to respond to demand created by the closure of ineligible programs. Therefore, we assigned a higher share of transfers attributed to these regulations to stay within the for-profit sectors than is seen in the baseline data.

Table 6: Percentage Distribution of Students who Entered Higher Education in 2003-04 and Transferred by 2004-05, by Initial Institution Control and Receiving Institution Control

		Receiving Institution Control			
		Public	Private Nonprofit	Private For-profit	Total
First Institution Control	Public	81	8	11	100%
	Private Nonprofit	79	19	2[a]	100%
	Private For-profit	45[a]	3[b]	52	100%

[a] Interpret data with caution. Estimate is unstable because the standard error represents more than 30 percent of the estimate.

[b] Interpret data with caution. Estimate is unstable because the standard error represents more than 50 percent of the estimate.

Source: BPS 04/09.

Estimates for the percentage of students that would have dropped out within their first year regardless of the regulations also came from BPS data. We looked at students' one-year retention and attainment rate at their initial institution, broken down by their first institution's sector. This information allowed us to see, for example, that 33 percent of students who enter a for-profit institution of two years or less had dropped out within one year. The results of this analysis for all sectors can be seen in Table 7.

This information on the dropout rate by sector also contributed to our estimates of the percent of students that would drop out due to the gainful employment regulations. The dropout rate assumptions in the high dropout and low dropout scenarios described in RIA Appendix A–1 and RIA Appendix A–2 are specified as the percentage of students who drop out or new students who do not enroll as a percentage of those remaining after the baseline level of dropouts found in the BPS data described above. The dropouts included in the model represent the potential response of students who would otherwise have continued or started their education to a program's performance on the debt measures. The Department does not have specific data on student responsiveness to disclosure of program performance on the debt measures and the other information available under these regulations and those published on October 29, 2010 (75 FR 66832) (Program

Integrity Issues final regulations). Therefore, the high dropout and low dropout scenarios described in RIA Appendix A–1 and RIA Appendix A–2 established a range of outcomes based on the Department's expertise and review of comments received after the publication of the NPRM. Comments received led to an increased dropout rate in the high dropout scenario and increased transfers to the for-profit sector because of the ability of those institutions to absorb students. The low dropout scenario started with a 5 percent dropout rate for a first failure of the debt measures to a 22 percent dropout rate of those remaining when a program becomes ineligible. This escalation is repeated in the high dropout scenario, which starts with a 15 percent dropout rate for a first failure and escalates up to 42 percent for ineligible programs in the for-profit less-than-2-year sector. For each status (fail once, fail twice, ineligible), the for-profit sectors had a dropout rate 2 percentage points higher than the public sector and private nonprofit sectors, to reflect a potential increased emphasis on program performance in those sectors. While there was some variation by sector, a program's status was the key determinant of the dropout rate assigned to students.

Table 7: Cumulative Retention and Attainment at First Institution in 2004-05 for Students entering Postsecondary Education in 2003-04, by First Institution Sector, Control, and Level

	Attained Credential	Still Enrolled	Transferred	Not Enrolled or Left Without Return	Total
4-year Institutions					
Public	1	70	20	10	100%
Private Nonprofit	2 [a]	70	20	8	100%
Private For-profit	5 [b]	52	17	26	100%
2-year Institutions					
Public	6	43	21	29	100%
Private Nonprofit	15 [a]	27	29	29	100%
Private For-profit	22	29	14	36	100%
Less-than-2-year Institutions					
Public	60	7 [a]	8	25	100%
Private Nonprofit	33 [a]	18 [b]	11 [b]	39	100%
Private For-profit	47	9	11	33	100%
Total	8	51	20	21	100%

[a] Interpret data with caution. Estimate is unstable because the standard error represents more than 30 percent of the estimate.

[b] Interpret data with caution. Estimate is unstable because the standard error represents more than 50 percent of the estimate.

<u>Source:</u> BPS 04/09.

Establishing rates of transfer and dropout within each sector allowed us to determine what percentage of students should be removed from the model before estimating the effects of our regulations. Running our estimates of the effect of the regulations after subtracting the students who would have left an institution anyway contextualizes the outcome of our regulations and acknowledges the significant existing levels of student movement that already occur in many programs. For example, only 29 percent of students at 2-year for-profit institutions who entered in 2003–04 were still enrolled in 2004–05. The rate of transfers and drops after one year was used to adjust the transfer and dropout rates used in the model after one year of failure while rates after two and three years were used to contextualize the model rates for two failures and ineligibility. If we estimate that these final regulations would cause 18 percent of those remaining students to drop out, the high existing dropout and transfer rate means that 9 percent of the student body would actually be affected. In this case, that result would mean the effect on students from the gainful employment regulations is approximately half as large as our estimated dropout effect and is roughly one-fifth as large as student exit without completion.

Summary of Results

While stepping through the events described above, the model records the state of the system at specific points in the process. These snapshots of data are combined, so that student shifts to different schools and to passing or failing programs can be displayed, across the modeled years. The model can be run under different scenarios by changing selected user-specified input and saving the results. The results of various scenarios may then be considered in the analysis of the effects of the gainful employment regulations on schools, programs, and students. The Department's review of the effects of these regulations is consistent with the principles of the Executive Orders 13563 and 12866 and represents a reasoned determination that the benefits of the regulatory approach justify its costs.

Tables 9 to 12 summarize the estimated results for programs, students, and revenues for the scenarios evaluated. As shown in Table 9, an estimated 1 percent of all programs and 3 percent of all programs at for-profit institutions will lose eligibility by 2015. The Department also estimates that 7 percent of programs at 4-year for-profit institutions and 6 percent of programs at 2-year for-profit institutions will lose eligibility.

Though a program must fail the debt measures for three years in a four-year period, we expect that students likely will exhibit some degree of reaction to a program failing once or twice, possibly by transferring out of the program or stopping out altogether. To reflect these behavioral considerations in our analysis, we established two different estimates of student movement in reaction to debt measure performance—the high dropout scenario and the low dropout scenario. In each case, we created tables that lay out the estimated percentage of students that will drop out or transfer, with different results assigned depending on a program's sector and performance on the debt measures. And

the extent to which students respond increases with the extent of the negative result—meaning the transfer and dropout rate is higher at a program that failed twice than one in the same sector that has only failed once. As a result, the extent to which students react to the policy by switching programs or dropping out will vary by scenario, sector, and debt measure performance.

In the high dropout scenario, we estimate that students are more likely to respond to poor debt measure performance by ceasing their education. In this scenario, dropout rates as a percent of remaining students range from 15 percent at programs in the public 4-year and private nonprofit 4-year sectors where only one failure occurred to 42 percent at programs in the for-profit less-than 2-year sector that are ineligible. Transfer rates as a percent of remaining students range from 20 percent at programs in the public 4-year and private nonprofit 4-year sectors where only one failure occurred to 40 percent at programs in the for-profit less-than 2-year sector that are ineligible. By contrast, the low dropout scenario assumes that instead of stopping out, students in programs that fare poorly on the debt measures are more likely to seek out another program for their education or stay enrolled at their current offering. In that instance, the rate of student dropout is lower relative to our other scenario, but the rate of student transfer is higher. As a result of these different assumptions, the rate of student dropouts in the low dropout scenario ranges from 5 percent at programs in the public 4-year and private nonprofit 4-year sectors where only one failure occurred to 22 at programs in the for-profit less-than 2-year sector that are ineligible. Transfer rates as a percent of remaining students range from 25 percent at programs in the public 4-year and private nonprofit 4-year sectors where only one failure occurred to 50 percent at programs in the for-profit less-than 2-year sector that are ineligible. The appendix to this RIA contains more detailed charts displaying our assumptions around student transfer and dropout, both in terms of the share of total students in gainful employment programs and as a share of the total student body after removing the baseline dropout and transfers that would have occurred without this regulation.

As noted earlier, BPS provides information regarding students' first-to-second-year persistence behaviors. We used these data to inform our "steady-state" estimate for the probability of dropping out. Using this baseline, we established the drop-out rate benchmarks for the various scenarios as noted above. The school and program assumptions for debt performance and repayment category transitions vary slightly as shown in RIA Appendix A–1 and RIA Appendix A–2. The estimated drop-outs related to the regulations over the five years ranged from 80,153 in the low dropout scenario to 181,933 in the high dropout scenario. The percentage of programs subject to ineligibility ranges from 0.1 percent in the public less-than-2-year sector to 3.9 percent in the for-profit 4-year sector when the total number of regulated programs, including small programs, is used as the denominator. If the denominator excludes programs with a small number of borrowers or completers, the percentage of programs that are ineligible ranges from 0.2 percent to 7.1 percent. The percentage of programs that have failed the measures at least once in a four-year cycle ranges from 1.1 percent for the public less-than-2-year sector to 24.5 percent for the 4-year for-profit sector.

When students transfer out of a sector or drop out of education, revenues and expenses associated with those students shift among sectors or leave higher education. Table 8 contains per enrollee revenue and expense information used to estimate the costs per sector of the student transfers set out in Tables 10–A to 10–C and in the RIA Appendices. These estimated direct costs are set out in Tables 12–A to 12–C. Results for programs are set out in Tables 11–A to 11–C. We estimate the effects on revenue under a scenario in which the maximum dropout rate is 22 percent and a scenario in which the maximum dropout rate is 42 percent.

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Table 8: Sector Average Revenues and Expenses per Enrollee

		4-year Institutions			2-year Institutions			Less-than-2-year Institutions		
		Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit
Institutions with Passing Repayment Rates	**Revenues**									
	Total	32,241	15,476	11,982	6,077	9,867	8,679	14,338	8,474	8,254
	Tuition and Fee	4,575	11,227	10,487	1,122	6,445	6,866	4,803	4,415	6,132
	Core*	23,381	9,637	11,605	5,801	9,378	8,570	14,338	8,261	8,253
	Expenses									
	Total	32,190	30,669	10,772	5,719	27,067	7,703	11,209	9,805	7,549
	Instructional	7,711	9,363	2,884	2,339	7,233	2,959	6,868	5,273	2,997
	Core**	23,368	25,548	10,385	5,395	26,601	7,568	11,209	9,804	7,546
Institutions with Failing Repayment Rates	**Revenues**									
	Total	21,981	20,234	9,001	5,293	9,146	8,004	7,286	5,305	6,594
	Tuition and Fee	3,582	8,150	7,734	717	4,991	6,428	3,567	2,456	4,980
	Core*	17,998	14,817	8,779	5,091	8,543	7,905	7,286	5,305	6,591
	Expenses									
	Total	20,807	23,847	7,833	4,915	9,792	7,221	5,915	5,654	5,529
	Instructional	6,832	5,580	2,080	1,871	2,592	2,497	4,345	3,290	2,283
	Core**	16,376	19,053	7,685	4,636	9,110	7,122	5,915	5,654	5,458

Note: Revenue and expense figures are not additive

*Total revenues for the essential education activities of the institution. Core revenues for public institutions (using the Governmental Accounting Standards Board (GASB) standards) include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private gifts, grants, and contracts; investment income; other operating and nonoperating sources; and other revenues and additions. Core revenues for private, not-for-profit and public institutions reporting under the Financial Accounting Standards Board (FASB) standards include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private gifts, grants, and contracts; investment return; sales and services of educational activities; and other sources. Core revenues for private, for-profit institutions reporting under FASB standards include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private grants and contracts; net investment income; sales and services of educational activities; and other sources. In general, core revenues exclude revenues from auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations.

**Total expenses for the essential education activities of the institution. Core expenses for public institutions reporting under GASB standards include expenses for instruction, research, public service, academic support, student services, institutional support, operation and maintenance of plant, depreciation, scholarships and fellowships, interest and other operating and nonoperating expenses. Core expenses for FASB (primarily private, not-for-profit and for-profit) institutions include expenses on instruction, research, public service, academic support, student services, institutional support, net grant aid to students, and other expenses. For both FASB and GASB institutions, core expenses exclude expenses for auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations.

Source: IPEDS.

Table 9: Summary of Impact of the Regulations From 2012 to 2015

Table 9-A: Impact of the Regulations on Programs

	Total	Public	Private Nonprofit	Private For-profit
Institutions with Regulated Programs	4,467	1,664	911	1,892
Regulated Programs Offered	21,049	11,877	1,236	7,936
High Drop Scenario				
Programs that Fail Once	817	162	30	625
Percent	4%	1%	2%	8%
Programs that Fail Twice	531	85	16	430
Percent	3%	1%	1%	5%
Programs that Lose Eligibility	475	67	11	397
Percent	2%	1%	1%	5%
Programs that Fail At Least Once	1,823	314	57	1,452
Percent	9%	3%	5%	18%
Programs that Never Fail	19,226	11,563	1,179	6,484
Percent	91%	97%	95%	82%
Low Drop Scenario				
Programs that Fail Once	785	155	29	601
Percent	4%	1%	2%	8%
Programs that Fail Twice	501	82	15	404
Percent	2%	1%	1%	5%
Programs that Lose Eligibility	467	66	11	390
Percent	2%	1%	1%	5%
Programs that Fail At Least Once	1,753	303	55	1,395
Percent	8%	3%	4%	18%
Programs that Never Fail	19,296	11,574	1,181	6,541
Percent	92%	97%	96%	82%

***Excludes programs with 30 or fewer completers or borrowers entering repayment subject to the small numbers provision.**

Source: **NSLDS, IPEDS, BPS: 04/09, NPSAS, and MDHE.**

Table 9-B: Impact of the Regulations on Students, High Dropout Scenario

		Program Result						
	Enrolled	Fail Once	Fail Twice	Ineligible	Never Fail	Percent in Programs that Only Fail Once or Twice	Percent in Ineligible Programs	Percent in Programs that Never Fail
After Year 1								
Public	4,302,174	18,584			4,283,590	0%	0%	100%
Private Nonprofit	231,611	1,054			230,557	0%	0%	100%
Private For-profit	3,833,506	136,221			3,697,285	4%	0%	96%
Total	8,367,291	155,859			8,211,432	2%	0%	98%
After Year 2								
Public	4,425,666	37,320	11,939		4,376,407	1%	0%	99%
Private Nonprofit	241,978	3,458	1,112		237,408	2%	0%	98%
Private For-profit	4,064,595	218,608	83,277		3,762,710	7%	0%	93%
Total	8,732,239	259,386	96,328		8,376,525	4%	0%	96%
After Year 3								
Public	4,551,720	47,546	22,372	7,133	4,474,669	2%	0%	98%
Private Nonprofit	256,488	4,834	2,225	559	248,870	3%	0%	97%
Private For-profit	4,309,054	265,366	128,513	47,345	3,867,830	9%	1%	90%
Total	9,117,262	317,746	153,110	55,037	8,591,369	5%	1%	94%
After Year 4								
Public	4,678,687	60,907	27,646	17,610	4,572,524	2%	0%	98%
Private Nonprofit	275,995	6,769	3,195	1,375	264,656	4%	0%	96%
Private For-profit	4,549,312	295,701	155,116	101,823	3,996,672	10%	2%	88%
Total	9,503,994	363,377	185,957	120,808	8,833,852	6%	1%	93%

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS, and MDHE.

Table 9-C: Impact of the Regulations on Students, Low Dropout Scenario

		Program Result						
	Enrolled	Fail Once	Fail Twice	Ineligible	Never Fail	Percent in Programs that Only Fail Once or Twice	Percent in Ineligible Programs	Percent in Programs that Never Fail
After Year 1								
Public	4,302,174	18,584			4,283,590	0%	0%	100%
Private Nonprofit	232,398	1,841			230,557	1%	0%	99%
Private For-profit	3,833,506	136,221			3,697,285	4%	0%	96%
Total	8,368,078	156,646			8,211,432	2%	0%	98%
After Year 2								
Public	4,426,986	36,919	12,224		4,377,843	1%	0%	99%
Private Nonprofit	243,432	3,450	1,151		238,831	2%	0%	98%
Private For-profit	4,070,765	216,685	85,250		3,768,830	7%	0%	93%
Total	8,741,183	257,054	98,625		8,385,504	4%	0%	96%
After Year 3								
Public	4,555,832	46,068	22,644	7,617	4,479,503	2%	0%	98%
Private Nonprofit	261,277	4,869	2,362	624	253,422	3%	0%	97%
Private For-profit	4,316,036	258,692	129,663	50,492	3,877,189	9%	1%	90%
Total	9,133,145	309,629	154,669	58,733	8,610,114	5%	1%	94%
After Year 4								
Public	4,687,001	58,754	27,582	19,016	4,581,649	2%	0%	98%
Private Nonprofit	285,844	7,107	3,492	1,608	273,637	4%	1%	96%
Private For-profit	4,564,256	290,532	153,723	109,201	4,010,800	10%	2%	88%
Total	9,537,101	356,393	184,797	129,825	8,866,086	6%	1%	93%

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS, and MDHE.

Tables 10: Student Distribution by Sector and Debt Measure Status

Table 10-A: 4-year Institutions

Sector		Year 2	Year 3	Year 4	Year 5
Public 4-year	**High Dropout Scenario**				
	No Fail	327,060	330,420	333,954	340,714
	Transfer Out of Sector	186	585	970	1355
	Transfer Into Sector from Out	125	479	918	1379
	Transfer within Sector	29	95	160	226
	Remain in Sector and Status*	1151	3307	5012	6698
	Drop Out	162	525	892	1256
	Low Dropout Scenario				
	No Fail	327,060	330,513	334,498	341,952
	Transfer Out of Sector	226	714	1,192	1,688
	Transfer Into Sector from Out	161	728	1,336	1,930
	Transfer within Sector	44	133	219	310
	Remain in Sector and Status*	1,204	3,495	5,327	7,192
	Drop Out	53	185	330	482
Private Nonprofit 4-year	**High Dropout Scenario**				
	No Fail	171,637	176,033	182,377	190,347
	Transfer Out of Sector	164	438	767	1133
	Transfer Into Sector from Out	1433	3808	6018	8074
	Transfer within Sector	30	73	123	179
	Remain in Sector and Status*	1015	2397	3809	5389
	Drop Out	145	398	707	1051
	Low Dropout Scenario				
	No Fail	171,637	175,933	182,350	190,671
	Transfer Out of Sector	218	570	1004	1518
	Transfer Into Sector from Out	1293	3809	6340	8783
	Transfer within Sector	24	66	119	182
	Remain in Sector and Status*	1063	2526	4063	5876
	Drop Out	49	143	268	415
Private For-profit 4-year	**High Dropout Scenario**				
	No Fail	2,568,184	2,621,422	2,692,559	2,773,370
	Transfer Out of Sector	4,520	12,154	19,083	25,144
	Transfer Into Sector from Out	1,407	3,086	4,919	6,509
	Transfer within Sector	5,118	10,674	14,691	18,302
	Remain in Sector and Status*	67,466	163,182	238,471	302,278
	Drop Out	8,188	19,696	29,447	38,087
	Low Dropout Scenario				
	No Fail	2,568,184	2,625,280	2,706,729	2,799,614
	Transfer Out of Sector	5,544	14,489	22,604	30,068
	Transfer Into Sector from Out	1,864	4,041	6,334	8,407
	Transfer within Sector	6,567	14,008	19,457	24,608
	Remain in Sector and Status*	69,769	169,495	248,208	318,288
	Drop Out	3,412	8,362	12,722	16,802

Table 10-B: 2-year Institutions

Sector		Year 2	Year 3	Year 4	Year 5
Public 2-year	**High Dropout Scenario**				
	No Fail	3,964,029	4,053,618	4,146,656	4,279,736
	Transfer Out of Sector	1,349	3,625	5,846	8,289
	Transfer Into Sector from Out	1,298	3,248	4,583	5,600
	Transfer within Sector	386	908	1,367	1,911
	Remain in Sector and Status*	14,408	37,700	58,521	81,151
	Drop Out	1,385	3,672	5,947	8,488
	Low Dropout Scenario				
	No Fail	3,964,029	4,054,896	4,151,204	4,288,503
	Transfer Out of Sector	1,683	4,442	7,100	10,115
	Transfer Into Sector from Out	1,877	4,377	5,990	7,275
	Transfer within Sector	491	1,141	1,710	2,403
	Remain in Sector and Status*	14,829	38,754	59,762	82,966
	Drop Out	526	1431	2366	3428
Private Nonprofit 2-year	**High Dropout Scenario**				
	No Fail	29,129	30,732	33,995	39,629
	Transfer Out of Sector	21	57	111	198
	Transfer Into Sector from Out	1,169	2,923	5,198	7,208
	Transfer within Sector	4	11	19	34
	Remain in Sector and Status*	255	617	1,076	1,839
	Drop Out	20	56	112	198
	Low Dropout Scenario				
	No Fail	29,129	32,202	38,334	47,803
	Transfer Out of Sector	26	74	152	289
	Transfer Into Sector from Out	2,622	5,755	8,930	11,827
	Transfer within Sector	5	14	27	47
	Remain in Sector and Status*	261	664	1,231	2,227
	Drop Out	7	23	49	94
Private For-profit 2-year	**High Dropout Scenario**				
	No Fail	696,362	700,059	704,303	721,865
	Transfer Out of Sector	3,324	6,699	10,304	12,735
	Transfer Into Sector from Out	2,267	6,015	9,552	12,826
	Transfer within Sector	1,230	2,297	3,699	4,644
	Remain in Sector and Status*	36,889	71,007	102,621	122,080
	Drop Out	4,099	8,257	13,007	16,268
	Low Dropout Scenario				
	No Fail	696,362	695,333	697,946	713,706
	Transfer Out of Sector	4,190	8,279	12,662	15,721
	Transfer Into Sector from Out	2,295	6,472	10,559	14,477
	Transfer within Sector	1,548	2,876	4,557	5,730
	Remain in Sector and Status*	37,982	72,302	102,637	122,182
	Drop Out	1,822	3,688	5,797	7,306

***Students stay at an institution that had the same result--either failing or passing--the gainful employment test. It is assumed that students who transfer within a sector do not attend an institution that has failed these tests.**

<u>Source:</u> NSLDS, IPEDS, BPS: 04/09, NPSAS, and MDHE.

Table 10-C: Less-than-2-year Institutions

Sector		Year 2	Year 3	Year 4	Year 5
Public Less-than-2-year	**High Dropout Scenario**				
	No Fail	116,658	120,421	125,025	131,667
	Transfer Out of Sector	8	34	80	137
	Transfer Into Sector from Out	473	1,321	2,077	2,701
	Transfer within Sector	1	5	10	16
	Remain in Sector and Status*	51	198	398	640
	Drop Out	9	39	90	152
	Low Dropout Scenario				
	No Fail	116,658	120,529	124,907	131,141
	Transfer Out of Sector	10	43	91	157
	Transfer Into Sector from Out	578	1,048	1,634	2,216
	Transfer within Sector	1	5	11	18
	Remain in Sector and Status*	54	212	399	642
	Drop Out	5	20	42	72
Private Nonprofit Less-than-2-year	**High Dropout Scenario**				
	No Fail	36,707	38,132	40,352	43,000
	Transfer Out of Sector	22	63	117	178
	Transfer Into Sector from Out	401	1,232	2,138	2,891
	Transfer within Sector	3	8	15	24
	Remain in Sector and Status*	194	522	873	1,274
	Drop Out	25	71	132	201
	Low Dropout Scenario				
	No Fail	36,707	38,230	40,733	43,832
	Transfer Out of Sector	28	78	148	254
	Transfer Into Sector from Out	488	1,523	2,747	3,795
	Transfer within Sector	3	10	19	33
	Remain in Sector and Status*	200	543	949	1,548
	Drop Out	12	36	70	118
Private For-profit Less-than-2-year	**High Dropout Scenario**				
	No Fail	672,177	704,618	741,717	781,205
	Transfer Out of Sector	1,208	2,765	4,142	5,365
	Transfer Into Sector from Out	2,231	4,309	6,008	7,333
	Transfer within Sector	356	768	1,209	1,596
	Remain in Sector and Status*	10,909	21,616	29,563	37,198
	Drop Out	1,749	3,902	5,874	7,629
	Low Dropout Scenario				
	No Fail	672,177	698,883	730,442	764,292
	Transfer Out of Sector	1,579	3,511	5,195	6,698
	Transfer Into Sector from Out	2,326	4,440	6,267	7,797
	Transfer within Sector	412	980	1,533	2,018
	Remain in Sector and Status*	11,278	21,928	29,581	36,936
	Drop Out	953	2,063	3,055	3,950

***Students stay at an institution that had the same result--either failing or passing--the gainful employment test. It is assumed that students who transfer within a sector do not attend an institution that has failed these tests.**

<u>Source:</u> NSLDS, IPEDS, BPS: 04/09, NPSAS and MDHE.

Tables 11: Program Distribution by Sector and Debt Measure Status

Table 11-A: 4-year Institutions

Sector		Year 2	Year 3	Year 4
Public 4-year	**High Dropout Scenario**			
	Pass	4,926	4,913	4,897
	Fail Once	13	19	25
	Fail Twice	4	9	12
	Ineligible Year 3	0	3	3
	Ineligible Year 4	0	0	6
	Low Dropout Scenario			
	Pass	4,926	4,913	4,898
	Fail Once	13	18	24
	Fail Twice	4	9	12
	Ineligible Year 3	0	3	3
	Ineligible Year 4	0	0	6
Private Nonprofit 4-year	**High Dropout Scenario**			
	Pass	4,384	4,371	4,358
	Fail Once	12	17	22
	Fail Twice	4	8	11
	Ineligible Year 3	0	3	3
	Ineligible Year 4	0	0	5
	Low Dropout Scenario			
	Pass	4,384	4,372	4,359
	Fail Once	12	17	22
	Fail Twice	4	8	11
	Ineligible Year 3	0	3	3
	Ineligible Year 4	0	0	5
Private For-profit 4-year	**High Dropout Scenario**			
	Pass	3,915	3,783	3,668
	Fail Once	209	227	239
	Fail Twice	118	153	168
	Ineligible Year 3	0	80	80
	Ineligible Year 4	0	0	87
	Low Dropout Scenario			
	Pass	3,920	3,796	3,688
	Fail Once	205	219	233
	Fail Twice	118	147	158
	Ineligible Year 3	0	80	80
	Ineligible Year 4	0	0	84

Table 11-B: 2-year Institutions

Sector		Year 2	Year 3	Year 4
Public 2-year	**High Dropout Scenario**			
	Pass	30,125	30,056	29,976
	Fail Once	77	100	130
	Fail Twice	30	55	69
	Ineligible Year 3	0	21	21
	Ineligible Year 4	0	0	35
	Low Dropout Scenario			
	Pass	30,127	30,061	29,986
	Fail Once	76	96	124
	Fail Twice	29	54	67
	Ineligible Year 3	0	21	21
	Ineligible Year 4	0	0	35
Private Nonprofit 2-year	**High Dropout Scenario**			
	Pass	391	389	386
	Fail Once	2	3	4
	Fail Twice	1	2	2
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
	Low Dropout Scenario			
	Pass	391	389	386
	Fail Once	2	3	4
	Fail Twice	1	2	2
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
Private For-profit 2-year	**High Dropout Scenario**			
	Pass	4,396	4,220	4,084
	Fail Once	225	279	284
	Fail Twice	133	165	204
	Ineligible Year 3	0	90	90
	Ineligible Year 4	0	0	91
	Low Dropout Scenario			
	Pass	4,402	4,239	4,113
	Fail Once	220	266	272
	Fail Twice	133	159	191
	Ineligible Year 3	0	90	90
	Ineligible Year 4	0	0	88

Note: Figures are cumulative year to year.

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS, and MDHE.

Table 11-C: Less-than-2-year Institutions

Sector		Year 2	Year 3	Year 4
Public 2-Year	**High Dropout Scenario**			
	Pass	2,039	2,035	2,031
	Fail Once	3	5	7
	Fail Twice	1	2	3
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
	Low Dropout Scenario			
	Pass	2,039	2,035	2,031
	Fail Once	3	5	7
	Fail Twice	1	2	3
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
Private Nonprofit 2-Year	**High Dropout Scenario**			
	Pass	275	273	271
	Fail Once	2	3	4
	Fail Twice	1	2	2
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
	Low Dropout Scenario			
	Pass	275	274	271
	Fail Once	2	3	4
	Fail Twice	1	2	2
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
Private, For-profit 2-Year	**High Dropout Scenario**			
	Pass	4,016	3,964	3,909
	Fail Once	68	83	101
	Fail Twice	34	48	58
	Ineligible Year 3	0	23	23
	Ineligible Year 4	0	0	26
	Low Dropout Scenario			
	Pass	4,018	3,970	3,919
	Fail Once	68	80	97
	Fail Twice	32	46	54
	Ineligible Year 3	0	22	22
	Ineligible Year 4	0	0	26

Note: Figures are cumulative year to year.

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS, and MDHE.

Tables 12: Estimated Direct Revenue and Expense Effects (Dollars in Millions)

Table 12-A: 4-year Institutions

Sector	Category	Item	Year 2	Year 3	Year 4	Year 5
Public 4-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.6	1.9	3.2	4.5
		Loss From Transfers Out	0.7	2.1	3.5	4.9
		Gain From Transfers In	0.6	2.2	4.2	6.3
	Expenses	Reduction from Drop Outs	2.7	8.7	14.8	20.9
		Reduction from Transfers Out	3.1	9.7	16.1	22.6
		Increase from Transfers In	3.2	12.3	23.6	35.5
	Net Change in Revenues for Sector		**1.9**	**4.4**	**4.9**	**4.9**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.2	0.7	1.2	1.7
		Loss From Transfers Out	0.8	2.6	4.3	6.0
		Gain From Transfers In	0.7	3.3	6.1	8.8
	Expenses	Reduction from Drop Outs	0.9	3.1	5.5	8.0
		Reduction from Transfers Out	3.8	11.9	19.8	28.1
		Increase from Transfers In	4.1	18.7	34.4	49.7
	Net Change in Revenues for Sector		**0.2**	**-3.7**	**-8.4**	**-12.5**
Private Nonprofit 4-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	1.2	3.2	5.8	8.6
		Loss From Transfers Out	1.3	3.6	6.3	9.2
		Gain From Transfers In	16.1	42.8	67.6	90.6
	Expenses	Reduction from Drop Outs	2.8	7.6	13.5	20.1
		Reduction from Transfers Out	3.1	8.4	14.6	21.6
		Increase from Transfers In	35.2	93.4	147.7	198.1
	Net Change in Revenues for Sector		**-15.7**	**-41.5**	**-64.0**	**-83.6**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.4	1.2	2.2	3.4
		Loss From Transfers Out	1.8	4.6	8.2	12.4
		Gain From Transfers In	14.5	42.8	71.2	98.6
	Expenses	Reduction from Drop Outs	0.9	2.7	5.1	7.9
		Reduction from Transfers Out	4.2	10.9	19.2	29.0
		Increase from Transfers In	31.7	93.5	155.6	215.5
	Net Change in Revenues for Sector		**-14.3**	**-42.9**	**-70.5**	**-95.8**
Private For-profit 4-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	63.3	152.3	227.7	294.6
		Loss From Transfers Out	35.0	94.0	147.6	194.5
		Gain From Transfers In	14.8	32.4	51.6	68.3
	Expenses	Reduction from Drop Outs	51.3	123.4	184.5	238.7
		Reduction from Transfers Out	28.3	76.2	119.6	157.6
		Increase from Transfers In	12.1	26.6	42.4	56.1
	Net Change in Revenues for Sector		**-16.0**	**-41.0**	**-62.0**	**-80.6**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	26.4	64.7	98.4	129.9
		Loss From Transfers Out	42.9	112.1	174.8	232.5
		Gain From Transfers In	19.5	42.4	66.4	88.2
	Expenses	Reduction from Drop Outs	21.4	52.4	79.7	105.3
		Reduction from Transfers Out	34.7	90.8	141.6	188.4
		Increase from Transfers In	16.1	34.8	54.6	72.4
	Net Change in Revenues for Sector		**-9.7**	**-26.0**	**-40.0**	**-53.1**

Table 12-B: 2-year Institutions

Sector	Category	Item	Year 2	Year 3	Year 4	Year 5
Public 2-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	1.0	2.6	4.3	6.1
		Loss From Transfers Out	1.0	2.6	4.2	5.9
		Gain From Transfers In	1.5	3.6	5.1	6.3
	Expenses	Reduction from Drop Outs	5.4	14.4	23.4	33.4
		Reduction from Transfers Out	5.3	14.3	23.0	32.6
		Increase from Transfers In	5.9	14.9	21.0	25.6
	Net Change in Revenues for Sector		**4.3**	**12.2**	**22.1**	**34.6**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.4	1.0	1.7	2.5
		Loss From Transfers Out	1.2	3.2	5.1	7.3
		Gain From Transfers In	2.1	4.9	6.7	8.2
	Expenses	Reduction from Drop Outs	2.1	5.6	9.3	13.5
		Reduction from Transfers Out	6.6	17.5	27.9	39.8
		Increase from Transfers In	8.6	20.0	27.4	33.3
	Net Change in Revenues for Sector		**0.6**	**3.8**	**9.7**	**18.4**
Private Nonprofit 2-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.1	0.3	0.6	1.0
		Loss From Transfers Out	0.1	0.3	0.6	1.0
		Gain From Transfers In	7.5	18.8	33.5	46.5
	Expenses	Reduction from Drop Outs	0.2	0.4	0.9	1.6
		Reduction from Transfers Out	0.2	0.4	0.9	1.6
		Increase from Transfers In	25.3	63.3	112.6	156.1
	Net Change in Revenues for Sector		**-17.7**	**-44.1**	**-78.4**	**-108.5**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.2	0.5
		Loss From Transfers Out	0.1	0.4	0.8	1.4
		Gain From Transfers In	16.9	37.1	57.6	76.2
	Expenses	Reduction from Drop Outs	0.1	0.2	0.4	0.7
		Reduction from Transfers Out	0.2	0.6	1.2	2.3
		Increase from Transfers In	56.8	124.6	193.4	256.1
	Net Change in Revenues for Sector		**-39.8**	**-87.2**	**-135.2**	**-178.8**
Private For-profit 2-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	26.3	53.1	83.6	104.6
		Loss From Transfers Out	21.4	43.1	66.2	81.9
		Gain From Transfers In	15.6	41.3	65.6	88.1
	Expenses	Reduction from Drop Outs	23.7	47.7	75.1	94.0
		Reduction from Transfers Out	19.2	38.7	59.5	73.6
		Increase from Transfers In	14.0	37.1	58.9	79.0
	Net Change in Revenues for Sector		**-3.2**	**-5.5**	**-8.5**	**-9.9**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	11.7	23.7	37.3	47.0
		Loss From Transfers Out	26.9	53.2	81.4	101.1
		Gain From Transfers In	15.8	44.4	72.5	99.4
	Expenses	Reduction from Drop Outs	10.5	21.3	33.5	42.2
		Reduction from Transfers Out	24.2	47.8	73.1	90.8
		Increase from Transfers In	14.1	39.9	65.1	89.2
	Net Change in Revenues for Sector		**-2.3**	**-3.2**	**-4.6**	**-4.8**

Note: Figures based on estimated marginal expense of 80 percent of total expenses. The equivalent table for the marginal expense of 40 percent of total expenses is available in RIA Appendix B.

<u>Source:</u> NSLDS, IPEDS, BPS: 04/09, NPSAS, and MDHE.

Table 12-C: Less-than-2-year Institutions

Sector	Category	Item	Year 2	Year 3	Year 4	Year 5
Public Less-than-2-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.3	0.5
		Loss From Transfers Out	0.0	0.1	0.3	0.5
		Gain From Transfers In	2.3	6.3	10.0	13.0
	Expenses	Reduction from Drop Outs	0.0	0.2	0.4	0.7
		Reduction from Transfers Out	0.0	0.2	0.4	0.6
		Increase from Transfers In	4.2	11.8	18.6	24.2
	Net Change in Revenues for Sector		**-1.9**	**-5.4**	**-8.5**	**-10.9**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.1	0.3
		Loss From Transfers Out	0.0	0.2	0.3	0.6
		Gain From Transfers In	2.8	5.0	7.8	10.6
	Expenses	Reduction from Drop Outs	0.0	0.1	0.2	0.3
		Reduction from Transfers Out	0.0	0.2	0.4	0.7
		Increase from Transfers In	5.2	9.4	14.7	19.9
	Net Change in Revenues for Sector		**-2.4**	**-4.3**	**-6.6**	**-9.0**
Private Nonprofit Less-than-2-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.1	0.2	0.3	0.5
		Loss From Transfers Out	0.1	0.2	0.3	0.4
		Gain From Transfers In	1.8	5.4	9.4	12.8
	Expenses	Reduction from Drop Outs	0.1	0.3	0.6	0.9
		Reduction from Transfers Out	0.1	0.3	0.5	0.8
		Increase from Transfers In	3.1	9.7	16.8	22.7
	Net Change in Revenues for Sector		**-1.3**	**-3.9**	**-6.8**	**-9.1**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.2	0.3
		Loss From Transfers Out	0.1	0.2	0.4	0.6
		Gain From Transfers In	2.2	6.7	12.1	16.8
	Expenses	Reduction from Drop Outs	0.1	0.2	0.3	0.5
		Reduction from Transfers Out	0.1	0.4	0.7	1.1
		Increase from Transfers In	3.8	11.9	21.5	29.8
	Net Change in Revenues for Sector		**-1.6**	**-5.0**	**-9.0**	**-12.2**
Private For-profit Less-than-2-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	8.7	19.4	29.3	38.0
		Loss From Transfers Out	6.0	13.8	20.6	26.7
		Gain From Transfers In	13.7	26.4	36.8	45.0
	Expenses	Reduction from Drop Outs	7.7	17.3	26.0	33.7
		Reduction from Transfers Out	5.3	12.2	18.3	23.7
		Increase from Transfers In	13.5	26.0	36.3	44.3
	Net Change in Revenues for Sector		**-1.4**	**-3.3**	**-5.0**	**-6.6**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	4.7	10.3	15.2	19.7
		Loss From Transfers Out	7.9	17.5	25.9	33.4
		Gain From Transfers In	14.3	27.2	38.4	47.8
	Expenses	Reduction from Drop Outs	4.2	9.1	13.5	17.5
		Reduction from Transfers Out	7.0	15.5	23.0	29.6
		Increase from Transfers In	14.0	26.8	37.8	47.1
	Net Change in Revenues for Sector		**-1.2**	**-2.7**	**-4.0**	**-5.2**

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS, and MDHE.

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Data Sensitivity

The data used in this model are limited by the fact that we are using data that were not collected for this purpose. There is also uncertainty in our assumptions because predicting student behavior and employment trends is well beyond what we are able to model. The revenue and expense effects presented in Table 12 represent the Department's best estimate of the net effects of these final regulations for the scenarios presented in this RIA. However, we recognize that elements in the analysis are sensitive to the cost structure of programs and innovations in the delivery of postsecondary education. In particular, the marginal cost of

a student attending a program through online delivery or a mix of online and in-person classes could vary significantly from the traditional model. Income statements for publicly traded for-profit institutions show that as the number of enrolled students grows at an institution expenses grow at almost the same rate as revenues. Accordingly, we assume that when students transfer or drop out the change in expenses is equal to 80 percent of the average existing cost per student. However, given the data limitations and the sensitivity of the net costs to the assumptions made about the percent of revenues lost and expenses saved when students leave a program or the revenues gained and expenses increased as students enter programs, the Department ran an alternative scenario featuring a reduction or increase in expenses for student transfers of 40 percent of total expenses. RIA Appendix B contains the equivalent of Table 12 for that scenario.

While the Department has some data on the prevalence of online delivery in gainful employment programs, we have very limited information on the cost structures of such programs. In 2007–08, 58 percent of undergraduate students at for-profit institutions were enrolled in programs delivered entirely through distance education. At public and private non-profit institutions, 24 percent and 37 percent of students enrolled in certificate programs, which also would be subject to the gainful employment rule, were enrolled in programs delivered entirely through distance learning. However, these data do not help describe the cost structure of such programs. It is possible that the marginal savings from a student leaving such a program or the marginal cost of a student transferring into an online program would be a significant portion of the total expense associated with the program.

As can be seen in Table 13, the annualized net losses from dropouts and inter-sector transfers in the high dropout scenario range from $112 million to $122 million, depending on the composition of program delivery and the expense reduction and increases associated with different types of program delivery. For the low dropout scenario, this range runs from $108 million to $160 million.

Consistent with Executive Order 13563's call to "measure, and seek to improve, the actual results of regulatory requirements," the Department will continue to analyze the effects of this regulation as the Department gains more and better data. As noted in the preamble to the final regulation, we will begin to provide institutions with the results of the debt calculation in 2012. These data, along with data from subsequent years, will enable the Department to determine whether the final regulation addresses the issues that prompted this regulatory action.

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Table 13: Range of Net Costs by Dropout Scenario and Marginal Expense Assumption

	High Dropout Scenario; 80% Reduction in Total Expenses (dollars in millions)				
All Sectors	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Cycle Total**
Effects of students leaving postsecondary education:					
Reductions in Tuition and Fee Revenues	101	233	355	458	1,148
Reductions in Total Expenses (decrease of 80%)	94	220	339	444	1,097
Effects of students transferring from poorly performing programs to better performing ones:					
Reduction in Tuition and Fee Revenues at sending programs	65	160	249	325	800
Reduction in Total Expenses at sending programs	65	160	253	335	813
Increase in Tuition and Fee Revenue at receiving programs	74	179	284	377	914
Increase in Total Expenses at receiving programs (80%)	117	295	478	642	1,531
Net effect of student dropouts and inter-sector transfers	**(51)**	**(128)**	**(206)**	**(270)**	**(655)**

	High Dropout Scenario; 40% Reduction in Total Expenses (dollars in millions)				
All Sectors	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Cycle Total**
Effects of students leaving postsecondary education:					
Reductions in Tuition and Fee Revenues	101	233	355	458	1,148
Reductions in Total Expenses (decrease of 40%)	75	180	276	362	893
Effects of students transferring from poorly performing programs to better					
Reduction in Tuition and Fee Revenues at sending programs	65	160	249	325	800
Reduction in Total Expenses at sending programs	50	127	202	268	647
Increase in Tuition and Fee Revenue at receiving programs	74	179	284	377	914
Increase in Total Expenses at receiving programs (40%)	84	214	346	466	1,109
Net effect of student dropouts and inter-sector transfers	**(52)**	**(120)**	**(189)**	**(242)**	**(603)**

	Low Dropout Scenario; 80% Reduction in Total Expenses (dollars in millions)				
All Sectors	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Cycle Total**
Effects of students leaving postsecondary education:					
Reductions in Tuition and Fee Revenues	44	102	156	205	507
Reductions in Total Expenses (decrease of 80%)	40	95	148	196	478
Effects of students transferring from poorly performing programs to better					
Reduction in Tuition and Fee Revenues at sending programs	82	194	301	395	972
Reduction in Total Expenses at sending programs	81	196	307	410	993
Increase in Tuition and Fee Revenue at receiving programs	89	214	339	455	1,096
Increase in Total Expenses at receiving programs (80%)	154	380	604	813	1,952
Net effect of student dropouts and inter-sector transfers	**(70)**	**(171)**	**(269)**	**(353)**	**(863)**

	Low Dropout Scenario; 40% Reduction in Total Expenses (dollars in millions)				
All Sectors	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Cycle Total**
Effects of students leaving postsecondary education:					
Reductions in Tuition and Fee Revenues	44	102	156	205	507
Reductions in Total Expenses (decrease of 40%)	32	76	119	159	386
Effects of students transferring from poorly performing programs to better					
Reduction in Tuition and Fee Revenues at sending programs	82	194	301	395	972
Reduction in Total Expenses at sending programs	62	155	244	328	788
Increase in Tuition and Fee Revenue at receiving programs	89	214	339	455	1,096
Increase in Total Expenses at receiving programs (40%)	103	263	424	575	1,366
Net effect of student dropouts and inter-sector transfers	**(47)**	**(114)**	**(180)**	**(235)**	**(576)**

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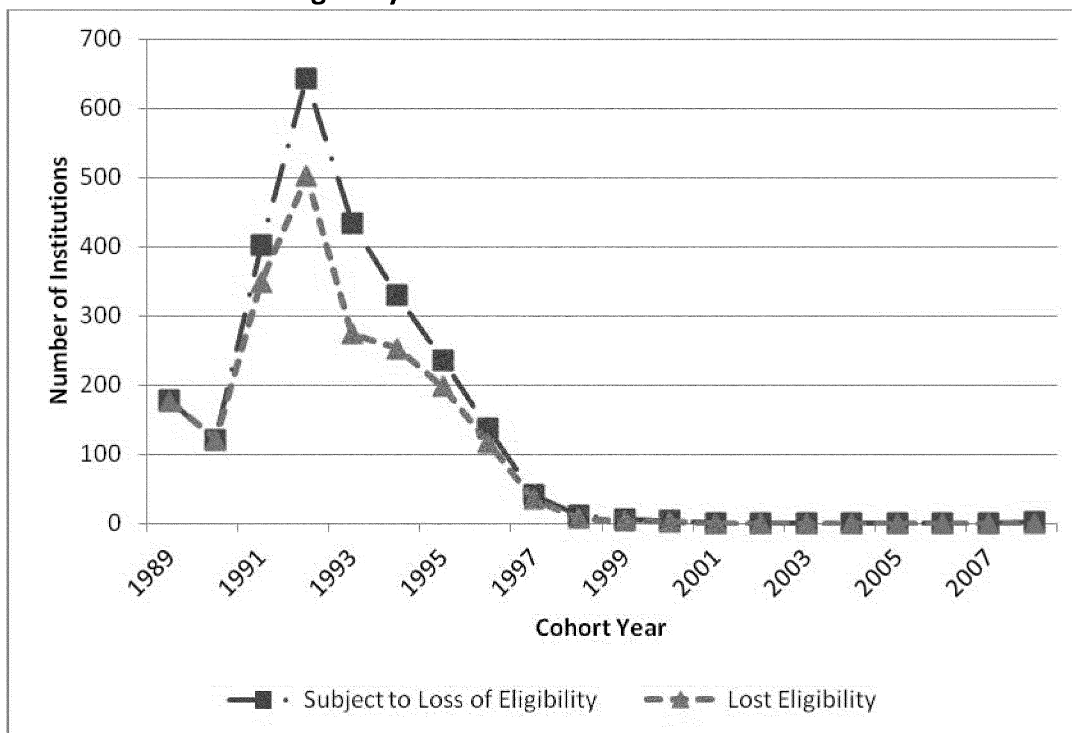
The effects described above represent the estimated effects of the regulations during the first four-year cycle leading to ineligibility, an initial transition period as the regulations come into effect. While the debt measures will remain in place, we would expect the effect to decline over time as programs that could not comply are eliminated and institutions have more data about program performance and are familiar with complying with the gainful employment debt measures. We expect the pattern of program failure to that which occurred when cohort default rates were introduced in 1989 with an initial elimination of the worst-performing programs followed by a new equilibrium in which programs comply with the minimum standards set out in the regulations, as shown in Chart D.

Chart D: Loss of Eligibility after Introduction of Cohort Default Rates



Source: Federal Student Aid.

V. Discussion of Costs, Benefits and Transfers

Consistent with the principles of Executive Orders 12866 and 13563, the Department has analyzed the impact of these regulations on students, businesses, the Federal Government, and State and local governments. The analysis rests on the projected impact of the regulations. The benefits and costs discussed below include the following:

- Private Benefits to Students and Borrowers
  - Development of measures linking programs to labor market outcomes
  - Improved retention rates
  - Increased graduation rates
  - Improved default rates
- Social Benefits
  - Improved market information
  - Better return on money spent on education
- Costs
  - Additional expense of educating transfer students at programs doing well on the debt measures
  - Cost of paperwork burden
  - Additional compliance costs as programs take efforts to meet debt measures
- Distributional Effects (Transfers)
  - Transfers affecting institutional revenues
  - Transfers affecting Federal, State, and local governments
  - Federal revenues
  - State and local government costs

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 14, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers from the Federal Government to student loan borrowers and from low-performing programs to performing programs. Transfers are neither costs nor benefits, but rather the reallocation of resources from one party to another.

Table 14 also presents estimates of the costs, benefits, and transfers associated with students who switch programs or withdraw. Because more students are projected to transfer into lower-cost institutions, overall educational expenditures are expected to slightly decrease.

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Table 14: Accounting Statement: Classification of Estimated Expenditures (in millions)

	Low Dropout Scenario	High Dropout Scenario
Category	**Benefits**	
Improved market information and development of measures linking programs to labor market outcomes	Not Quantified	
Improved retention, graduation and default rates	Not Quantified	
Better return on money spent on education	Not Quantified	
Category	**Costs**	
Additional expense of educating transfer students at programs doing well on the debt measures	$178	$133
Cost of paperwork burden	$5	$5
Additional compliance costs as programs take efforts to meet debt measures	Not Quantified	
Category	**Transfers**	
Transfer of tuition and fee revenues from failing programs to other programs when students change schools	$181	$148
Transfer of additional tuition and fee revenues (from various sources) to programs into which students transfer	$23	$21
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$23	$51
Transfer of loan and cash tuition payments from failing programs to students when students drop out of programs	$71	$163

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Private Benefits to Students and Borrowers

The regulations are primarily intended to provide opportunities for better employment and loan affordability outcomes for students, particularly for those participating in the Federal student aid programs. The final regulations provide significant opportunities for institutions to improve failing programs against the debt measures.

Development of Measures Linking Programs to Labor Market Outcomes

One improvement will result from strengthening the connection between training programs and the labor market. As described under the heading, *Need for Regulatory Action,* market mechanisms may not operate properly in the case of educational markets where students have incomplete information and educational institutions are effectively insulated from the effects of an excess supply of graduates in a particular field.

By tying the state of the labor market to the ability of for-profit institutions to generate revenue, the final regulations compensate for

this disconnect between student demand and employer demand. First, earnings and repayment information will provide a clear indication to institutions about whether or not their students are successful in securing stable and well-paying positions. This information will help institutions determine when it would be prudent to expand some programs or pare back others. Second, meeting the debt-to-earnings ratio and repayment rate thresholds will encourage institutions to prepare students for jobs in well-paying and in-demand fields. This effect creates an incentive to move programs up-market so that they prepare students for jobs with better salaries and employment prospects.

The health care industry is an example of how the gainful employment regulations could encourage institutions, particularly those in the for-profit sectors, to adjust their offerings to provide better opportunities to students and to eliminate oversupply in the job market. A report by the Center for American Progress released in January found that for-profit institutions currently supply a significant percentage of health care credentials annually.[21] But many of these programs prepare students for low-paying entry-level jobs in support occupations, such as medical assistants, massage therapists, and medical insurance coders. Though most of those jobs have some labor market demand, projections of future openings indicate there is an oversupply of graduates for these positions, while more highly compensated occupations, such as registered nurses, are facing significant shortages. Not only are programs preparing students for these lower-paying occupations creating an oversupply of graduates, but this oversupply is almost entirely produced by the for-profit sector. The Center for American Progress report found that of the 10 most popular health care programs offered at for-profit institutions, eight of them are in programs for which the for-profit sector accounted for four-fifths or more of the completions each year. In other words, the for-profit sector was providing the vast majority of the oversupply in these health care fields with lesser earnings and growth potential.

An analysis of national completion data shows that the health care industry is not the only area in which for-profit institutions are providing a significant supply of completions in areas where earnings and growth are low. Table 15 shows the 15 most popular instructional programs at for-profit institutions, as measured by the number of completions at any level. In nine of these program types, for-profit institutions accounted for over 60 percent of the annual completions. In all but one of these programs—registered nursing—for-profit institutions represented a disproportionately large share of the completions. As Table 15 demonstrates, the programs in which for-profit institutions are providing the vast majority of completions tend to have lower median wages, as measured by BLS data, than the programs in which they have a lower share of completions. This information suggests that increasing programs in these better paying areas—such as graduating more registered nurses instead of medical assistants—would help students obtain better jobs, while also allowing programs to perform better on the debt measures.

Table 15: Number of Completions and Median Salary for the 15 Most Popular Programs at For-Profit Institutions

Instructional Program	Number of Completions	Percent of National Completions	Weighted Median Salary for Associated Occupations*
Medical/Clinical Assistant	77,350	88%	$28,678
Business Administration and Management, General	67,789	22%	$90,831
Cosmetology/Cosmetologist, General	53,357	84%	$23,265
Massage Therapy/Therapeutic Massage	25,380	90%	$35,230
Automobile/Automotive Mechanics Technology/Technician	15,791	47%	$35,450
Dental Assisting/Assistant	13,903	71%	$35,230
Culinary Arts/Chef Training	12,277	64%	$23,853
Licensed Practical/Vocational Nurse Training	11,695	20%	$39,820
Pharmacy Technician/Assistant	11,661	76%	$27,081
Medical Insurance Coding Specialist/Coder	11,045	80%	$29,326
Nursing/Registered Nurse	10,797	7%	$63,750
Aesthetician/Esthetician and Skin Care Specialist	10,069	94%	N/A
Criminal Justice/Law Enforcement Administration	8,974	36%	$76,500
Allied Health and Medical Assisting Services	8,598	86%	$31,148
Business Administration, Management and Operations, Other	7,872	41%	$92,600

*Excludes postsecondary educators

Source: IPEDS and BLS.

[21] Julie Margetta Morgan and Ellen-Marie Whelan, "Profiting from Health Care: The Role of For-Profit Schools in Training the Health Care Workforce," Center for American Progress, January 2011, *http://www.americanprogress.org/issues/2011/01/profiting_from_health_care.html*

Improved Retention Rates

Institutions can also improve their performance on the debt measures by improving their institutional retention and graduation rates. Data on institutional performance clearly show that improvements in these areas are possible because many institutions have significantly higher retention and graduation rates even though they serve low-income students.

Critical to a student's progress through any educational institution or program is retention. Data from BPS suggest that retention early in a program of study is particularly critical. Failure to return for the second year accounts for 23 percent of all unsuccessful departures from postsecondary education. Another 21 percent fail to return for the third year. For students who began in a bachelor's degree program, 13 percent left before the second year and an additional 15 percent left before the third year.[22]

Institutions that are currently passing the repayment rate threshold established under the final regulations have retention rates that are 27 percent higher than the rate for institutions that have repayment rates that fail the repayment rate measure (71 percent vs. 56 percent).

Table 16: Percent of Leavers Who Have Left By a Given Year, by Degree Program in 2003-04

Program Type	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Bachelor's Degree	13	28	50	68	90	100%
Associate's Degree	24	43	65	78	92	100%
Certificate	25	76	83	88	96	100%
Total	**23**	**44**	**64**	**77**	**92**	**100%**

Source: BPS: 04/09.

Table 17: Comparison of Retention Rates for Institutions Passing and Failing the Repayment Rate Measure Overall

Institutions with...	Retention Rate
Failing repayment rate	56%
Passing repayment rate	71%
All institutions	**68%**

Source: NSLDS and IPEDS.

If institutions successfully reform failing programs, we would expect institutions to bring their retention rates within the range observed for programs that pass the repayment rate measure. If currently failing institutions were able to raise their retention rate to the average for institutions passing the repayment measure, nearly 60,000 more students per year would be retained for a second year.

While differences in the demographic characteristics of students play a role in retention—the retention rate at institutions with the lowest percentage of students receiving Pell Grants is 76 percent compared to 62 percent at institutions with the highest percentage of students receiving Pell Grants—it is clear that improvements can be made through investments in retention efforts. While both institutional and student demographic characteristics affect the retention rate, it is important to note that institutions that pass the repayment rate measure had retention rates that were 27 percent higher than for those that failed the repayment rate measure.

Table 18: Retention Rate of Failing and Passing Programs, By Pell Grant Concentration Quintile

Institutions with...	Lowest	Second Lowest	Middle	Second Highest	Highest
Failing repayment rate	44%	55%	57%	60%	58%
Passing repayment rate	79%	70%	56%	68%	67%
All institutions	76%	69%	56%	62%	62%

Source: NSLDS, IPEDS, and Common Origination and Disbursement (COD) system.

Increased Graduation Rates

As important as retention rates are, the ultimate goal is the completion of a degree or certificate. President Obama has called for the United States to have the highest proportion of young adults with college degrees and certificates in the world by 2020. The President's 2020 goal is not simply a restatement of the longstanding national

[22] *Source:* U.S. Department of Education, National Center for Education Statistics, 2003–04 Beginning Postsecondary Students Longitudinal Study, Second Follow-up (BPS:04/09)

policy of promoting access to higher education but a reflection of the fact that the United States needs more working adults with degrees and certificates.

Degrees and certificates are only attained through diligent effort by students enrolled at institutions that place their success at the center of the institution's efforts. There are many types of institutions—public; private nonprofit; and for-profit—that have high graduation rates. Programs that are currently passing the repayment rate threshold established under these final regulations have graduation rates that are 35 percent higher than the rate for institutions that have repayment rates that fail the repayment rate measure (50 percent compared to 37 percent) and the bachelor's degree graduation rate was 61 percent higher for institutions that pass the repayment rate measure than for institutions that fail the repayment rate measure (53 percent compared to 33 percent).

Like retention rates, if institutions successfully reform programs, we would expect them to bring their graduation rates within the range that is observed for programs that pass the repayment rate measure. If currently failing institutions were able to raise their graduation rate to that of the institutions that are passing the repayment measure, nearly 70,000 more students per year would receive a degree or certificate.

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Table 19: Comparison of Graduation Rates for Institutions Passing and Failing the Repayment Rate Measure by Percentage of Students Receiving Pell Grants

Sector		Lowest	Second Lowest	Second Highest	Highest	Total
Public 4-year	**Overall Graduation Rate**					
	Failing Repayment Rate	5%	25%	33%	31%	30%
	Passing Repayment Rate	66%	57%	47%	37%	54%
	All institutions	66%	56%	47%	34%	53%
	Bachelor's Degree Graduation Rate					
	Failing Repayment Rate			36%	31%	32%
	Passing Repayment Rate	67%	57%	48%	38%	55%
	All institutions	67%	57%	48%	35%	54%
Private Nonprofit 4-year	**Overall Graduation Rate**					
	Failing Repayment Rate	11%		62%	32%	34%
	Passing Repayment Rate	77%	60%	48%	41%	62%
	All institutions	77%	60%	49%	38%	61%
	Bachelor's Degree Graduation Rate					
	Failing Repayment Rate	81%		86%	34%	37%
	Passing Repayment Rate	78%	60%	49%	43%	63%
	All institutions	78%	60%	50%	40%	62%
Private For-profit 4-year	**Overall Graduation Rate**					
	Failing Repayment Rate	37%	6%	23%	44%	36%
	Passing Repayment Rate	42%	49%	44%	20%*	23%*
	All institutions	38%	22%	34%	25%	27%
	Bachelor's Degree Graduation Rate					
	Failing Repayment Rate	42%	6%	30%	43%	36%
	Passing Repayment Rate	57%	57%	39%	19%	22%
	All institutions	47%	24%	35%	23%	25%

*A small number of institutions have a significant impact on the graduation rate in this sector.

Source: NSLDS, IPEDS, and COD.

Table 20: Mean Graduation Rates at 2-year and Less-than-2-year Institutions by Percentage of Students Receiving Pell Grants and Whether the Institution's Overall Repayment Rate Passes or Fails the Repayment Rate Metric

	Lowest	Second Lowest	Second Highest	Highest	Total
Public 2-year					
Failing repayment rate	20%	18%	15%	16%	17%
Passing repayment rate	23%	24%	24%	21%	23%
All institutions	22%	23%	20%	18%	21%
Private Nonprofit 2-year					
Failing repayment rate		49%	23%	38%	38%
Passing repayment rate	53%	66%	53%	48%	52%
All institutions	53%	65%	52%	45%	50%
Private For-profit 2-year					
Failing repayment rate	43%		42%	49%	49%
Passing repayment rate	48%	75%	65%	63%	63%
All institutions	44%	75%	61%	56%	55%
Public Less-than-2-year					
Failing repayment rate	79%	76%	80%	74%	74%
Passing repayment rate	78%	85%	81%	80%	81%
All institutions	78%	85%	81%	80%	80%
Private Nonprofit Less-than-2-year					
Failing repayment rate				76%	76%
Passing repayment rate	85%	67%	85%	77%	75%
All institutions	85%	67%	85%	77%	76%
Private For-profit Less-than-2-year					
Failing repayment rate	81%	86%	73%	62%	62%
Passing repayment rate	74%	78%	76%	69%	69%
All institutions	76%	78%	76%	65%	66%

Source: NSLDS, IPEDS, and COD.

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Improved Default Rates

Given the nature of the repayment rate, it is not surprising that significantly lower default rates are observed at institutions that pass the repayment rate. But it is also important to consider the cost of defaults on former students who cannot afford to repay their loans. These borrowers face very serious problems if they cannot pay their loans.

Once a loan is assigned to a guaranty agency or the Department for collection, credit bureaus are notified, and the borrower's credit rating will suffer. In 2010, 6.4 million students had a Federal student loan reported to one or more credit bureaus as being in default. These circumstances increase the cost of borrowing for the defaulter and are likely to affect whether the borrower can obtain a loan at all. Borrowers who default on their loans often struggle to rent or buy a home, or buy a car. Often a poor credit rating adversely affects the borrower's ability to obtain a job. The borrower is subject to administrative wage garnishment, whereby the Department will require the defaulted borrower's employer to forward 15 percent of his or her disposable pay toward repayment of the loan. Some borrowers have lost their jobs because their employer did not want to be responsible for the wage garnishment or because the need to garnish the employee's wages called into question the employee's reliability. If the borrower is a Federal employee, he or she faces the possibility of having 15 percent of disposable pay offset by the Department toward repayment of the loan through Federal salary offset. A borrower could also be limited in terms of obtaining a security clearance or a job at some agencies including the Department of Education. Further, the Treasury Department offsets Federal tax refunds and any other payments, as authorized by law, to repay a defaulted loan. In 2010, approximately 1 million students had nearly $1.5 billion applied to their defaulted Federal student loans from withheld tax refunds, Social Security benefits, and other Federal payments.

The borrower must pay additional collection costs when a loan is assigned to a private collection agency. The largest of these costs is contingent fees that are incurred to collect the loan. While the Department gives the borrower repeated warnings before referring a debt to a collection contractor, if the borrower does not heed those warnings and reach an agreement with the lender on

repayment terms, the Department refers the loan to collection contractors. These contractors earn a commission, or contingent fee, for any payments then made on the loans referred. The Department charges each borrower the cost of the commission earned by the contractor, and applies payments from the borrower, first to defray the contingent fee earned for that payment, and second, to the interest and principal owed on the debt. As a result, the amount needed to satisfy a student loan debt collected by the Department's collection contractors can be up to 25 percent more than the principal and interest repaid by the borrower. In 2010, more than 1.5 million borrowers paid approximately $380 million in contingent fees to private collection agencies. Finally, if these collection efforts are unsuccessful, the Department may take additional legal action to force a borrower to repay the loan.

Once a loan is declared in default, the borrower is no longer entitled to any deferments or forbearances. In addition, the borrower cannot receive any additional title IV, HEA student aid until he or she has made payments of an approved amount for at least six consecutive months. Each year the Department denies aid to nearly 350,000 students who have defaulted on their loans until those obligations are resolved. Discharging Federal student loans in bankruptcy is very rare.

These consequences of default are severe and often go unacknowledged by those who argue that the public costs of supporting public higher education outweigh the costs of default. These critics further ignore the community and generational effects these consequences have on postsecondary access that are very significant but difficult to quantify.

While the anticipated benefits in terms of improved retention and graduation rates are somewhat speculative, the impact on default rates—with all the negative consequences that accrue to borrowers, their families, and the broader community—are more direct. If institutions are successful in reforming programs, cohort default rates will decline dramatically. If these final regulations have a positive impact by reducing the number of borrowers defaulting on loans, the number of borrowers entering default within three years could decline by over 292,000 over the next five years. This estimate was derived by multiplying the number of borrowers defaulting in programs that fell below the threshold for passing the repayment rate measure by the difference in the repayment rate.

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Table 21: Comparison of Two- and Three-Year Default Rates for Institutions Passing and Failing the Repayment Rate Measure

Institutions with…	Two-Year Default Rate	Three-Year Default Rate
Failing repayment rate	11.8%	22.3%
Passing repayment rate	6.1%	10.9%
All institutions	**7.3%**	**13.2%**

Source: NSLDS.

Table 22: Comparison of Two- and Three-Year Default Rates for Institutions Passing and Failing the Repayment Rate Measure by Percentage of Students Receiving Pell Grants

Two-Year Default Rate

Institutions with…	Lowest	Second Lowest	Middle	Second Highest	Highest
Failing repayment rate	11.1%	10.8%	10.2%	13.5%	14.0%
Passing repayment rate	4.8%	5.9%	7.9%	9.0%	9.4%
All institutions	5.4%	6.3%	8.5%	11.2%	11.9%

Three-Year Default Rate

Institutions with…	Lowest	Second Lowest	Middle	Second Highest	Highest
Failing repayment rate	19.1%	18.1%	20.6%	25.7%	27.9%
Passing repayment rate	7.8%	9.9%	15.2%	18.2%	19.8%
All institutions	8.9%	10.7%	16.6%	21.8%	24.3%

Source: NSLDS, IPEDS, and COD.

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Social Benefits

Improved Market Information

Students will receive private benefits associated with improved information, which will allow them to make better educational choices. But better information also has a social benefit component as well. Strengthening the connection between training programs and the labor market will allow both to function more efficiently.

First, earnings and repayment information will provide a clear indication to institutions about whether or not their students are successful in securing stable and well-paying positions. This information will help institutions determine when it would be

prudent to expand some programs or pare back others. Second, meeting the debt-to-earnings ratio and repayment rate thresholds will encourage institutions to prepare students for jobs in well-paying and in-demand fields. This effect creates an incentive to move programs up-market so that they prepare students for jobs with better salaries and employment prospects.

Finally, the better and clearer information that will be available about programs leading to gainful employment will also benefit institutions with high-performing programs, which can use their performance on the measures to differentiate themselves from competitors and lessen the need for complex and expensive marketing efforts. Currently, institutions must devote a significant amount of revenues to marketing and recruiting costs because available data do not allow them to easily indicate quality.[23] Graduation rates are not broken down to the programmatic level and fail to capture many students. Placement rates are not comparable across institutions because they are calculated in different ways.[24] Licensure rates provide little indication of quality because the vast majority of students pass their licensing examinations.[25] In place of these types of marketing efforts, the gainful employment regulations would allow an institution to demonstrate to prospective students that its programs provide better wages, lower debt burdens, and a higher likelihood of repayment than competitor offerings—easily understandable data that tell a clear story about student success.

Better Return on Money Spent on Education

The social benefits that should accrue as a result of this rule largely result from a better return on money spent on education (associated with an increase in human capital). While the focus of the rule is necessarily on better returns to Federal student aid, there will also likely be better returns on other kinds of aid and cash tuition payments. Because of the increasing information provided to students and programs that meet minimum performance standards, students are expected to make more optimal education choices, leading to better income prospects. Since education has positive spillover effects, a society would want to subsidize it. Increasing the returns should not only increase the positive private benefits to students but increase the positive spillover effects to society.

While it is currently difficult to precisely quantify the changes in positive spillover effects that are attributable to this rule, the Department will evaluate its ability to measure these effects as additional information regarding student earnings and other aspects of this rule become available. This is also consistent with Executive Order 13563, Section 1, which states that our regulatory system "must measure, and seek to improve, the actual results of regulatory requirements." Consistent with Section 1 principles of Executive Order 13563, the agency must measure and seek to improve the actual results of regulatory requirements.

Unlike many other efforts to improve education and workforce training, efforts to improve gainful employment programs in response to these regulations will be grounded in reliable data on the outcomes of part of the overall investment in Federal student aids, which in FY 2010, exceeded $140 billion and provided aid to 14 million students. While the rule only specifically addresses programs which, by law, must lead to gainful employment in a recognized occupation, the resulting data and program improvement efforts will have significant spillover effects on the degree programs at non-profit and public institutions.

Costs

A primary goal of this rule is to ensure that Federal student aid funds, including student loans that must be repaid whether a student was satisfied with the program of study or not, are well spent. In the process of achieving that goal, there is an increase in expenses that occurs as a result of students transferring from failing to succeeding programs, as well as two main compliance costs that institutions will face as a result of this regulation.

Increase in Expenses When Students Transfer From Failing to Succeeding Programs

As a result of this rule, some segment of students is likely to transfer from failing to succeeding programs. In the process, many of them will also be transferring among postsecondary education sectors. In some cases, students will move from more expensive programs to less expensive programs; in other cases, students will move from less expensive programs to more expensive programs.

Educating additional students requires a postsecondary education institution to incur additional costs—both fixed costs (for example, additional classroom space) and variable costs (such as hiring additional instructors). As a result, there will be a shift of certain costs from institutions with failing programs to institutions with successful programs. There is a net increase in expenses that results when students transfer from failing programs to successful programs. This net increase in expenses per student being educated amounts to a cost of $133 million (under the high-dropout scenario) to $178 million (low-dropout scenario) per year. The increase in expenses for programs may be associated with better programs and services that help students succeed in the labor market.

Paperwork Burdens

As detailed in the *Paperwork Burden Costs* section, institutions will also accrue some costs to comply with the data and reporting pieces of the regulation. This occurs in the form of time spent determining alternative earnings information (if the institution chooses to do so), challenging data for the debt-to-earnings ratios and repayment rates, providing debt warnings to students, and providing notification that a failing program has been voluntarily discontinued. These costs are estimated in greater detail in the *Paperwork Burden Costs* section, but we project this element of compliance costs to be $5.4 million a year.

Additional Compliance Costs Associated With Meeting Debt Measures

Institutions will also bear some costs to manage their performance under the debt measures. Institutions concerned about failing the debt measures might accrue costs on services like increased loan counseling for graduates that could help improve results on measures like the repayment rate without any substantive changes to their offerings.

It is important to note that these costs are associated with improved outcomes, and are essential to ensuring that federal money goes toward providing students with a valuable education.

Some institutions that are not at risk of failing the debt measures may also choose to improve their programs as a result of this regulation's emphasis on gainful employment. These additional expenses could come in many different forms. For example, an institution may choose to spend more on curriculum development to better link a program's content to the needs of in-demand and well-paying jobs in the workforce. Institutions could also allocate more funds toward other functions, such as instruction to hire better faculty; providing training to existing faculty to improve program outcomes; tutoring or other support services to assist struggling students; career counseling to help students find jobs; or other areas where increased investment could yield improved performance on the gainful employment measures. These are costs that would likely not occur only at institutions with failing or barely-passing programs, as institutions frequently take steps to improve all facets of the product they are providing students. Institutions could recoup some or all of the costs associated with program improvement from improving the retention of students, which will generate additional tuition and fee revenues.

Because there is significant variation in the types of institutions that will take on these improvement costs, the type of reforms they will employ, it is difficult for us to quantify the amount of these additional costs.

The Department will monitor programmatic improvements against a wide variety of performance measures as the rule is implemented, consistent with Executive Order 13563. While today, many postsecondary education institutions use general labor market data from the BLS to evaluate the "value proposition" for

[23] For a discussion of the amounts spent on marketing by for-profit colleges see interviews from PBS Frontline with Mark DeFusco, a former director at the University of Phoenix or Jeffrey Silber, a senior analyst at BMO Capital Markets. The interviews are available at *http://www.pbs.org/wgbh/pages/frontline/collegeinc/interviews/defusco.html* and *http://www.pbs.org/wgbh/pages/frontline/collegeinc/interviews/silber.html.*

[24] Andrea Sykes, Laurium Evaluation Group, "Background Group: Calculating Job Placement Rates under Gainful Employment Regulations," February 2011.

[25] For example, passage rates on barbering and cosmetology examination results reported by the State of California show that nearly 100 percent of test takers pass their licensure exams. See *http://www.barbercosmo.ca.gov/applicants/schls_rslts.shtml.* Similarly, data from the National Council of State Boards of Nursing show that 87 percent of first-time U.S. educated students pass the national licensing test for licensed practical/vocational nurses. See *https://www.ncsbn.org/Table_of_Pass_Rates_2010.pdf.*

prospective students, these institutions, as early as 2012, will have data on the actual performance of their former students. This information, which, as discussed above, will be extremely important for prospective students, also will help shape the changes that are made to the programs offered to ensure compliance with these rules.

Distributional Effects (Transfers)

While the overall costs and benefits of this rule are discussed above, there are also certain "transfers" or distributional effects associated with the reallocation of resources between different sectors of society.

Transfers Affecting Institutional Revenues

For institutions, the impact of the final regulations is mixed. Institutions with failing programs, including programs that lose eligibility, are likely to see lower revenues. On the other hand, institutions with high-performing programs are likely to see growing enrollment and revenue and to benefit from additional market information that permits institutions to demonstrate the value of their programs.

Under our two scenarios, we estimate that the for-profit education sector would see a cumulative drop in revenue annually, on average, of $338.1 million a year. This estimate does not include paperwork and compliance costs, because it reflects only transfers. The projected decrease in annual revenue represents less than 2 percent of the sector's estimated $26 billion in revenue in 2009, the most recent year for which data are available. By contrast, data reported by for-profit institutions to IPEDS show that schools in the for-profit sector had an average revenue growth of 13 percent per year over the five-year period from 2004–05 to 2008–09 (not including investment revenue). Some of the decrease in revenue will take the form of a transfer of tuition and fee revenues from failing programs to other programs when students change schools. Another portion will take the form of a transfer of Federal student aid money from failing programs to the Federal government when students who previously attended failing programs choose not to pursue further education. Finally, a portion of the decrease in revenue will take the form of a transfer of loans and cash tuition payments from failing programs to the students themselves when students choose not to pursue further education. See Table 14 for more details.

We estimate that the effects of these regulations on *net* revenue for the for-profit education industry will be less—$60.8 million per year on average. This estimate does not include paperwork and compliance costs, because it reflects only transfers. The effects on net revenue are smaller because schools will either reduce expenses due to a lessened need for instructors or take in new revenue as students transfer into successful programs.

While the regulations will have the effect of reducing the revenue of the for-profit postsecondary education industry as a whole, they also may have the effect of increasing revenue for companies whose programs pass the debt measures. The Department estimates that, as a result of these regulations, between 115,000 and 141,000 students will transfer between one for-profit institution and another by 2015. The movement of students from low performing programs at one institution to a better performing program at another institution will cause stronger programs to grow and, likely, produce larger profits.

Additional analysis of the regulations' impact on small businesses is presented in the *Final Regulatory Flexibility Analysis* section of this RIA.

Transfers Affecting Federal, State, and Local Governments

Several commenters argued that the cost estimates of the effects of the proposed regulations were incomplete because they did not take into account the full cost of other sectors of higher education, including other government subsidies provided to public or private nonprofit institutions. In particular, the commenters noted that public institutions receive direct funding from States and private nonprofit institutions are exempt from taxes. The commenters also indicated that the Department had misinterpreted a study by the Florida Office of Program Policy and Government Accountability about the costs of for-profit and public sector institutions. Some commenters provided estimates that suggested including these subsidies in the effects calculations would result in increased costs to taxpayers if students shift from institutions in the for-profit sectors to public or private, nonprofit institutions. The largest cost estimate came from the Parthenon Group, which estimated that between 465,000 and 660,000 students would shift from for-profit institutions to community colleges each year, resulting in a cost of an additional $2 billion annually for community colleges to serve these students. However, we estimate that most of those that fail to enroll or leave a failing program will enroll in another program offered by a for-profit institution. The data that will be available under the rule will be used by institutions offering strong programs in terms of economic return to differentiate those programs from those of their less effective competitors.

Federal Revenues

The cost implications for the Federal Government result largely from changes to tax revenues and changes to expenditures on student aid. Federal tax revenues would fall to the extent that for-profit education companies pay less in corporate taxes, institutions lay off employees, or fewer students earn credentials that could increase their earnings. On the other hand, Federal tax revenue would increase to the extent that institutions improve the performance of their programs and students transfer to better performing programs, which could lead to higher completion rates and credentials that carry greater economic benefits. As seen in Table 14, there is also a small transfer of money from failing programs to the Federal Government when students who previously received Federal aid drop out of those programs. As discussed in more depth in the *Net Budget Impacts* section, the net effect is difficult to estimate reliably but is likely to be small, around $23 million to $51 million in savings to the Federal Government annually, depending on whether one uses the low dropout or high dropout scenario.

State and Local Government Costs

The impact of the regulations on State income tax revenue will be similar to the impact on Federal revenue, and it is also likely to be small. There may also be an impact on State and local expenditures on higher education. We do not dictate to State or local governments how they should choose to spend their funds on higher education. Nor do we interfere with their own independent decisions to expand enrollment, determinations that are typically made as part of a long-term planning process. Given that States possess full control over whether or not to expand enrollment, it is incorrect to attribute any costs associated with these independent decisions to these regulations.

The higher cost estimate suggested by some commenters assumes States expanding enrollment face marginal costs that are similar to their average cost or that they will only choose to expand through traditional brick-and-mortar institutions. In fact, many States across the country are experimenting with innovative models that use different methods of instruction and content delivery that allow students to complete courses faster and at a lower cost. Rather than adding additional buildings or campuses, States may instead opt to expand distance education offerings or try innovative practices like those used by the Western Governors University, which awards credit when students demonstrate they have mastered competency of the material. Forecasting the extent to which future growth would occur in traditional settings versus distance education or some other model is outside the scope of this analysis.

Finally, a crucial assumption in estimating the increase in cost is that the expense per completion in the for-profit sector is lower than it is in the public sector. Such assumptions, however, fail to account for concerns about the quality of a degree. Producing large numbers of certificates or degrees that leave students with unmanageable debt burdens and poor employment prospects is not preferable to students earning credentials that, while more expensive to obtain, result in students earning higher and more stable incomes. Reducing such discussions about cost solely to monetary elements fails to recognize the important dimension around quality that these regulations also seek to capture. It also fails to take into consideration the fact those institutions offering strong programs, in terms of economic return, will use this information to differentiate the programs they offer from those of their less effective competitors and, thus, enroll more students.

VI. Paperwork Burden Costs

In assessing the potential impact of these regulations, the Department recognizes that certain provisions are likely to increase workload for some program participants. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of the preamble. Additional workload would normally be

expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these regulations are estimated to increase burden on institutions participating in the title IV, HEA student assistance programs by 261,512 hours per year. The monetized cost of this additional burden on institutions, using wage data developed using BLS data, available at *http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $5,443,820, as shown in Table 23. This cost was based on an hourly rate of $22.12 that was used to reflect increased management time to establish new data collection procedures associated with the gainful employment provisions. The final regulations will also increase the paperwork burden on students by an estimated 22,516 hours as they read the debt warnings from institutions. The monetized cost of this additional burden on students, using wage data developed using BLS data, available at *http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $376,468.

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Table 23: Estimated Annual Paperwork Burden for Institutions by Requirement

Provision	Reg. Section	OMB Control #	Hours	Costs
Optional reporting of tuition and fees.	668.7(c)(2)(i)(A)(2)	OMB 1845-0109	233,595	$5,167,121
Pre-draft data challenges to list of names to be submitted to the SSA.	668.7(e)(1)	OMB 1845-0109	2,772	$61,317
Post-draft data corrections challenging the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate, or the median loan debt for the program that was used in the numerator of the draft debt-to-earnings ratios.	668.7(e)(2)	OMB 1845-0109	4,620	$102,194
Notification of intent to use alternative earnings and submission of alternative earnings.	668.7(g)	OMB 1845-0109	4,655	$102,969
Debt warnings	668.7(j)(1)-(j)(2)	OMB 1845-0109	462	$10,219
Notification to students and the Secretary that a failing program has been voluntarily discontinued.	668.7(j)(5)	OMB 1845-0109	15,408	$340,825

Table 22 relates the estimated burden for institutions of each paperwork requirement to the hours and costs estimated in the *Paperwork Reduction Act of 1995* section of this preamble. The largest burden comes from the optional reporting of tuition and fees to limit the amount of debt included in the debt-to-earnings calculation. The estimated burden of reporting tuition and fee information about students is 233,595 hours and $5,167,121.

Prior to the issuance of the draft debt-to-earnings ratios, the Secretary will provide a list to institutions, of students that will be included in the applicable two- or four-year period used to calculate the debt-to-earnings ratios beginning in FY 2012. Institutions will have 30 days after the date the list is sent to the institution to provide corrections such as evidence that a student should be included or excluded from the list or to submit

corrected or updated student identity information. The estimated burden from these pre-draft data challenges is 2,772 hours and $61,317. After the issuance of draft debt measures, institutions will have the ability to challenge the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate, the list of borrowers used to calculate the loan repayment rate, or the median loan debt for the program that was used in the numerator of the draft debt-to-earnings ratio. The burden associated with challenges to the draft debt measures is 4,620 hours annually at a cost of $102,194. Programs that fail the debt measures may demonstrate that a failing program would meet a debt-to-earnings standard by recalculating the debt-to-earnings ratios using the median loan debt for the program and using alternative earnings data from: a State-sponsored data system, an institutional survey conducted in accordance with NCES standards, or, for fiscal years 2012, 2013, and 2014, BLS data. The estimated burden of notifying the Secretary of the intent to use alternative earnings data and of supplying the alternative earnings information is 4,655 hours and $102,969.

Additional items included in the burden on institutions reported under OMB 1845–0109 include an estimated burden of 15,311 hours for notifying students when an institution voluntarily withdraws a failing program from title IV, HEA participation and the date when title IV, HEA aid will no longer be available for the program and an estimated 462 hours in issuing debt warnings to current students. Together, these provisions have an estimated cost to institutions of $340,825. A total of 22,516 hours and $376,468 of burden on students for reading the notice of voluntarily withdrawal is recorded under OMB 1845–0109.

VII. Net Budget Impacts

The regulations are estimated to have a positive net budget impact ranging between $23 million (in the low dropout scenario) to $51 million (in the high dropout scenario). Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

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

Absent evidence of the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources.* Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: For-profit institutions (less than 2-year), 2-year institutions, freshmen/sophomores at 4-year institutions, juniors/seniors at 4-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category.

The scenarios presented in these final regulations anticipate some small savings in Federal student aid programs as students who would have attended programs that fail the debt measures elect not to pursue postsecondary education and do not take out Federal loans or receive Pell Grants. In some years, costs from students not taking Federal loans offset savings from Pell Grants.

As we estimate that many students who transfer out of failing programs will continue to receive student aid, the estimates for the effects on the Federal student aid programs are based on the number of students expected to drop out under the high dropout and low dropout scenarios described in this RIA. Since some prospective students will decide not to enroll and students already enrolled may decide to leave postsecondary education rather than re-enroll at another institution, we estimate a small net Federal savings. Of these estimated savings, approximately $26.2 million in the high dropout scenario and $59.1 million in the low dropout scenario would be from reductions in Pell Grants, which are offset by estimated increased costs in student loans. These potential savings represent our best estimate of the effect of the regulations on the Federal student aid programs, but student responsiveness to program performance, programs' efforts to improve performance, and potential increases in retention rates could offset the estimated savings.

Assumptions, Limitations, and Data Sources

The impact estimates provided in the preceding section reflect a baseline in which the changes implemented in these regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources was used, including data from the NSLDS; operational and financial data from Department of Education systems; and data from a range of surveys conducted by NCES such as the 2007–2008 NPSAS, the 2008–09 IPEDS, and the 2009 follow-up to the 2004 BPS. Data from other sources, such as the U.S. Census Bureau and the Missouri Department of Higher Education, were also used. Data on administrative burden at participating institutions are extremely limited; accordingly, in the NPRM, the Department expressed interest in receiving comments in this area. We recognize that, despite the Department's diligent efforts and extensive public input, there are limitations in the best available data and there remains some uncertainty about the impact of these final regulations. Therefore, the Department intends to monitor the implementation of these regulations carefully, consider new data as they become available to ensure against unintended adverse consequences, and reconsider relevant issues if the evidence warrants. As additional data become available, the Department may update these estimates.

We identify and explain burdens specifically associated with information collection requirements in the *Paperwork Reduction Act of 1995* section of the preamble.

VIII. Alternatives Considered

A number of commenters suggested fundamentally different approaches for defining "gainful employment." Some of these approaches, including graduation and placement rates, a higher repayment rate threshold, an index, alternative debt measures, and default rates, were alternatives discussed by the Department in the negotiated rulemaking process, the NPRM, or both. The alternatives suggested by commenters are discussed below.

Return on Investment and Net Present Value

Some commenters argued that the proposed gainful employment debt measures evaluate only one aspect of the quality of programs—whether a student's initial debt burden was reasonable—but fail to account for other long-standing measures of program quality or a student's long-term return on his or her educational investment. The commenters believed that structuring regulations in this manner may discourage institutions from offering training in jobs with the potential for long-term salary growth for fear of losing program eligibility. For example, based on BLS data, entry-level salaries for graduates from programs for auto technicians range from $19,840 to $25,970. According to the commenters, salaries for auto technicians may have long-term growth potential because it can take a technician two to five years after graduation to become fully qualified. Mastering additional complex specialties also requires the technician to have years of experience and advanced training. According to the commenters, applying the proposed gainful employment measures to these programs may prevent students from pursuing training in these necessary fields.

Some commenters offered that a more reasonable measure of the quality of an educational program would be the student's return on investment (ROI), not a first-year debt service calculation. The commenters

argued that a student's initial capacity to service debt should be one consideration in judging educational program quality, but not the essential metric. Instead, the analysis of a program should take into account the potential long term benefits and earnings.

Other commenters believed that, according to finance theory, the only correct method for determining the value of a program would be a Net Present Value (NPV) approach that considers the present value of all incremental lifetime earnings stemming from the program and the present value of the total costs of the program. The commenters contended that, even if it were economically rational to base the regulations on another approach, the proposed regulations are economically irrational because the debt-to-earnings and loan repayment tests are based on arbitrary three- and four-year evaluation periods that are too short to fairly reflect the benefits of education.

While we appreciate the suggestion to incorporate a return on investment calculation into these final regulations, we believe there are significant theoretical and practical reasons for not doing so. To be sure, an ROI or NPV approach helps to distinguish among competing investment opportunities. However, inherent in an ROI or NPV calculation is a specified discount rate so that all future cash flows (income as well as expenses) can be described in terms of present-day values. Thus the selection of an appropriate discount rate is key to this calculation. If the Department were to implement an ROI or NPV calculation in the proposed metrics, it would have no basis for establishing a discount rate for borrowers who make personal investment decisions with respect to pursuing postsecondary education programs.

The Department agrees that there are long-term benefits, in particular with respect to increased lifetime earnings, for those with formal education or training beyond high school. However, those earnings accrue of the course of a career that could span three or four decades. Measurements of program performance 30 or 40 years in the past would not be meaningful for helping institutions improve or for protecting students against low-quality programs. We do know from The National Longitudinal Survey of Youth conducted by the BLS that the length of time an employee remains with the same employer tends to be shorter for younger workers and that the average worker will have about eleven different jobs in the first 25 years or so of his or her working lifetime.[26] However, we are unaware of any on-going, longitudinal tracking of work-life earnings by specific occupation.

Retention, Completion, and Placement Rates

Some commenters suggested a variety of alternative measures for determining whether a program leads to gainful employment including retention rates, employment rates, job placement rates adjusted for local economic conditions, and completion rates. Other commenters believed there was no need to further define gainful employment because (1) national accrediting agencies require that the majority of students graduate and find jobs in the field in which they were trained, or (2) students who pass State licensing examinations are gainfully employable.

We likewise appreciate the suggestions to use retention rates, employment rates, job placement rates, and completion rates as alternative measures. During the negotiation sessions, some non-Federal negotiators objected to a proposal for using graduation rates on the ground that the proposed standard was too demanding, but they did not propose an alternative. Some negotiators also raised concerns about the ability of institutions to obtain valid placement information from graduates and employers. In the Program Integrity Issues final regulations published on October 29, 2010, the Department required disclosure of program-level graduation and placement rates. Based on the information we have available, using them as a measure of whether a program leads to gainful employment would be premature.

Default Rates

Some commenters suggested the use of default rates to measure program performance. The application of default rates to institutional eligibility is one tool that Congress has used that is related to debt burdens. Under current law, prospective students are not allowed to use their Federal aid at an institution where its former students had a high default rate. However, the cohort default rate only includes borrowers who defaulted by going 360 days without making a payment within two years of entering repayment. These borrowers represent only a small portion of borrowers who are struggling with their loans. The default measurement does not include borrowers who are in late stages of delinquency, even if they default after two years. The metric also does not include those who are delinquent on their payments or borrowers who cease making payments without defaulting by receiving a forbearance or deferment. A significant number of borrowers fall into these categories. According to a recent study of students in the 2005 cohort by the Institute for Higher Education Policy, 26 percent of borrowers became delinquent on their loans at some point.[27] Because of the concerns outlined above, the repayment rate better captures the experience of all these individuals who are struggling to repay their loans.

Gainful Employment Index

Other commenters suggested that the Department use a composite score based on default, graduation, and placement rates. The commenters argued that institutions with exceptional, industry-determined rates have proven their success in providing quality education and therefore should be allowed to continue serving their students without impediments. The commenters noted that Representative Robert Andrews pioneered a composite index in the 1990s and suggested using default, graduation, and placement rates along with the number of Pell Grant recipients to determine an overall score for an institution. According to the commenters, factoring in Pell Grant information would acknowledge the unhappy truth that low-income students are less likely to complete higher education programs. To avoid punishing schools for accepting these students into their programs, the commenters suggested the Department use a formula that would acknowledge the extra difficulties faced by students at a lower socioeconomic level. Some commenters supporting the composite index approach suggested weighting the placement rate at 50 percent, the cohort default rate at 30 percent, and the graduation rate at 20 percent.

The commenters argued that a composite index approach is superior to the proposed debt measures in the following ways. First, the composite index would not rely on one characteristic (debt load) or a complex loan repayment rate, but on a number of outcomes, most importantly the employment of graduates. Second, the index could be implemented readily since cohort default and graduation rates are already tracked by the Department, and the great majority of for-profit colleges already track student placement. Third, this approach is analogous to the currently used financial responsibility composite score for institutions that integrates a basket of three financial measures into one index. Finally, it measures outcomes at the institutional level, rather than the program level, reducing complexity and difficulty in implementing a gainful employment standard. The commenters stated that the index approach could be implemented relatively rapidly without disrupting the market and risking unintended consequences. If the metrics need refinement, the commenters offered that the Department could implement the index, and over the next 36 months redefine how default rates are measured (potentially moving to measuring the repayment of principal in dollars) and how graduation rates are measured (potentially moving to track all students). Alternatively, it could apply the index at the program level after the relevant information is gathered and analyzed.

Although the concept of a composite index is appealing, the suggested index uses some of the same indicators, which in our view fall short of directly evaluating a program's performance. The specific indicators suffer from important shortcomings: default rates measure only a portion of the borrowers who have had difficulty repaying their loans, the statutory definition of graduation rate excludes transfer and part-time students, and placement rates are defined differently by accrediting agencies and States. Applying the composite index at the institutional level would mask poorly performing programs because only the overall performance of the institution, not each program, would be evaluated. Moreover, if the institution's overall performance was subpar, the composite index would jeopardize the

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[26] Bureau of Labor Statistics, National Longitudinal Survey of Youth, available at *http://www.bls.gov/news.release/pdf/nlsoy.pdf*

[27] Alisa F. Cunningham and Gregory S. Kienzl, "Delinquency: The Untold Story of Student Loan Borrowing," March 2011, available at *http://www.ihep.org/assets/files/publications/a-f/Delinquency-The_Untold_Story_FINAL_March_2011.pdf.*

eligibility of the entire institution. By using purpose-built measures applied at the program level, these regulations effectively target poor-performing programs without necessarily placing the entire institution at risk because only those programs become ineligible for title IV, HEA funds. Finally, the Department does not believe that programs enrolling lower-income students cannot help those students achieve success and would be concerned about the consequences for writing into law lower expectations for the future employment and debt repayment of those students.

Earnings Comparison

Commenters also suggested that the Department use, particularly for short-term programs, a comparison of pre-program and post-program earnings to capture the near-term effect of the program. This approach has some merit conceptually. However, earnings immediately before enrollment may not be an accurate measure of an individual's baseline earning potential without the program. Pre-enrollment earnings are particularly unlikely to reflect earnings potential for dependent students, workers returning to school after becoming unemployed, or those using their training to switch fields. Moreover, such a measurement would not identify programs where large numbers of students are taking out debts they cannot afford to repay.

Disclosure

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

Delay for Further Study and Data Collection

Some commenters recommended that the Department delay the issuance of final regulations to allow further study of the issues around gainful employment programs. Some commenters mentioned that the Government Accountability Office is currently studying related issues. Other commenters expressed the view that the Department should establish procedures to calculate each program's repayment rate and debt-to-earnings ratios before using those measures to set program eligibility to reduce the uncertainty around the impact of the regulations and give institutions more time to improve their programs.

The Department believes that action is urgently needed to address the problem of poorly performing gainful employment programs. Each year of delay would likely mean hundreds of thousands of additional students enrolling in programs that are likely to leave them with unaffordable debts and poor employment prospects. The process of developing these regulations has taken nearly two years and involved unprecedented levels of public engagement, including three public hearings in the spring of 2009, three negotiated rulemaking sessions in the winter of 2009–10, and the postponement of the final regulations by eight months to allow the careful consideration of over 90,000 comments, two additional public hearings in October 2010, and dozens of additional meetings with individuals and organizations who commented on the NPRM. In addition, the Department has carefully analyzed the information and data available to it from public sources, its research activities, and the Federal financial aid program.

Finally, the Department has revised the regulations to provide programs with an opportunity to improve their performance before losing eligibility. In 2011, the Department will release data to institutions on an informational basis, helping them identify and improve their failing programs. No programs will lose eligibility until they have failed the debt measures for three out of four FYs. When the first eligibility losses occur in 2014, they will be limited to the lowest-performing 5 percent of programs. To help institutions anticipate the impact of the regulations, the Department is prepared to accept BLS earnings information during a transition period of three years, and the repayment rate measure has been designed to recognize programs demonstrating rapid improvement.

IX. Final Regulatory Flexibility Analysis

These gainful employment regulations will affect institutions that participate in the title IV, HEA programs, and individual students and loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit institutions as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The SBA Size Standards define nonprofit institutions as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The revenues involved in the sector affected by these regulations, and the concentration of ownership of institutions by private owners or public systems means that the number of title IV, HEA eligible institutions that are small entities would be limited but for the fact that the nonprofit entities fit within the definition of a small organization regardless of revenue. Additionally, the concentration of small entities in the sectors directly affected by these provisions and the potential for some of the programs offered by those entities to lose eligibility to participate in the title IV, HEA programs led to the preparation of this Final Regulatory Flexibility Analysis.

Description of the Reasons That Action by the Agency Is Being Considered

The Secretary is establishing through these regulations a definition of gainful employment in a recognized occupation by establishing what we consider, for purposes of meeting the requirements of section 102 of the HEA, to be a reasonable relationship between the loan debt incurred by students in a training program and income earned from employment after the student completes the training. The regulations clarify, for purposes of establishing a student's eligibility to receive title IV, HEA funds, a program's eligibility based on providing training that leads to gainful employment in a recognized occupation. An institution must provide a warning to students and prospective students if a program does not pass any of the debt measures.

Student debt is more prevalent and individual borrowers are incurring more debt than ever before. Twenty years ago, only one in six full-time freshmen at 4-year public colleges and universities took out a Federal student loan; now more than half do. Today, nearly two-thirds of all graduating college seniors carry student loan debt, up from less than one-half a generation ago. All other things being equal, any former students would be better off leaving college without debt. The less debt a student has, the more funds they are able to devote to buying a home, saving for retirement or for their children's education, or serving the community. Student loan debt is worth having if it makes it possible to gain the education and training that enhances productivity as a citizen, civic leader, worker, or entrepreneur. To the extent that the student loan debt brings little or no benefit to the students (or to society), it is a cost that public policy should attempt to minimize or eliminate. It is in this context that the requirement that a program of study must lead to "gainful employment" can best be understood. The cost of excess student debt manifests in three significant ways: payment burdens on the borrower; subsidies from taxpayers; and the negative consequences of default (which fall on the borrower and taxpayers).

The concept of training leading to gainful employment was intended to ensure that this connection between debt and earnings would not be lost. The Department, however, has historically applied the barest minimum enforcement: when applying to access Federal funds, the institution must check a box that says its programs "prepare students for gainful employment in a recognized occupation." [28] While the Department does audit and review other aspects of program eligibility (such as the length of the program), there is no standard for determining whether a program in fact meets the gainful employment requirement.

As described in this RIA, the trends in graduates' earnings, student loan debt, defaults, and repayment underscore the need for the Department to act. The gainful employment standard takes into consideration repayment rates on Federal student loans and the relationship between total student loan debt and earnings after completion of a postsecondary program, and in some cases of new or additional programs,

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

the institution's application to the Department to target the worst-performing programs and to encourage institutions to improve their programs.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

As discussed under the heading *Legal Authority* in the *Analysis of Comments and Changes* section of the preamble, the gainful employment regulations are intended to address growing concerns about high levels of loan debt for students enrolled in postsecondary programs that presumptively provide training that leads to gainful employment in a recognized occupation. The HEA applies different criteria for determining the eligibility of programs and institutions for title IV, HEA program funds. For public and private nonprofit institutions, degree programs of greater than one year in length are generally eligible for title IV, HEA aid regardless of the subject or purpose of the program so long as they meet other requirements. In the case of shorter programs and programs of any length at for-profit institutions, eligibility is restricted to programs that "prepare students for gainful employment in a recognized occupation." This difference in eligibility is longstanding and has been retained through many amendments to the HEA. As recently as the HEOA, Congress again adopted this distinct treatment of for-profit institutions while adding an exception for certain liberal arts baccalaureate programs at some for-profit institutions.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Regulations Will Apply

These final regulations apply to programs eligible for title IV, HEA funding because they prepare students for gainful employment. At this time, the Department does not have an accurate count of the number of programs offered by institutions. However, we estimate that as many as 13,728 programs offered by small entities could be subject to these regulations. The proxy used for the number of "programs" is IPEDS Completions data. It counts each instance of a six-digit CIP code (area of study) by award level. So, for example, if an institution awards a certificate in business as well as a bachelor's degree and a master's degree, the programs are counted as three separate programs. The programs are aggregated to the six-digit ID level so that they can be looked at with the repayment data, and the number of programs is unduplicated as a program offered at multiple locations represented by the six-digit OPEID is considered one program. Given that the category of small entities includes some private nonprofit institutions regardless of revenues, a wide range of small entities is covered by the regulations. The entities may include institutions with multiple programs, a few of which are covered by the regulations, to single-program institutions with well established ties to a local employer base. Many of the programs subject to the regulations are offered by for-profit institutions and public and private nonprofit institutions with programs less than two years in length. As demonstrated in Table 24, these sectors have a greater concentration of small entities. Across all sectors, the average total revenue for entities with revenue below $7 million is $2,439,483 based on IPEDS 2008–2009 data.

Table 24: Institutional Characteristics of Small Entities by Sector

	Number of Institutions	Share of Sector Tuition and Fee Revenue	Total Programs	Number of Regulated Programs	Number of Large Regulated Programs	Share of Programs that Are Large Regulated	Share of Enrollment in Large Regulated Programs
4-year Institutions							
Public	4	0%	21	7	1	5%	0%
Private Nonprofit	356	2%	2,585	346	68	3%	0%
Private For-profit	52	1%	342	342	116	34%	1%
2-year Institutions							
Public	88	1%	1,669	1,382	568	34%	0%
Private Nonprofit	142	43%	549	280	170	31%	29%
Private For-profit	405	17%	2,191	2,187	1,152	53%	20%
Less-than-2-year Institutions							
Public	202	68%	1,483	1,482	669	45%	38%
Private nonprofit	61	62%	218	213	127	58%	52%
Private For-profit	983	40%	3,264	3,255	2,027	62%	45%

Source: IPEDS.

The structure of the regulations and the small numbers provisions in the final regulations reduce the effect of the regulations on small entities but complicate the analysis. The regulations provide for the evaluation of individual gainful employment programs offered by postsecondary institutions, but these programs are administered by the institution, either at the branch level or on a system-wide basis. Many institutions have programs that would be considered small, but the classification for this analysis is at the institutional level since a program that is determined ineligible under the regulations would affect the institution's ability to operate. Of the 1,440 for-profit institutions with less than $7 million in revenues, approximately 76 percent have fewer than five programs and the loss of title IV, HEA eligibility for any program would be more likely to cause the institution to shut down than would be the case for larger entities with multiple programs.

The small numbers provision finalized in these regulations requires 30 completers for the debt-to-earnings ratios and 30 borrowers entering repayment in the applicable 2YP, 2YP–A, 2YP–R, 4YP, or 4YP–R for calculation of the debt measures in order for a program to fail the debt measures and potentially be found ineligible. To develop the data necessary to calculate the debt measures, the Department will be entering into a data matching agreement with another Federal agency that has income data, most likely the SSA. The data matching agreement will not permit us to be able to identify an individual program completer's income. Therefore, we will need to assure that data for particular individuals will not be identifiable. To ensure individual data are not identifiable, we will need to suppress small cell sizes based on the requirements of the other Federal agency, which currently requires more than ten individuals.

Under the NPRM, the treatment of programs with a small number of completers was not fully determined. The Department requested comments about small programs in the NPRM, and many commenters did request clarification on how programs with a small number of completers would be treated. While the possibility of rolling up data first from six- to four-digit CIP codes,

then from four- to two-digit CIP code families, then to the entire institution was considered in the NPRM, this approach was rejected.

Under these final regulations, programs that do not have a minimum of 30 completers or borrowers in the 2YP, 2YP–A, or 2YP–R will be evaluated for a four-year period consisting of years three to six in repayment (4Y–P) or years six to nine in repayment (4YP–R). Programs that do not have a minimum of 30 completers or borrowers in the 4YP or 4YP–R will not be evaluated for ineligibility. If the list of completers the Department sends to SSA has more than 30 individuals, the mean or median earnings calculated by SSA will be used to evaluate the program's debt-to-earnings ratios, even if the number of completers used in the calculation is less than 30 after SSA removes any identity mismatches from the list of completers. Programs with fewer than 10 completers in the relevant calculation period cannot be evaluated with data from SSA and the debt-to-earnings ratios will not be produced for those programs. Ultimately, if there are insufficient observations, we will not be able to assess an institution's performance against the debt measures and, in this circumstance, the program is considered to satisfy the debt measures.

The small numbers provision brings the estimated number of programs that could become ineligible under the regulations down from 55,405 to 21,049 programs at all institutions and from 13,566 to 5,728 programs at small entities. Table 25 demonstrates the effect of the small numbers provision on small entities by sector and revenue category. Across all sectors and revenue categories, approximately 62 percent of regulated programs would not have enough completers to be determined ineligible based on existing completions data. While the 30 completer or borrower minimum means that a significant percentage of programs will not be ineligible, it does reduce the chance that the performance of one or two borrowers could result in large variability in a program's performance on the debt measures from year to year. Additionally, while the percentage of programs to which the small numbers provision applies is high, especially for the four-year institutions, the regulated programs with at least 31 completers still represent approximately 92 percent of enrollment in regulated programs at small entities.

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Table 25: Effect of Small Numbers Provision on Regulated Programs by Sector and Revenue Category

		Regulated Program Share	Institutional Revenue Under $7 Million: Number of Programs	Institutional Revenue Under $7 Million: Share of Programs	Institutional Revenue Over $7 Million: Number of Programs	Institutional Revenue Over $7 Million: Share of Programs
4-year	Public Regulated Programs		6	100%	0	0%
	Small data programs	100%	6	100%	0	0%
	Other regulated programs	0%	0	0%	0	0%
	Private Nonprofit Regulated Programs		242	6%	3,836	94%
	Small data programs	81%	192	79%	3,103	81%
	Other regulated programs	19%	50	21%	733	19%
	Private For-profit Regulated Programs		334	100%	0	0%
	Small data programs	66%	222	66%	0	0%
	Other regulated programs	34%	112	34%	0	0%
2-Year	Public Regulated Programs		317	100%	0	0%
	Small data programs	54%	170	54%	0	0%
	Other regulated programs	46%	147	46%	0	0%
	Private Nonprofit Regulated Programs		156	71%	64	29%
	Small data programs	48%	61	39%	45	70%
	Other regulated programs	52%	95	61%	19	30%
	Private For-profit Regulated Programs		1,938	100%	0	0%
	Small data programs	47%	901	47%	0	0%
	Other regulated programs	53%	1,036	53%	0	0%
Less-than 2-Year	Public Regulated Programs		621	100%	0	0%
	Small data programs	52%	323	52%	0	0%
	Other regulated programs	48%	298	48%	0	0%
	Private Nonprofit Regulated Programs		80	63%	46	37%
	Small data programs	27%	24	30%	10	22%
	Other regulated programs	73%	56	70%	36	78%
	Private For-profit Regulated Programs		2,006	100%	0	0%
	Small data programs	34%	679	34%	0	0%
	Other regulated programs	66%	1,327	66%	0	0%
Total	Regulated Programs		**3,994**	29%	**9,646**	71%
	Small data programs	**60%**	**3,197**	**80%**	**5,737**	**59%**
	Other regulated programs	**40%**	**797**	**20%**	**3,910**	**41%**

Source: IPEDS.

The combination of the small numbers provision and the estimated performance of these programs on the debt measures limit the number of programs at small entities as defined by the Small Business Administration that can be found ineligible under the debt measures. While private nonprofit institutions are classified as small entities, our estimates indicate that no more than 4.9 percent of programs at those institutions are likely to fail the debt measures, with an even smaller percentage likely to be found ineligible. It is unlikely that the number of ineligible programs would reach the 5 percent ineligibility cap available based on FY 2014 data. The governmental entities controlling public sector institutions are not expected to fall below the 50,000 threshold for small status under the SBA's Size Standards, but even if they do, programs at public sector institutions are highly unlikely to fail the debt measures. Therefore, our analysis of the effects on small entities focuses on the for-profit sectors. From the estimates described in the *Analysis of the Regulations* section above, the percentage of programs subject to evaluation in the for-profit sectors likely to be found ineligible is 7.1 percent for 4-year institutions, 6.4 percent for 2-year institutions, and 1.8 percent for less-than-2-year institutions. When modeled using the small entities only, those percentages were 6.3 percent, 4.5 percent, and 1.4 percent respectively. Tables 26 A–C and 27 A–C present the results for programs when the model runs are limited to small entities. As indicated above, these results are slightly better than the performance of the full set of institutions. Among programs that are not subject to the small numbers provision, small entities have a higher percentage of programs with initial repayment rates above 35 percent.

Table 26: Estimated Results for Programs at Small Entities under the Low Dropout Scenario

Table 26-A: 4-year Institutions

		Gainful Employment Programs at Small Institutions			Share of Programs Subject to Debt Measures at Small Institutions		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	7	7	7	100%	99%	98%
	Fail Once	0	0	0	1%	1%	1%
	Fail Twice	0	0	0	0%	0%	1%
	Ineligible Year 3	0	0	0	0%	0%	0%
	Ineligible Year 4	0	0	0	0%	0%	0%
Private Nonprofit	Pass	4,384	4,372	4,359	98%	97%	95%
	Fail Once	12	17	22	1%	2%	3%
	Fail Twice	4	8	11	1%	1%	1%
	Ineligible Year 3	0	3	3	0%	0%	0%
	Ineligible Year 4	0	0	5	0%	0%	1%
Private For-profit	Pass	328	323	318	88%	84%	80%
	Fail Once	9	9	10	7%	8%	8%
	Fail Twice	5	6	7	5%	5%	6%
	Ineligible Year 3	0	4	4	0%	3%	3%
	Ineligible Year 4	0	0	3	0%	0%	3%

Table 26-B: 2-year Institutions

		Gainful Employment Programs at Small Institutions			Share of Programs Subject to Debt Measures at Small Institutions		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	1,381	1,381	1,379	100%	100%	100%
	Fail Once	1	1	2	0%	0%	0%
	Fail Twice	0	0	1	0%	0%	0%
	Ineligible Year 3	0	0	0	0%	0%	0%
	Ineligible Year 4	0	0	0	0%	0%	0%
Private Nonprofit	Pass	391	389	386	99%	98%	96%
	Fail Once	2	3	4	1%	2%	2%
	Fail Twice	1	2	2	0%	1%	1%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	0	1	0%	0%	1%
Private For-profit	Pass	2,086	2,035	1,993	91%	87%	83%
	Fail Once	65	82	86	6%	7%	8%
	Fail Twice	36	46	58	3%	4%	5%
	Ineligible Year 3	0	24	24	0%	2%	2%
	Ineligible Year 4	0	0	26	0%	0%	2%

Table 26-C: Less-than-2-year Institutions

		Gainful Employment Programs at Small Institutions			Share of Programs Subject to Debt Measures at Small Institutions		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	1,478	1,475	1,471	99%	99%	98%
	Fail Once	3	4	6	1%	1%	1%
	Fail Twice	1	2	3	0%	0%	0%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	0	1	0%	0%	0%
Private Nonprofit	Pass	276	273	271	98%	97%	96%
	Fail Once	2	3	4	1%	2%	2%
	Fail Twice	1	2	2	1%	1%	1%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	0	1	0%	0%	1%
Private For-profit	Pass	3,198	3,169	3,138	97%	96%	94%
	Fail Once	39	48	58	2%	2%	3%
	Fail Twice	18	26	32	1%	1%	2%
	Ineligible Year 3	0	12	12	0%	1%	1%
	Ineligible Year 4	0	0	15	0%	0%	1%

Source: NSLDS, IPEDS, BPS, NPSAS, and MDHE.

Table 27: Estimated Results for Programs at Small Entities under the High Dropout Scenario

Table 27-A: 4-year Institutions

		Gainful Employment Programs at Small Institutions			Share of Programs Subject to Debt Measures at Small Institutions		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	7	7	7	100%	99%	98%
	Fail Once	0	0	0	1%	1%	1%
	Fail Twice	0	0	0	0%	0%	1%
	Ineligible Year 3	0	0	0	0%	0%	0%
	Ineligible Year 4	0	0	0	0%	0%	0%
Private Nonprofit	Pass	4,384	4,372	4,359	98%	97%	95%
	Fail Once	12	17	22	1%	2%	3%
	Fail Twice	4	8	11	1%	1%	1%
	Ineligible Year 3	0	3	3	0%	0%	0%
	Ineligible Year 4	0	0	5	0%	0%	1%
Private For-Profit	Pass	328	322	317	88%	83%	79%
	Fail Once	9	10	10	8%	8%	9%
	Fail Twice	5	6	7	5%	6%	6%
	Ineligible Year 3	0	4	4	0%	3%	3%
	Ineligible Year 4	0	0	4	0%	0%	3%

Table 27-B: 2-year Institutions

		Gainful Employment Programs at Small Institutions			Share of Programs Subject to Debt Measures at Small Institutions		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	1,381	1,381	1,379	100%	100%	100%
	Fail Once	1	1	2	0%	0%	0%
	Fail Twice	0	0	1	0%	0%	0%
	Ineligible Year 3	0	0	0	0%	0%	0%
	Ineligible Year 4	0	0	0	0%	0%	0%
Private Nonprofit	Pass	391	388	386	99%	97%	96%
	Fail Once	2	3	4	1%	2%	2%
	Fail Twice	1	2	2	0%	1%	1%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	0	1	0%	0%	1%
Private For-Profit	Pass	2,084	2,029	1,985	91%	86%	82%
	Fail Once	67	86	90	6%	7%	8%
	Fail Twice	36	48	61	3%	4%	5%
	Ineligible Year 3	0	24	24	0%	2%	2%
	Ineligible Year 4	0	0	27	0%	0%	2%

Table 27-C: Less-than-2-year Institutions

		Gainful Employment Programs at Small Institutions			Share of Programs Subject to Debt Measures at Small Institutions		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	1,478	1,475	1,471	99%	99%	98%
	Fail Once	3	4	6	1%	1%	1%
	Fail Twice	1	2	3	0%	0%	0%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	0	1	0%	0%	0%
Private Nonprofit	Pass	276	273	271	98%	97%	96%
	Fail Once	2	3	4	1%	2%	2%
	Fail Twice	1	2	2	1%	1%	1%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	0	1	0%	0%	1%
Private For-Profit	Pass	3,197	3,166	3,134	97%	96%	94%
	Fail Once	40	49	60	2%	2%	3%
	Fail Twice	19	28	34	1%	1%	2%
	Ineligible Year 3	0	13	13	0%	1%	1%
	Ineligible Year 4	0	0	15	0%	0%	1%

Source: NSLDS, IPEDS, BPS, NPSAS, and MDHE.

The revenue profile and cost structure of small entities vary from that of the overall set of institutions. Table 28 provides per-enrollee average revenue and expense amounts by sector for small entities.

Table 28: Sector Average Revenues and Expenses per Enrollee at Small Entities

		4-year Institutions			2-year Institutions			Less-than-2-year Institutions		
		Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit
Institutions with Passing Repayment Rates	**Revenues**									
	Total	11,805	20,616	11,114	8,818	10,478	8,024	12,408	8,474	7,990
	Tuition and Fee	6,764	11,109	9,405	2,805	6,467	6,318	4,784	4,415	5,814
	Core*	11,086	14,798	10,870	8,614	10,063	7,989	12,408	8,261	7,989
	Expenses									
	Total	10,530	26,465	10,936	9,893	27,040	7,104	10,581	9,805	7,337
	Instructional	4,731	8,243	3,143	6,522	7,132	2,951	6,572	5,273	2,954
	Core**	10,530	21,463	10,780	9,598	26,670	7,051	10,581	9,804	7,337
Institutions with Failing Repayment Rates	**Revenues**									
	Total	20,979	10,028	7,078	9,146	7,565	7,286	5,305	6,086	10,248
	Tuition and Fee	8,242	8,142	2,253	4,991	5,884	3,567	2,456	4,462	5,747
	Core*	15,480	9,787	6,871	8,543	7,532	7,286	5,305	6,086	8,894
	Expenses									
	Total	23,844	10,026	5,207	9,792	7,209	5,915	5,654	5,155	10,442
	Instructional	5,469	2,772	2,159	2,592	2,593	4,345	3,290	2,226	3,187
	Core**	18,977	9,898	4,899	9,110	7,170	5,915	5,654	5,139	9,231

*Total revenues for the essential education activities of the institution. Core revenues for public institutions (using the Governmental Accounting Standards Board (GASB) standards) include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private gifts, grants, and contracts; investment income; other operating and nonoperating sources; and other revenues and additions. Core revenues for private, not-for-profit and public institutions reporting under the Financial Accounting Standards Board (FASB) standards include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private gifts, grants, and contracts; investment return; sales and services of educational activities; and other sources. Core revenues for private, for-profit institutions reporting under FASB standards include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private grants and contracts; net investment income; sales and services of educational activities; and other sources. In general, core revenues exclude revenues from auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations.

**Total expenses for the essential education activities of the institution. Core expenses for public institutions reporting under GASB standards include expenses for instruction, research, public service, academic support, student services, institutional support, operation and maintenance of plant, depreciation, scholarships and fellowships, interest and other operating and nonoperating expenses. Core expenses for FASB (primarily private, not-for-profit and for-profit) institutions include expenses on instruction, research, public service, academic support, student services, institutional support, net grant aid to students, and other expenses. For both FASB and GASB institutions, core expenses exclude expenses for auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations.

Source: **IPEDS.**

The number of students from small entities estimated to drop out of education or transfer out of programs at small entities as a result of those programs failing the gainful employment debt measures or becoming ineligible and the accompanying revenue effects are shown in Table 30. The effects of incoming transfers are estimated by applying the share of small entities in a sector to the estimated number of students transferring into the sector in the results generated by the model runs for the full set of institutions described in this Regulatory Impact Analysis. Small entities that fail the debt measures and eventually become ineligible are more likely to close than larger institutions with multiple programs. As a result, the sector revenue losses presented in Table 29 assume that small entities lose 85 percent of total revenues per enrollee leaving failing and ineligible programs, while all institutions lose 100 percent of tuition and fee revenues per enrollee leaving failing and ineligible programs. The estimated cumulative drop in revenue from small entities resulting from students transferring or dropping out of programs that fail the gainful employment debt measures is $91.8 million from programs at for-profit institutions in a four-year period, an average of $22.9 million annually. When offset by the potential revenue gains or expense reductions, the estimated net effects are a $49.5 million loss over four years for programs at for-profit institutions, an average annual loss of $12.4 million. This estimate does not include paperwork and compliance costs, because it reflects only transfers. These estimates are based on student transfers coming in from small entities only and inter-sector transfers from small for-profit entities. Transfers in from large entities could offer small entities opportunities for additional net revenues that would offset these estimated losses.

Table 29: Estimated Direct Revenue and Expense Effects for Small Entities

Table 29-A: For-profit 4-year (Dollars in Thousands)

Private For-profit 4-year

		Year 2	Year 3	Year 4	Year 5
Low Drop Scenario					
Student Movement	Number Dropping Out	50	94	134	287
	Number Transferring Out	160	165	213	205
	Number Transferring In	17	40	63	84
Tuition and Fee Revenue	Loss From Drops	300.8	565.5	806.2	1,726.6
	Loss From Transfers Out	962.6	992.7	1,281.4	1,233.3
	Gain From Transfers In	162.7	380.0	595.7	790.6
Expenses	Reduction from Drops	208.30	391.60	558.24	1195.62
	Reduction from Transfers Out	666.55	687.38	887.34	854.02
	Increase from Transfers In	189.19	441.91	692.66	919.36
Net Change in Revenues for Sector		-415.02	-541.06	-738.98	-1,039.0
High Drop Scenario					
Student Movement	Number Dropping Out	119	220	308	379
	Number Transferring Out	66	141	201	255
	Number Transferring In	13	31	49	65
Tuition and Fee Revenue	Loss From Drops	715.9	1,323.5	1,853.0	2,280.1
	Loss From Transfers Out	397.1	848.3	1,209.2	1,534.1
	Gain From Transfers In	121.5	290.2	462.6	612.1
Expenses	Reduction from Drops	495.7	916.5	1,283.1	1,578.9
	Reduction from Transfers Out	275.0	587.4	837.4	1,062.3
	Increase from Transfers In	141.3	337.5	537.9	711.8
Net Change in Revenues for Sector		-362.1	-715.2	-1,017.0	-1,272.6

Source: NSLDS, IPEDS, BPS, NPSAS, and MDHE.

Table 29-B: For-profit 2-year (Dollars in Thousands)

Private For-profit 2-year			Year 2	Year 3	Year 4	Year 5
	Low Drop Scenario					
	Student Movement	Number Dropping Out	271	571	915	1,170
		Number Transferring Out	622	1,284	2,004	2,526
		Number Transferring In	479	726	1,228	1,385
	Tuition and Fee Revenue	Loss From Drops	1,678.3	3,536.2	5,666.6	7,245.8
		Loss From Transfers Out	3,852.0	7,951.8	12,410.7	15,643.5
		Gain From Transfers In	3,026.4	4,584.1	7,759.1	8,747.5
	Expenses	Reduction from Drops	1,202.2	2,533.1	4,059.2	5,190.5
		Reduction from Transfers Out	2,759.4	5,696.2	8,890.4	11,206.1
		Increase from Transfers In	3,403.1	5,154.6	8,724.7	9,836.2
	Net Change in Revenues for Sector		-1,945.4	-3,829.1	-6,093.4	-7,581.4
	High Drop Scenario					
	Student Movement	Number Dropping Out	609	1,279	2,055	2,607
		Number Transferring Out	493	1,037	1,630	2,042
		Number Transferring In	474	727	1,155	1,293
	Tuition and Fee Revenue	Loss From Drops	3,771.5	7,920.8	12,726.6	16,145.1
		Loss From Transfers Out	3,053.1	6,422.1	10,094.6	12,646.1
		Gain From Transfers In	2,993.2	4,590.7	7,297.4	8,167.7
	Expenses	Reduction from Drops	2,701.7	5,674.0	9,116.6	11,565.5
		Reduction from Transfers Out	2,187.1	4,600.5	7,231.2	9,059.0
		Increase from Transfers In	3,365.8	5,162.0	8,205.6	9,184.3
	Net Change in Revenues for Sector		-2,308.4	-4,639.8	-7,381.5	-9,183.3

Source: NSLDS, IPEDS, BPS, NPSAS, and MDHE.

Table 29-C: For-profit less-than-2-year (Dollars in Thousands)

Private For-profit Less-than-2-year

		Year 2	Year 3	Year 4	Year 5
Low Drop Scenario					
Student Movement	Number Dropping Out	267	615	937	1,237
	Number Transferring Out	442	1,044	1,592	2,095
	Number Transferring In	1,070	2,042	2,883	3,587
Tuition and Fee Revenue	Loss From Drops	2,325.7	5,357.0	8,161.7	10,774.9
	Loss From Transfers Out	3,850.0	9,093.8	13,867.1	18,248.5
	Gain From Transfers In	6,220.5	11,874.1	16,760.1	20,851.9
Expenses	Reduction from Drops	2,091.0	4,816.4	7,338.1	9,687.6
	Reduction from Transfers Out	3,461.5	8,176.1	12,467.7	16,407.0
	Increase from Transfers In	7,850.3	14,985.1	21,151.3	26,315.1
Net Change in Revenues for Sector		-2,253.0	-4,569.3	-6,614.2	-8,392.0
High Drop Scenario					
Student Movement	Number Dropping Out	490	1,162	1,797	2,383
	Number Transferring Out	338	822	1,268	1,677
	Number Transferring In	1,026	1,982	2,764	3,373
Tuition and Fee Revenue	Loss From Drops	4,268.1	10,121.6	15,652.8	20,757.1
	Loss From Transfers Out	2,944.1	7,160.0	11,044.9	14,607.5
	Gain From Transfers In	5,966.5	11,523.8	16,067.5	19,611.0
Expenses	Reduction from Drops	3,837.4	9,100.2	14,073.2	18,662.5
	Reduction from Transfers Out	2,647.0	6,437.5	9,930.3	13,133.4
	Increase from Transfers In	7,529.7	14,543.0	20,277.2	24,749.1
Net Change in Revenues for Sector		-2,291.0	-4,763.2	-6,903.8	-8,706.8

Source: NSLDS, IPEDS, BPS, NPSAS, and MDHE.

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While many programs at small entities would not be determined ineligible under the small numbers provisions and their performance on the debt measures, it is still important for the Department to have data on all of these programs for several reasons. As for all programs, they would be required to disclose their performance. The Department believes that students considering or attending programs with small numbers of borrowers or completers will find the debt measures useful in their decision-making process, even as the Department believes that a larger sample is needed to make reliable eligibility determinations. These data will also be useful to institutions seeking to improve the performance of their programs or considering expanding enrollment in their programs. Finally, examining these programs' data over time will help the Department evaluate the performance of all gainful employment programs. The estimated costs associated with complying with the data collection and reporting requirements are summarized below.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Table 30 relates the estimated burden of each information collection requirement to the hours and costs estimated in the *Paperwork Reduction Act of 1995* section of the preamble. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of the preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on small entities participating in the title IV, HEA programs by 30,339 hours per year. The monetized cost of this additional burden on institutions, using wage data developed using BLS data available at *http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf,* is $671,093. This cost was based on an hourly rate of $22.12 that was used to reflect increased management time to establish new data collection procedures associated with the gainful employment provisions.

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Table 30: Estimated Paperwork Burden for Small Entities

Provision	Reg. Section	OMB Control #	Hours	Costs
Optional reporting of tuition and fees.	668.7(c)(2)(i)(A)(2)	OMB 1845-0109	23,360	$516,712
Pre-draft data challenges to list of names to be submitted to the SSA.	668.7(e)(1)	OMB 1845-0109	693	$15,329
Post-draft data corrections challenging the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate, or the median loan debt for the program that was used in the numerator of the draft debt-to-earnings ratios.	668.7(e)(2)	OMB 1845-0109	1,155	$25,549
Notification of intent to use alternative earnings and submission of alternative earnings.	668.7(g)	OMB 1845-0109	1,164	$25,742
Debt warnings	668.7(j)(1)-(j)(2)	OMB 1845-0109	116	$2,555
Notification to students and the Secretary that a failing program has been voluntarily discontinued.	668.7(j)(5)	OMB 1845-0109	3,852	$85,206

Table 30 relates the estimated burden for small entities of each paperwork requirement to the hours and costs estimated in the *Paperwork Reduction Act of 1995* section of this preamble. The largest burden comes from the optional reporting of tuition and fees to limit the amount of debt included in the debt-to-earnings calculation. The estimated burden for small entities of reporting tuition and fee information about students is 23,360 hours and $516,712.

Prior to the issuance of the draft debt-to-earnings ratios, the Secretary will provide a list to institutions of students that will be included in the applicable two- or four-year period used to calculate the debt-to-earnings ratios beginning in FY 2012. Institutions will have 30 days after the date the list is sent to the institution, to provide corrections such as, evidence that a student should be included or excluded from the list or to submit corrected or updated student identity information. The estimated burden from these pre-draft data challenges is 1,155 hours and $25,742. After the issuance of draft debt measures, institutions will have the ability to challenge the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate, the list of borrowers used to calculate the loan repayment rate, or the median loan debt for the program that was used in the numerator of the draft debt-to-earnings ratio. The burden associated with challenges to the draft debt measures is 2,772 hours annually at a cost of $61,317. Programs that fail the debt measures may demonstrate that a failing program would meet a debt-to-earnings standard by recalculating the debt-to-earnings ratios using the median loan debt for the program and using alternative earnings data from: a State-sponsored data system, an institutional survey conducted in accordance with NCES standards, or, for fiscal years 2012, 2013, and 2014, BLS data. The estimated burden of notifying the Secretary of the intent to use alternative earnings data and of supplying the alternative earnings information is 1,164 hours and $25,742.

Additional items included in the burden estimate for institutions reported under OMB

1845–0109 include an estimated burden of 3,852 hours for notifying the Secretary and students when an institution voluntarily withdraws a failing program from title IV, HEA participation and the date when title IV, HEA aid will no longer be available for the program and an estimated 116 hours in issuing debt warnings to current students. Together, these provisions have an estimated cost of $113,503 for small entities.

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Regulations

The regulations are unlikely to conflict with or duplicate existing Federal regulations. Under existing law and regulations administered by the Department, institutions are required to disclose data in a number of complementary areas related to the regulations. For example, among the information that institutions must disclose under the HEA is price information including a "net price" calculator and a pricing summary page. The additional information required by these final regulations will help students make informed decisions about the affordability of their student loan debts and the performance of the covered programs.

Alternatives Considered

As described above, the Department evaluated the regulations for their effect on different types of institutions, including the small entities that comprise approximately 60 percent of title IV, HEA eligible institutions subject to these regulations. As discussed in the Alternatives Considered *section* of this RIA, several different approaches were analyzed, including the use of graduation and placement rates, disclosure alone, a NPV return on investment analysis, an index of factors, default rates, and higher thresholds for the repayment rate. Default rates are not used because a low default rate is not synonymous with a low debt burden. As noted earlier, forbearance, deferments for economic hardship and unemployment, and income-contingent and income-based repayment are important consumer protections that help keep former students out of default; however cohort default rates, alone, are not an adequate standard for assessment of whether a program prepares students for gainful employment. Nor can disclosure serve as a standard for determining whether a program complies with the gainful employment requirement in the statute. For example, with a disclosure approach an institution might report that one of its programs did not place a single graduate into a job, yet the program would remain eligible as "preparing students for gainful employment in a recognized occupation" because it disclosed the fact that it had failed to do so. For graduation and placement rates, non-Federal negotiators raised concerns about the ability of institutions to obtain valid placement information from graduates and employers. Based on the information we have available, using them as a measure of gainful employment would be premature. No specific proposal was considered for an index, nor is it clear how such an index would logically measure gainful employment. Furthermore, one should be cautious about assuming that an institution enrolling lower-income students should necessarily have lower expectations for the future employment or earnings of graduates. An index could be a good approach to provide incentives, perhaps as a method of distributing funds in a program. While we find the concept appealing, we are not convinced that it is appropriate for accomplishing the goals of these regulations.

As the analysis and comments from outside parties shaped the proposal, alternatives were developed that reduced the proposal's negative effects. These alternatives include a delayed effective date for the gainful employment standard, an ability of institutions to request that a program's repayment rate be evaluated for those three years further along in their careers, a cap limiting the number of programs that could lose eligibility in the first year after the regulations take effect to the lowest-performing programs producing no more than 5 percent of completers during the prior award year, increased debt-to-earnings limits, and a decreased repayment rate threshold. These alternatives are not specifically targeted at small entities, but the delayed effective date and initial cap on the regulations' effect will provide time for small entities to adapt to the regulations. Clarification of the treatment of programs with a small number of completers or borrowers is particularly relevant for small entities and, along with the changes to the calculation of the debt measures and the requirement that a program is not ineligible until it fails the debt measures for three of four FYs, reduces the effect of the regulations on small entities and opens opportunities for programs that serve students well.

RIA Technical Notes

All data analyzed as part of this regulatory impact analysis, including the regressions relating repayment rate to student and institutional characteristics, is available on-line at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html.* This file was created by merging data provided from the National Student Loan Data System (NSLDS) with information collected by the National Center for Education Statistics' Integrated Postsecondary Education Data System (IPEDS). Analysts who wish to append additional information to this file are cautioned that all IPEDS data has been aggregated by six-digit OPE IDs, because that is the level at which repayment rates are reported.

The RIA analysis file contains 5,495 unique records. The regressions reported in this filing are limited to a subset of those records, specifically: (a) Those that had undergraduate offerings, (b) those that have a non-missing repayment rate (e.g., institutions may participate in title IV, HEA grant programs but not in the loan programs), and (c) those that had no missing predictor variables. The final analytic population is 4,255 institutions, or 77 percent of the total RIA file.

Table TA-1: Distribution of cases included in the initial and final RIA Regression analysis dataset, by institution sector

		Included In Initial Dataset[1]		Included in Final Dataset[2]	
Sector	Total Cases	Number	Percent	Number	Percent
4-year Institutions					
Public	596	576	97%	547	92%
Private Nonprofit	1,479	1,205	81%	1,136	77%
For-Profit	211	183	87%	174	82%
2-year Institutions					
Public	1,041	828	80%	824	79%
Private Nonprofit	170	146	86%	118	69%
For-Profit	582	530	91%	506	87%
<2-year Institutions					
Public	231	135	58%	112	48%
Private Nonprofit	65	41	63%	38	58%
For-Profit	1,099	856	78%	800	73%
Total	**5,474**	**4,500**	**82%**	**4,255**	**78%**

[1] To be included in the initial dataset, cases had to meet the following criteria: (a) in initial analytic file, (b) have undergraduate offerings, and (c) have a non-missing repayment rate in the initial analytic file.
[2] To be included in the final dataset, cases had to have no missing values on any predictor variable later used in a regression model.

Source: NSLDS and IPEDS.

The regression analysis has five components:

(1) An ordinary least squares regression relating repayment rate (RepayRateFinalRule) to four possible sets of predictor variables;

a. Student body characteristics, including the percentage of students at an institution who are identified as racial/ethnic minorities (PerMinority), the percentage of students at an institution who receive Pell grants (PellPerWinsor),[29] the percentage of the undergraduate student population represented by women (pctugwomen), and the percentage of the undergraduate student population under the age of 25 (pctugunder25).

[29] This variable has been winsorized to reduce extreme observations.

Table TA-2: Distribution of cases included in initial RIA dataset that were excluded from the final file due to missing predictors, by institution sector

Sector	Included in Initial Dataset	Excluded from Final Set Due to Missing Data: Number	Excluded from Final Set Due to Missing Data: Percent	Included in Final Dataset
4-year Institutions				
Public	576	29	5%	547
Private Nonprofit	1,205	69	6%	1136
For-Profit	183	9	5%	174
2-year Institutions				
Public	828	4	0%	824
Private Nonprofit	146	28	19%	118
For-Profit	530	24	5%	506
Less-than-2-year Institutions				
Public	135	23	17%	112
Private Nonprofit	41	3	7%	38
For-Profit	856	56	7%	800
Total	**4,500**	**245**	**5%**	**4,255**

Source: NSLDS and IPEDS.

b. Measures of institutional spending and growth, including instructional (InstPerTotalExp) and non-instructional (CorePerTotalExp) costs and the percentage change in the size of the entering undergraduate class at an institution between 2006 and 2009 (PctChangeEntering06_09).

c. Total graduation rate (GradRateTot).

d. And, among 4-year institutions, a measure of institutional selectivity: An institutions acceptance rate (AcceptRate08).

(2) An ordinary least squares regression relating repayment rate (RepayRateFinalRule) to the percentage of students at an institution who are identified as racial/ethnic minorities;

(3) An ordinary least squares regression relating repayment rate (RepayRateFinalRule) to the percentage of students at an institution who receive Pell grants;

(4) All pairwise correlations between the dependent and independent variables; and

(5) The semi-partial correlation between repayment rate and each of the independent variables used in the regression analysis.

In the discussion of the results of that analysis, we rely on two concepts with which not all readers may be familiar.

The standardized regression coefficient. Comparing the strength of predictors in a regression model is complicated by the fact that not all independent variables are likely to be in the same metric. Such is the case here; for example, we include both rates (e.g., retention) and per-FTE expenses (e.g., instructional expenses). To increase comparability, regression coefficients can be *standardized,* so that all variables have the same "scale." The larger the absolute value of a standardized regression coefficient, the greater the effect it has on the dependent variable. Technically, the standardized regression coefficient, beta, is read as: "A one standard deviation change in *x* makes a *beta* standard deviation change in *y*."

RIA Appendix A–1: High Dropout Scenario

This scenario features a drop-out starting at 15% of those remaining after baseline dropouts and transfers for a single failure and up to 42% for for-profit-less-than-2-year institutions. The transfer rates associated with this scenario run from 20% for a single failure to 40% for ineligibility. The transfers are distributed according to our opinion that most transfers attributable to gainful employment would occur within the sectors, particularly the for-profit sectors. This is due to the capacity and flexibility of successful for-profit programs to expand at a faster rate than public institutions.

Table A-1A: Enrollment Assumptions

	Public 4-year	Private Nonprofit 4-year	Private For-profit 4-year	Public 2-year	Private Nonprofit 2-year	Private For-profit 2-year	Public Less-than-2-year	Private Nonprofit Less-than-2-year	Private For-Profit Less-than-2-year
Annual Enrollment Growth Percentage for 2008 to 2012	0.015	0.02	0.07	0.03	0.02	0.06	0.02	0.02	0.07
Year 1 to Year 2 Growth	1.02	1.03	1.07	1.03	1.03	1.06	1.02	1.03	1.05
Year 2 to Year 3 Growth	1.03	1.03	1.07	1.03	1.03	1.07	1.03	1.04	1.07
Year 3 to Year 4 Growth	1.03	1.03	1.07	1.04	1.04	1.07	1.04	1.03	1.07
Year 4 to Year 5 Growth	1.03	1.03	1.07	1.04	1.04	1.07	1.04	1.03	1.07

Table A-1B: Debt Ratio Failure Rate

For Institutions that Passed the Debt Ratios in the Previous Year

	Repayment Rate in next year		
	45% or Above	Between 35% and 45%	Below 35%
Public 4-year	2%	4%	8%
Private Nonprofit 4-year	3%	8%	12%
Private For-profit 4-year	8%	15%	29%
Public 2-year	2%	2%	4%
Private Nonprofit 2-year	5%	8%	10%
Private For-profit 2-year	6%	12%	20%
Public less-than-2-year	2%	4%	6%
Private Nonprofit less-than-2-year	3%	4%	8%
Private For-profit less-than-2-year	3%	4%	8%

For Institutions that Failed the Debt Ratios in the Previous Year

	Repayment Rate in next year		
Year 2	45% or Above	Between 35% and 45%	Below 35%
Public 4-year	85%	85%	90%
Private Nonprofit 4-year	85%	85%	90%
Private For-profit 4-year	80%	80%	85%
Public 2-year	85%	85%	90%
Private Nonprofit 2-year	85%	85%	90%
Private For-profit 2-year	80%	80%	85%
Public less-than-2-year	80%	80%	85%
Private Nonprofit less-than-2-year	80%	80%	85%
Private For-profit less-than-2-year	80%	80%	85%

	Repayment Rate in Next Year		
Year 3	45% or Above	Between 35% and 45%	Below 35%
Public 4-year	75%	75%	80%
Private Nonprofit 4-year	75%	75%	80%
Private For-profit 4-year	70%	70%	75%
Public 2-year	75%	75%	80%
Private Nonprofit 2-year	75%	75%	80%
Private For-profit 2-year	70%	70%	75%
Public less-than-2-year	70%	70%	75%
Private Nonprofit less-than-2-year	70%	70%	75%
Private For-profit less-than-2-year	70%	70%	75%

	Repayment Rate in Next Year		
Year 4	45% or Above	Between 35% and 45%	Below 35%
Public 4-year	70%	70%	75%
Private Nonprofit 4-year	70%	70%	75%
Private For-profit 4-year	65%	65%	70%
Public 2-year	70%	70%	75%
Private Nonprofit 2-year	70%	70%	75%
Private For-profit 2-year	65%	65%	70%
Public less-than-2-year	65%	65%	70%
Private Nonprofit less-than-2-year	65%	65%	70%
Private For-profit less-than-2-year	65%	65%	70%

Table A-1C: Repayment Category Transition Assumptions

Year 1 to Year 2

Repayment Rate Year 1	Repayment Rate Year 2: 45% or Above	Repayment Rate Year 2: Between 35% and 45%	Repayment Rate Year 2: Below 35%
45% or Above	85%	10%	5%
Between 35% and 45%	15%	65%	20%
Below 35%	3%	12%	85%

Year 2 to Year 3

	Repayment Rate Year 3		
Repayment Rate Year 1: 45% or Above	45% or Above	Between 35% and 45%	Below 35%
Repayment Rate Year 2			
45% or Above	90%	8%	2%
Between 35% and 45%	25%	55%	20%
Below 35%	2%	28%	70%
Repayment Rate Year 1: Between 35% and 45%			
Repayment Rate Year 2			
45% or Above	65%	25%	10%
Between 35% and 45%	15%	75%	10%
Below 35%	5%	10%	85%
Repayment Rate Year 1: Below 35%			
Repayment Rate Year 2			
45% or Above	40%	40%	20%
Between 35% and 45%	25%	60%	15%
Below 35%	1%	9%	90%

Year 3 to Year 4

	Repayment Rate Year 4		
Repayment Rate Year 1: 45% or Above	45% or Above	Between 35% and 45%	Below 35%
Repayment Rate Year 2: 45% or Above			
Repayment Rate Year 3			
45% or Above	96%	2%	2%
Between 35% and 45%	30%	60%	10%
Below 35%	5%	35%	60%
Repayment Rate Year 1: 45% or Above			
Repayment Rate Year 2: Between 35% and 45%			
Repayment Rate Year 3			
45% or Above	30%	60%	10%
Between 35% and 45%	15%	75%	10%
Below 35%	5%	25%	70%
Repayment Rate Year 1: 45% or Above			
Repayment Rate Year 2: Below 35%			
Repayment Rate Year 3			
45% or Above	40%	40%	20%
Between 35% and 45%	25%	60%	15%
Below 35%	2%	13%	85%

	Repayment Rate Year 4		
Repayment Rate Year 1: Between 35% and 45%	45% or Above	Between 35% and 45%	Below 35%
Repayment Rate Year 2: 45% or Above			
Repayment Rate Year 3			
45% or Above	90%	9%	1%
Between 35% and 45%	25%	65%	10%
Below 35%	8%	22%	70%

Repayment Rate Year 1: Between 35% and 45%

Repayment Rate Year 2: Between 35% and 45%			
Repayment Rate Year 3			
45% or Above	70%	20%	10%
Between 35% and 45%	15%	75%	10%
Below 35%	5%	15%	80%

Repayment Rate Year 1: Between 35% and 45%

Repayment Rate Year 2: Below 35%			
Repayment Rate Year 3			
45% or Above	40%	40%	20%
Between 35% and 45%	10%	60%	30%
Below 35%	5%	10%	85%

	Repayment Rate Year 4		
Repayment Rate Year 1: Below 35%	45% or Above	Between 35% and 45%	Below 35%
Repayment Rate Year 2: 45% or Above			
Repayment Rate Year 3			
45% or Above	95%	3%	2%
Between 35% and 45%	15%	75%	10%
Below 35%	8%	32%	60%

Repayment Rate Year 1: Below 35%

Repayment Rate Year 2: Between 35% and 45%			
Repayment Rate Year 3			
45% or Above	85%	10%	5%
Between 35% and 45%	10%	75%	15%
Below 35%	5%	15%	80%

Repayment Rate Year 1: Below 35%

Repayment Rate Year 2: Below 35%			
Repayment Rate Year 3			
45% or Above	40%	40%	20%
Between 35% and 45%	15%	60%	25%
Below 35%	0%	2%	98%

Table A-1D: Student Transition Assumptions

	To: Institutions in Sector that did not Fail									
	4-year Institutions			2-year Institutions			Less-than-2-year Institutions			
From: Failed Once	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Drop Out
Public 4-year	0.02	0.02	0.08	0.01	0.00	0.02	0.00	0.00	0.00	0.11
Private Nonprofit 4-year	0.00	0.02	0.09	0.01	0.00	0.02	0.00	0.00	0.00	0.11
Private For-profit 4-year	0.00	0.02	0.06	0.01	0.00	0.02	0.00	0.00	0.02	0.10
Public 2-year	0.01	0.01	0.02	0.02	0.02	0.02	0.00	0.00	0.01	0.08
Private Nonprofit 2-year	0.01	0.01	0.01	0.01	0.01	0.02	0.00	0.00	0.01	0.07
Private For-profit 2-year	0.00	0.00	0.02	0.01	0.02	0.03	0.01	0.01	0.02	0.09
Public Less-than-2-year	0.00	0.00	0.01	0.02	0.01	0.04	0.02	0.02	0.03	0.13
Private Nonprofit Less-than-2-year	0.00	0.00	0.01	0.01	0.01	0.03	0.01	0.01	0.02	0.10
Private For-Profit Less-than-2-year	0.00	0.00	0.01	0.01	0.01	0.04	0.01	0.01	0.03	0.12

	To: Institutions in Sector that did not Fail									
	4-year Institutions			2-year Institutions			Less-than-2-year Institutions			
From: Failed Twice	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Drop Out
Public 4-year	0.02	0.02	0.04	0.02	0.02	0.04	0.01	0.01	0.01	0.16
Private Nonprofit 4-year	0.02	0.02	0.04	0.02	0.02	0.05	0.01	0.01	0.01	0.16
Private For-profit 4-year	0.00	0.01	0.02	0.01	0.01	0.03	0.01	0.01	0.01	0.10
Public 2-year	0.01	0.01	0.01	0.01	0.01	0.02	0.00	0.00	0.01	0.08
Private Nonprofit 2-year	0.01	0.01	0.02	0.01	0.01	0.02	0.00	0.00	0.01	0.10
Private For-profit 2-year	0.00	0.01	0.02	0.01	0.01	0.02	0.00	0.00	0.01	0.10
Public Less-than-2-year	0.01	0.01	0.02	0.02	0.02	0.03	0.02	0.02	0.03	0.20
Private Nonprofit Less-than-2-year	0.01	0.01	0.01	0.02	0.01	0.02	0.01	0.02	0.02	0.13
Private For-Profit Less-than-2-year	0.00	0.01	0.01	0.02	0.01	0.02	0.01	0.02	0.02	0.16

	To: Institutions in Sector that did not Fail									
	4-year Institutions			2-year Institutions			Less-than-2-year Institutions			
From: Ineligible	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Drop Out
Public 4-year	0.03	0.02	0.05	0.02	0.02	0.04	0.01	0.01	0.01	0.22
Private Nonprofit 4-year	0.03	0.02	0.06	0.02	0.02	0.04	0.01	0.01	0.01	0.22
Private For-profit 4-year	0.00	0.02	0.04	0.00	0.02	0.03	0.00	0.01	0.01	0.12
Public 2-year	0.01	0.01	0.02	0.02	0.01	0.02	0.00	0.00	0.01	0.11
Private Nonprofit 2-year	0.01	0.01	0.02	0.02	0.01	0.03	0.00	0.00	0.01	0.14
Private For-profit 2-year	0.00	0.01	0.03	0.01	0.02	0.04	0.00	0.01	0.01	0.15
Public Less-than-2-year	0.01	0.01	0.02	0.02	0.02	0.04	0.02	0.02	0.04	0.27
Private Nonprofit Less-than-2-year	0.01	0.01	0.01	0.02	0.02	0.03	0.02	0.02	0.03	0.19
Private For-Profit Less-than-2-year	0.00	0.01	0.01	0.01	0.02	0.04	0.01	0.02	0.04	0.22

	To: Institutions in Sector that had one Fail								
	4-year Institutions			2-year Institutions			Less-than-2-year Institutions		
From: Failed Once	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit
Public 4-year	0	0	0	0	0	0	0	0	0
Private Nonprofit 4-year	0	0	0	0	0	0	0	0	0
Private For-profit 4-year	0	0	0	0	0	0	0	0	0
Public 2-year	0	0	0	0	0	0	0	0	0
Private Nonprofit 2-year	0	0	0	0	0	0	0	0	0
Private For-profit 2-year	0	0	0	0	0	0	0	0	0
Public Less-than-2-year	0	0	0	0	0	0	0	0	0
Private Nonprofit Less-than-2-year	0	0	0	0	0	0	0	0	0
Private For-Profit Less-than-2-year	0	0	0	0	0	0	0	0	0

	To: Institutions in Sector that had one Fail								
	4-year Institutions			2-year Institutions			Less-than-2-year Institutions		
From: Failed Twice	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit
Public 4-year	0.007	0.007	0.007	0.000	0.000	0.000	0.000	0.000	0.000
Private Nonprofit 4-year	0.007	0.007	0.007	0.000	0.000	0.000	0.000	0.000	0.000
Private For-profit 4-year	0.000	0.005	0.005	0.000	0.000	0.000	0.000	0.000	0.000
Public 2-year	0.002	0.002	0.002	0.003	0.003	0.003	0.002	0.002	0.002
Private Nonprofit 2-year	0.002	0.002	0.002	0.004	0.004	0.004	0.002	0.002	0.002
Private For-profit 2-year	0.000	0.002	0.002	0.004	0.004	0.004	0.002	0.002	0.002
Public Less-than-2-year	0.000	0.000	0.000	0.008	0.000	0.008	0.004	0.004	0.008
Private Nonprofit Less-than-2-year	0.000	0.000	0.000	0.005	0.000	0.005	0.003	0.003	0.005
Private For-Profit Less-than-2-year	0.000	0.000	0.000	0.006	0.000	0.006	0.003	0.003	0.006

	To: Institutions in Sector that had one Fail								
	4-year Institutions			2-year Institutions			Less-than-2-year Institutions		
From: Ineligible	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit
Public 4-year	0.008	0.008	0.008	0.004	0.004	0.004	0	0	0
Private Nonprofit 4-year	0.008	0.008	0.008	0.004	0.004	0.004	0	0	0
Private For-profit 4-year	0	0.005	0.005	0	0.003	0.003	0	0	0
Public 2-year	0.002	0.002	0.002	0.003	0.003	0.003	0.003	0.003	0.003
Private Nonprofit 2-year	0.002	0.002	0.002	0.004	0.004	0.004	0.004	0.004	0.004
Private For-profit 2-year	0	0.003	0.003	0.003	0.006	0.006	0	0	0.006
Public Less-than-2-year	0.004	0.004	0.004	0.007	0.007	0.007	0.007	0.007	0.015
Private Nonprofit Less-than-2-year	0.003	0.003	0.003	0.005	0.005	0.005	0.005	0.005	0.01
Private For-Profit Less-than-2-year	0	0.004	0.004	0	0.007	0.007	0.004	0.004	0.014

Table A-1E: Student Transition Results

	Year 2	Year 3	Year 4	Year 5
Public 4-Year				
No Fail	327,060	330,420	333,954	340,714
Transfer Out of Sector	186	585	970	1,355
Transfer Into Sector from Out	125	479	918	1,379
Transfer within Sector	29	95	160	226
Remain in Sector and Status*	1,151	3,307	5,012	6,698
Drop Out	162	525	892	1,256
Private Nonprofit 4-year				
No Fail	171,637	176,033	182,377	190,347
Transfer Out of Sector	164	438	767	1133
Transfer Into Sector from Out	1433	3808	6018	8074
Transfer within Sector	30	73	123	179
Remain in Sector and Status*	1015	2397	3809	5389
Drop Out	145	398	707	1051
Private For-profit 4-year				
No Fail	2,568,184	2,621,422	2,692,559	2,773,370
Transfer Out of Sector	4,520	12,154	19,083	25,144
Transfer Into Sector from Out	1,407	3,086	4,919	6,509
Transfer within Sector	5,118	10,674	14,691	18,302
Remain in Sector and Status*	67,466	163,182	238,471	302,278
Drop Out	8,188	19,696	29,447	38,087

	Year 2	Year 3	Year 4	Year 5
Public 2-Year				
No Fail	3,964,029	4,053,618	4,146,656	4,279,736
Transfer Out of Sector	1,349	3,625	5,846	8,289
Transfer Into Sector from Out	1,298	3,248	4,583	5,600
Transfer within Sector	386	908	1,367	1,911
Remain in Sector and Status*	14,408	37,700	58,521	81,151
Drop Out	1,385	3,672	5,947	8,488
Private Nonprofit 2-yar				
No Fail	29,129	30,732	33,995	39,629
Transfer Out of Sector	21	57	111	198
Transfer Into Sector from Out	1,169	2,923	5,198	7,208
Transfer within Sector	4	11	19	34
Remain in Sector and Status*	255	617	1,076	1,839
Drop Out	20	56	112	198
Private For-profit 2-year				
No Fail	696,362	700,059	704,303	721,865
Transfer Out of Sector	3,324	6,699	10,304	12,735
Transfer Into Sector from Out	2,267	6,015	9,552	12,826
Transfer within Sector	1,230	2,297	3,699	4,644
Remain in Sector and Status*	36,889	71,007	102,621	122,080
Drop Out	4,099	8,257	13,007	16,268

	Year 2	Year 3	Year 4	Year 5
Public Less-than-2-year				
No Fail	116,658	120,421	125,025	131,667
Transfer Out of Sector	8	34	80	137
Transfer Into Sector from Out	473	1,321	2,077	2,701
Transfer within Sector	1	5	10	16
Remain in Sector and Status*	51	198	398	640
Drop Out	9	39	90	152

Private Nonprofit Less-than-2-year				
No Fail	36,707	38,132	40,352	43,000
Transfer Out of Sector	22	63	117	178
Transfer Into Sector from Out	401	1,232	2,138	2,891
Transfer within Sector	3	8	15	24
Remain in Sector and Status*	194	522	873	1,274
Drop Out	25	71	132	201

Private For-profit Less-than-2-year				
No Fail	672,177	704,618	741,717	781,205
Transfer Out of Sector	1,208	2,765	4,142	5,365
Transfer Into Sector from Out	2,231	4,309	6,008	7,333
Transfer within Sector	356	768	1,209	1,596
Remain in Sector and Status*	10,909	21,616	29,563	37,198
Drop Out	1,749	3,902	5,874	7,629

***Students stay at an institution that had the same result--either failing or passing--the gainful employment test. It is assumed that students who transfer within a sector do not attend an institution that has failed these tests.**

Table A-1F: Program Transition Results

	Gainful Employment Programs			Share of Programs Subject to Debt Measures*		
	Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public 4-year	**4,943**	**4,943**	**4,943**			
Pass	4,926	4,913	4,897	98.7%	97.7%	96.4%
Fail Once	13	19	25	1.0%	1.5%	1.9%
Fail Twice	4	9	12	0.3%	0.7%	1.0%

Ineligible Year 3	-	3	3	0.0%	0.2%	0.2%
Ineligible Year 4	-	-	6	0.0%	0.0%	0.4%
Private Nonprofit 4-year	**4,400**	**4,400**	**4,400**			
Pass	4,384	4,371	4,358	98.1%	96.7%	95.1%
Fail Once	12	17	22	1.4%	2.0%	2.6%
Fail Twice	4	8	11	0.5%	1.0%	1.3%
Ineligible Year 3	-	3	3	0.0%	0.4%	0.4%
Ineligible Year 4	-	-	5	0.0%	0.0%	0.6%
Private For-profit 4-year	**4,243**	**4,243**	**4,243**			
Pass	3,915	3,783	3,668	86.0%	80.4%	75.5%
Fail Once	209	227	239	8.9%	9.7%	10.2%
Fail Twice	118	153	168	5.1%	6.5%	7.2%
Ineligible Year 3	-	80	80	0.0%	3.4%	3.4%
Ineligible Year 4	-	-	87	0.0%	0.0%	3.7%
Public 2-year	**30,232**	**30,232**	**30,232**			
Pass	30,125	30,056	29,976	98.9%	98.2%	97.3%
Fail Once	77	100	130	0.8%	1.0%	1.4%
Fail Twice	30	55	69	0.3%	0.6%	0.7%
Ineligible Year 3	-	21	21	0.0%	0.2%	0.2%
Ineligible Year 4	-	-	35	0.0%	0.0%	0.4%
Private Nonprofit 2-year	**394**	**394**	**394**			
Pass	391	389	386	98.5%	97.4%	96.2%
Fail Once	2	3	4	1.1%	1.5%	2.0%
Fail Twice	1	2	2	0.4%	0.8%	1.0%
Ineligible Year 3	-	1	1	0.0%	0.3%	0.3%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.5%
Private For-profit 2-year	**4,754**	**4,754**	**4,754**			
Pass	4,396	4,220	4,084	87.3%	81.1%	76.3%
Fail Once	225	279	284	8.0%	9.9%	10.1%
Fail Twice	133	165	204	4.7%	5.9%	7.2%
Ineligible Year 3	-	90	90	0.0%	3.2%	3.2%
Ineligible Year 4	-	-	91	0.0%	0.0%	3.2%
Public less-than-2-year	**2,043**	**2,043**	**2,043**			

Pass	2,039	2,035	2,031	99.6%	99.3%	98.9%
Fail Once	3	5	7	0.3%	0.5%	0.7%
Fail Twice	1	2	3	0.1%	0.2%	0.3%
Ineligible Year 3	-	1	1	0.0%	0.1%	0.1%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.1%
Private Nonprofit less-than-2-year	**279**	**279**	**279**			
Pass	275	273	271	98.2%	97.1%	95.8%
Fail Once	2	3	4	1.3%	1.7%	2.2%
Fail Twice	1	2	2	0.5%	0.9%	1.1%
Ineligible Year 3	-	1	1	0.0%	0.3%	0.3%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.5%
Private For-profit less-than-2-year	**4,117**	**4,117**	**4,117**			
Pass	4,016	3,964	3,909	96.3%	94.5%	92.5%
Fail Once	68	83	101	2.5%	3.0%	3.7%
Fail Twice	34	48	58	1.2%	1.7%	2.1%
Ineligible Year 3	-	23	23	0.0%	0.8%	0.8%
Ineligible Year 4	-	-	26	0.0%	0.0%	0.9%

* Programs that had more than 30 completers and students entering repayment in a four-year period. Percentages are based on the 21,049 programs estimated to meet these criteria.

RIA Appendix A–2: Low Dropout Scenario

This scenario features a drop-out starting at 5% of those remaining after baseline dropouts and transfers for a single failure and up to 22% for for-profit-less-than-2-year institutions. The transfer rates associated with this scenario run from 25% for a single failure to 50% for ineligibility, slightly higher than under Scenario A–1 as fewer students dropped out in this scenario. The transfers are distributed according to our opinion that most transfers attributable to gainful employment would occur within the sectors, particularly the for-profit-sectors. This is due to the capacity and flexibility of successful for-profit programs to expand at a faster rate than public institutions.

Table A-2A: Enrollment Assumptions

	Public 4-year	Private Nonprofit 4-year	Private For-profit 4-year	Public 2-year	Private Nonprofit 2-year	Private For-profit 2-year	Public Less-than-2-year	Private Nonprofit Less-than-2-year	Private For-Profit Less-than-2-year
Annual Enrollment Growth Percentage for 2008 to 2012	0.015	0.02	0.07	0.03	0.02	0.06	0.02	0.02	0.07
Year 1 to Year 2 Growth	1.02	1.03	1.07	1.03	1.03	1.06	1.02	1.03	1.05
Year 2 to Year 3 Growth	1.02	1.03	1.07	1.03	1.03	1.07	1.03	1.04	1.06
Year 3 to Year 4 Growth	1.02	1.03	1.07	1.03	1.03	1.06	1.03	1.04	1.06
Year 4 to Year 5 Growth	1.03	1.03	1.07	1.04	1.04	1.06	1.04	1.03	1.06

Table A-2B: Debt Ratios Failure Distribution

For Institutions that Passed the Debt Ratios in the Previous Year

	Repayment Rate in Next Year		
	45% or Above	Between 35% and 45%	Below 35%
Public 4-year	2%	4%	8%
Private Nonprofit 4-year	3%	8%	12%
Private For-profit 4-year	8%	15%	29%
Public 2-year	2%	2%	4%
Private Nonprofit 2-year	5%	8%	10%
Private For-profit 2-year	6%	12%	20%
Public less-than-2-year	2%	4%	6%
Private Nonprofit less-than-2-year	3%	4%	8%
Private For-profit less-than-2-year	3%	4%	8%

For Institutions that Failed the Debt Ratios in the Previous Year

Year 1 to Year 2	Repayment Rate in Year 2		
	45% or Above	Between 35% and 45%	Below 35%
Public 4-year	85%	85%	95%
Private Nonprofit 4-year	85%	85%	95%
Private For-profit 4-year	80%	80%	90%
Public 2-year	85%	85%	95%
Private Nonprofit 2-year	85%	85%	95%
Private For-profit 2-year	80%	80%	90%
Public less-than-2-year	80%	80%	90%
Private Nonprofit less-than-2-year	80%	80%	90%
Private For-profit less-than-2-year	80%	80%	85%

Year 2 to Year 3	Repayment Rate in Year 3		
	45% or Above	Between 35% and 45%	Below 35%
Public 4-year	80%	80%	85%
Private Nonprofit 4-year	80%	80%	85%
Private For-profit 4-year	75%	75%	80%
Public 2-year	80%	80%	85%
Private Nonprofit 2-year	80%	80%	85%
Private For-profit 2-year	75%	75%	80%
Public less-than-2-year	75%	75%	80%
Private Nonprofit less-than-2-year	75%	75%	80%
Private For-profit less-than-2-year	75%	75%	80%

Year 3 to Year 4	Repayment Rate in Year 4		
	45% or Above	Between 35% and 45%	Below 35%
Public 4-year	75%	75%	80%
Private Nonprofit 4-year	75%	75%	80%
Private For-profit 4-year	70%	70%	75%
Public 2-year	75%	75%	80%
Private Nonprofit 2-year	75%	75%	80%
Private For-profit 2-year	70%	70%	75%
Public less-than-2-year	70%	70%	75%
Private Nonprofit less-than-2-year	70%	70%	75%
Private For-profit less-than-2-year	70%	70%	75%

Table A-2C: Repayment Category Transition Assumptions

Year 1 to Year 2

Repayment Rate Year 1	Repayment Rate Year 2: 45% or Above	Repayment Rate Year 2: Between 35% and 45%	Repayment Rate Year 2: Below 35%
45% or Above	85%	10%	5%
Between 35% and 45%	15%	65%	20%
Below 35%	5%	15%	80%

Year 2 to Year 3

Repayment Rate Year 1: 45% or Above

Repayment Rate Year 2	Repayment Rate Year 3: 45% or Above	Repayment Rate Year 3: Between 35% and 45%	Repayment Rate Year 3: Below 35%
45% or Above	90%	8%	2%
Between 35% and 45%	25%	55%	20%
Below 35%	50%	30%	65%

Repayment Rate Year 1: Between 35% and 45%

Repayment Rate Year 2	Repayment Rate Year 3: 45% or Above	Repayment Rate Year 3: Between 35% and 45%	Repayment Rate Year 3: Below 35%
45% or Above	65%	25%	10%
Between 35% and 45%	15%	75%	10%
Below 35%	5%	15%	80%

Repayment Rate Year 1: Below 35%

Repayment Rate Year 2	Repayment Rate Year 3: 45% or Above	Repayment Rate Year 3: Between 35% and 45%	Repayment Rate Year 3: Below 35%
45% or Above	40%	45%	15%
Between 35% and 45%	25%	65%	10%
Below 35%	5%	10%	85%

Year 3 to Year 4

Repayment Rate Year 1: 45% or Above	Repayment Rate Year 4: 45% or Above	Repayment Rate Year 4: Between 35% and 45%	Repayment Rate Year 4: Below 35%
Repayment Rate Year 2: 45% or Above			
Repayment Rate Year 3			
45% or Above	96%	2%	2%
Between 35% and 45%	30%	60%	10%
Below 35%	5%	40%	55%

Repayment Rate Year 1: 45% or Above	Repayment Rate Year 4: 45% or Above	Repayment Rate Year 4: Between 35% and 45%	Repayment Rate Year 4: Below 35%
Repayment Rate Year 2: Between 35% and 45%			
Repayment Rate Year 3			
45% or Above	30%	60%	10%
Between 35% and 45%	15%	75%	10%
Below 35%	5%	30%	65%

Repayment Rate Year 1: 45% or Above	Repayment Rate Year 4: 45% or Above	Repayment Rate Year 4: Between 35% and 45%	Repayment Rate Year 4: Below 35%
Repayment Rate Year 2: Below 35%			
Repayment Rate Year 3			
45% or Above	40%	40%	20%
Between 35% and 45%	25%	60%	15%
Below 35%	5%	15%	80%

Repayment Rate Year 1: Between 35% and 45%	Repayment Rate Year 4: 45% or Above	Repayment Rate Year 4: Between 35% and 45%	Repayment Rate Year 4: Below 35%
Repayment Rate Year 2: 45% or Above			
Repayment Rate Year 3			
45% or Above	90%	9%	1%
Between 35% and 45%	25%	65%	10%
Below 35%	5%	30%	65%

Repayment Rate Year 1: Between 35% and 45%

Repayment Rate Year 2: Between 35% and 45%			
Repayment Rate Year 3			
45% or Above	70%	20%	10%
Between 35% and 45%	15%	75%	10%
Below 35%	5%	20%	75%

Repayment Rate Year 1: Between 35% and 45%

Repayment Rate Year 2: Below 35%			
Repayment Rate Year 3			
45% or Above	40%	40%	20%
Between 35% and 45%	10%	60%	30%
Below 35%	5%	15%	80%

	Repayment Rate Year 4		
Repayment Rate Year 1: Below 35%	45% or Above	Between 35% and 45%	Below 35%
Repayment Rate Year 2: 45% or Above			
Repayment Rate Year 3			
45% or Above	95%	3%	2%
Between 35% and 45%	15%	75%	10%
Below 35%	10%	35%	55%

Repayment Rate Year 1: Below 35%

Repayment Rate Year 2: Between 35% and 45%			
Repayment Rate Year 3			
45% or Above	85%	10%	5%
Between 35% and 45%	10%	75%	15%
Below 35%	5%	25%	75%

Repayment Rate Year 1: Below 35%

Repayment Rate Year 2: Below 35%			
Repayment Rate Year 3			
45% or Above	40%	40%	20%
Between 35% and 45%	15%	60%	25%
Below 35%	0%	7%	93%

Table A-2D: Student Transition Assumptions

To: Institutions in Sector that did not Fail

	4-year Institutions			2-year Institutions			Less-than-2-year Institutions			
From: Failed Once	**Public**	**Private Nonprofit**	**Private For-profit**	**Public**	**Private Nonprofit**	**Private For-profit**	**Public**	**Private Nonprofit**	**Private For-profit**	**Drop Out**
Public 4-year	0.03	0.02	0.09	0.02	0.02	0.02	0.00	0.00	0.00	0.04
Private Nonprofit 4-year	0.00	0.02	0.11	0.02	0.02	0.02	0.00	0.00	0.00	0.04
Private For-profit 4-year	0.00	0.01	0.08	0.01	0.01	0.01	0.00	0.00	0.01	0.04
Public 2-year	0.01	0.01	0.02	0.03	0.02	0.03	0.01	0.00	0.01	0.03
Private Nonprofit 2-year	0.01	0.01	0.02	0.01	0.02	0.03	0.00	0.00	0.01	0.03
Private For-profit 2-year	0.00	0.00	0.02	0.01	0.02	0.03	0.01	0.01	0.02	0.04
Public Less-than-2-year	0.00	0.00	0.02	0.02	0.01	0.05	0.02	0.02	0.04	0.07
Private Nonprofit Less-than-2-year	0.00	0.00	0.01	0.01	0.01	0.04	0.01	0.01	0.03	0.05
Private For-Profit Less-than-2-year	0.00	0.00	0.02	0.02	0.01	0.04	0.02	0.02	0.03	0.07

To: Institutions in Sector that did not Fail

	4-year Institutions			2-year Institutions			Less-than-2-year Institutions			
From: Failed Twice	**Public**	**Private Nonprofit**	**Private For-profit**	**Public**	**Private Nonprofit**	**Private For-profit**	**Public**	**Private Nonprofit**	**Private For-profit**	**Drop Out**
Public 4-year	0.02	0.02	0.06	0.02	0.02	0.05	0.01	0.01	0.01	0.06
Private Nonprofit 4-year	0.03	0.02	0.06	0.02	0.02	0.05	0.01	0.01	0.01	0.07
Private For-profit 4-year	0.01	0.01	0.04	0.01	0.01	0.03	0.00	0.01	0.01	0.04
Public 2-year	0.01	0.01	0.02	0.01	0.01	0.02	0.00	0.00	0.01	0.04
Private Nonprofit 2-year	0.01	0.01	0.02	0.02	0.02	0.02	0.01	0.01	0.01	0.04
Private For-profit 2-year	0.00	0.01	0.02	0.02	0.02	0.03	0.00	0.01	0.01	0.05
Public Less-than-2-year	0.01	0.01	0.02	0.02	0.02	0.04	0.02	0.03	0.04	0.10
Private Nonprofit Less-than-2-year	0.01	0.01	0.01	0.01	0.01	0.02	0.01	0.02	0.02	0.07
Private For-Profit Less-than-2-year	0.00	0.01	0.02	0.02	0.02	0.04	0.00	0.03	0.04	0.09

To: Institutions in Sector that did not Fail

	4-year Institutions			2-year Institutions			Less-than-2-year Institutions			
From: Ineligible	**Public**	**Private Nonprofit**	**Private For-profit**	**Public**	**Private Nonprofit**	**Private For-profit**	**Public**	**Private Nonprofit**	**Private For-profit**	**Drop Out**
Public 4-year	0.04	0.03	0.07	0.03	0.03	0.05	0.01	0.01	0.01	0.09
Private Nonprofit 4-year	0.04	0.03	0.08	0.03	0.03	0.05	0.01	0.01	0.01	0.10
Private For-profit 4-year	0.00	0.02	0.05	0.00	0.02	0.03	0.00	0.01	0.01	0.05
Public 2-year	0.01	0.01	0.02	0.02	0.01	0.03	0.00	0.00	0.01	0.05
Private Nonprofit 2-year	0.02	0.01	0.03	0.03	0.02	0.04	0.01	0.01	0.01	0.06
Private For-profit 2-year	0.00	0.01	0.04	0.01	0.02	0.05	0.00	0.01	0.01	0.07
Public Less-than-2-year	0.01	0.01	0.02	0.03	0.03	0.06	0.03	0.03	0.06	0.13
Private Nonprofit Less-than-2-year	0.01	0.01	0.01	0.02	0.02	0.04	0.02	0.02	0.04	0.10
Private For-Profit Less-than-2-year	0.00	0.01	0.02	0.01	0.03	0.05	0.01	0.03	0.05	0.12

From: Failed Once	To: Institutions in Sector that had one Fail — 4-year Institutions Public	4-year Private Nonprofit	4-year Private For-profit	2-year Institutions Public	2-year Private Nonprofit	2-year Private For-profit	Less-than-2-year Institutions Public	Less-than-2-year Private Nonprofit	Less-than-2-year Private For-profit
Public 4-year	0	0	0	0	0	0	0	0	0
Private Nonprofit 4-year	0	0	0	0	0	0	0	0	0
Private For-profit 4-year	0	0	0	0	0	0	0	0	0
Public 2-year	0	0	0	0	0	0	0	0	0
Private Nonprofit 2-year	0	0	0	0	0	0	0	0	0
Private For-profit 2-year	0	0	0	0	0	0	0	0	0
Public Less-than-2-year	0	0	0	0	0	0	0	0	0
Private Nonprofit Less-than-2-year	0	0	0	0	0	0	0	0	0
Private For-Profit Less-than-2-year	0	0	0	0	0	0	0	0	0

From: Failed Twice	To: Institutions in Sector that had one Fail — 4-year Institutions Public	4-year Private Nonprofit	4-year Private For-profit	2-year Institutions Public	2-year Private Nonprofit	2-year Private For-profit	Less-than-2-year Institutions Public	Less-than-2-year Private Nonprofit	Less-than-2-year Private For-profit
Public 4-year	0.008	0.008	0.008	0.000	0.000	0.000	0.000	0.000	0.000
Private Nonprofit 4-year	0.008	0.008	0.008	0.000	0.000	0.000	0.000	0.000	0.000
Private For-profit 4-year	0.000	0.005	0.005	0.000	0.000	0.000	0.000	0.000	0.000
Public 2-year	0.002	0.002	0.002	0.004	0.004	0.004	0.002	0.002	0.002
Private Nonprofit 2-year	0.002	0.002	0.002	0.005	0.005	0.005	0.002	0.002	0.002
Private For-profit 2-year	0.000	0.003	0.003	0.003	0.005	0.005	0.000	0.003	0.003
Public Less-than-2-year	0.000	0.000	0.000	0.009	0.000	0.009	0.005	0.005	0.009
Private Nonprofit Less-than-2-year	0.000	0.000	0.000	0.006	0.000	0.006	0.003	0.003	0.006
Private For-Profit Less-than-2-year	0.000	0.000	0.000	0.000	0.000	0.010	0.005	0.005	0.010

From: Ineligible	To: Institutions in Sector that had one Fail — 4-year Institutions Public	4-year Private Nonprofit	4-year Private For-profit	2-year Institutions Public	2-year Private Nonprofit	2-year Private For-profit	Less-than-2-year Institutions Public	Less-than-2-year Private Nonprofit	Less-than-2-year Private For-profit
Public 4-year	0.009	0.009	0.009	0.005	0.005	0.005	0	0	0
Private Nonprofit 4-year	0.01	0.01	0.01	0.005	0.005	0.005	0	0	0
Private For-profit 4-year	0	0.006	0.006	0	0.003	0.003	0	0	0
Public 2-year	0.002	0.002	0.002	0.004	0.004	0.004	0.004	0.004	0.004
Private Nonprofit 2-year	0.003	0.003	0.003	0.005	0.005	0.005	0.005	0.005	0.005
Private For-profit 2-year	0	0.004	0.004	0.004	0.007	0.007	0	0.007	0.007
Public Less-than-2-year	0.005	0.005	0.005	0.009	0.009	0.009	0.009	0.009	0.018
Private Nonprofit Less-than-2-year	0.003	0.003	0.003	0.006	0.006	0.006	0.006	0.006	0.013
Private For-Profit Less-than-2-year	0	0.004	0.004	0	0.009	0.009	0.004	0.009	0.018

Table A-2E: Student Transition Results

	Year 2	Year 3	Year 4	Year 5
Public 4-Year				
No Fail	327,060	330,513	334,498	341,952
Transfer Out of Sector	226	714	1,192	1,688
Transfer Into Sector from Out	161	728	1,336	1,930
Transfer within Sector	44	133	219	310
Remain in Sector and Status*	1,204	3,495	5,327	7,192
Drop Out	53	185	330	482
Private Nonprofit 4-year				
No Fail	171,637	175,933	182,350	190,671
Transfer Out of Sector	218	570	1004	1518
Transfer Into Sector from Out	1293	3809	6340	8783
Transfer within Sector	24	66	119	182
Remain in Sector and Status*	1063	2526	4063	5876
Drop Out	49	143	268	415
Private For-profit 4-year				
No Fail	2,568,184	2,625,280	2,706,729	2,799,614
Transfer Out of Sector	5,544	14,489	22,604	30,068
Transfer Into Sector from Out	1,864	4,041	6,334	8,407
Transfer within Sector	6,567	14,008	19,457	24,608
Remain in Sector and Status*	69,769	169,495	248,208	318,288
Drop Out	3,412	8,362	12,722	16,802

	Year 2	Year 3	Year 4	Year 5
Public 2-Year				
No Fail	3,964,029	4,054,896	4,151,204	4,288,503
Transfer Out of Sector	1,683	4,442	7,100	10,115
Transfer Into Sector from Out	1,877	4,377	5,990	7,275
Transfer within Sector	491	1,141	1,710	2,403
Remain in Sector and Status*	14,829	38,754	59,762	82,966
Drop Out	526	1431	2366	3428
Private Nonprofit 2-yar				
No Fail	29,129	32,202	38,334	47,803
Transfer Out of Sector	26	74	152	289
Transfer Into Sector from Out	2,622	5,755	8,930	11,827
Transfer within Sector	5	14	27	47
Remain in Sector and Status*	261	664	1,231	2,227
Drop Out	7	23	49	94
Private For-profit 2-year				
No Fail	696,362	695,333	697,946	713,706
Transfer Out of Sector	4,190	8,279	12,662	15,721
Transfer Into Sector from Out	2,295	6,472	10,559	14,477
Transfer within Sector	1,548	2,876	4,557	5,730
Remain in Sector and Status*	37,982	72,302	102,637	122,182
Drop Out	1,822	3,688	5,797	7,306

	Year 2	Year 3	Year 4	Year 5
Public Less-than-2-year				
No Fail	116,658	120,529	124,907	131,141
Transfer Out of Sector	10	43	91	157
Transfer Into Sector from Out	578	1,048	1,634	2,216
Transfer within Sector	1	5	11	18
Remain in Sector and Status*	54	212	399	642
Drop Out	5	20	42	72
Private Nonprofit Less-than-2-year				
No Fail	36,707	38,230	40,733	43,832
Transfer Out of Sector	28	78	148	254

Transfer Into Sector from Out	488	1,523	2,747	3,795
Transfer within Sector	3	10	19	33
Remain in Sector and Status*	200	543	949	1,548
Drop Out	12	36	70	118
Private For-profit Less-than-2-year				
No Fail	672,177	698,883	730,442	764,292
Transfer Out of Sector	1,579	3,511	5,195	6,698
Transfer Into Sector from Out	2,326	4,440	6,267	7,797
Transfer within Sector	412	980	1,533	2,018
Remain in Sector and Status*	11,278	21,928	29,581	36,936
Drop Out	953	2,063	3,055	3,950

***Students stay at an institution that had the same result--either failing or passing--the gainful employment test. It is assumed that students who transfer within a sector do not attend an institution that has failed these tests.**

Table A-2F: Program Transition Results

	Gainful Employment Programs			Share of Programs Subject to Debt Measures*		
	Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public 4-year	4,943	4,943	4,943			
Pass	4,926	4,913	4,898	98.7%	97.7%	96.5%
Fail Once	13	18	24	1.0%	1.4%	1.9%
Fail Twice	4	9	12	0.3%	0.7%	0.9%
Ineligible Year 3	-	3	3	0.0%	0.2%	0.2%
Ineligible Year 4	-	-	6	0.0%	0.0%	0.4%
Private Nonprofit 4-year	4,400	4,400	4,400			
Pass	4,384	4,372	4,359	98.1%	96.7%	95.2%
Fail Once	12	17	22	1.4%	2.0%	2.6%
Fail Twice	4	8	11	0.5%	0.9%	1.3%
Ineligible Year 3	-	3	3	0.0%	0.4%	0.4%
Ineligible Year 4	-	-	5	0.0%	0.0%	0.6%
Private For-profit 4-year	4,243	4,243	4,243			
Pass	3,920	3,796	3,688	86.2%	80.9%	76.3%
Fail Once	205	219	233	8.8%	9.4%	9.9%
Fail Twice	118	147	158	5.0%	6.3%	6.8%
Ineligible Year 3	-	80	80	0.0%	3.4%	3.4%
Ineligible Year 4	-	-	84	0.0%	0.0%	3.6%
Public 2-year	30,232	30,232	30,232			
Pass	30,127	30,061	29,986	98.9%	98.2%	97.4%
Fail Once	76	96	124	0.8%	1.0%	1.3%
Fail Twice	29	54	67	0.3%	0.6%	0.7%
Ineligible Year 3	-	21	21	0.0%	0.2%	0.2%
Ineligible Year 4	-	-	35	0.0%	0.0%	0.4%
Private Nonprofit 2-year	394	394	394			
Pass	391	389	386	98.5%	97.5%	96.3%
Fail Once	2	3	4	1.1%	1.5%	1.9%
Fail Twice	1	2	2	0.4%	0.8%	1.0%
Ineligible Year 3	-	1	1	0.0%	0.3%	0.3%

Ineligible Year 4	-	-	1	0.0%	0.0%	0.5%
Private For-profit 2-year	4,754	4,754	4,754			
Pass	4,402	4,239	4,113	87.5%	81.8%	77.3%
Fail Once	220	266	272	7.8%	9.4%	9.6%
Fail Twice	133	159	191	4.7%	5.6%	6.8%
Ineligible Year 3	-	90	90	0.0%	3.2%	3.2%
Ineligible Year 4	-	-	88	0.0%	0.0%	3.1%
Public less-than-2-year	2,043	2,043	2,043			
Pass	2,039	2,035	2,031	99.6%	99.3%	98.9%
Fail Once	3	5	7	0.3%	0.5%	0.6%
Fail Twice	1	2	3	0.1%	0.2%	0.3%
Ineligible Year 3	-	1	1	0.0%	0.1%	0.1%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.1%
Private Nonprofit less-than-2-year	279	279	279			
Pass	275	274	271	98.2%	97.2%	96.0%
Fail Once	2	3	4	1.3%	1.6%	2.1%
Fail Twice	1	2	2	0.5%	0.9%	1.1%
Ineligible Year 3	-	1	1	0.0%	0.3%	0.3%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.5%
Private For-profit less-than-2-year	4,117	4,117	4,117			
Pass	4,018	3,970	3,919	96.4%	94.7%	92.8%
Fail Once	68	80	97	2.4%	2.9%	3.5%
Fail Twice	32	46	54	1.1%	1.7%	2.0%
Ineligible Year 3	-	22	22	0.0%	0.8%	0.8%
Ineligible Year 4	-	-	26	0.0%	0.0%	0.9%

* Programs that had more than 30 completers and students entering repayment in a four-year period. Percentages are based on the 21,049 programs estimated to meet these criteria.

RIA Appendix A–3: Program Results for Small Institutions

The scenarios described here mirror those described in the high dropout and low dropout scenarios, with the data set limited to small institutions only.

Table A-3(1): Program Transition Results for Small Institutions Under the High Dropout Scenario

	Gainful Employment Programs at Small Institutions			Share of Programs Subject to Debt Measures at Small Institutions*		
	Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public 4-year	7	7	7			
Pass	7	7	7	99.5%	98.8%	98.0%
Fail Once	0	0	0	0.5%	0.9%	1.3%
Fail Twice	-	0	0	0.0%	0.3%	0.5%
Ineligible Year 3	-	-	-	0.0%	0.0%	0.0%
Ineligible Year 4	-	-	0	0.0%	0.0%	0.2%
Private Nonprofit 4-year	4,400	4,400	4,400			
Pass	4,384	4,371	4,358	98.1%	96.7%	95.1%
Fail Once	12	17	22	1.4%	2.0%	2.6%
Fail Twice	4	8	11	0.5%	1.0%	1.3%
Ineligible Year 3	-	3	3	0.0%	0.4%	0.4%
Ineligible Year 4	-	-	5	0.0%	0.0%	0.6%
Private For-profit 4-year	342	342	342			
Pass	328	322	318	87.8%	83.0%	79.0%
Fail Once	9	10	10	7.5%	8.3%	8.6%
Fail Twice	5	6	7	4.7%	5.5%	6.1%
Ineligible Year 3	-	4	4	0.0%	3.2%	3.2%
Ineligible Year 4	-	-	4	0.0%	0.0%	3.1%
Public 2-year	1,382	1,382	1,382			
Pass	1,381	1,380	1,379	99.9%	99.7%	99.5%
Fail Once	1	1	2	0.1%	0.2%	0.3%
Fail Twice	-	0	1	0.0%	0.1%	0.1%
Ineligible Year 3				0.0%	0.0%	0.0%

	-	-	-			
Ineligible Year 4	-	-	0	0.0%	0.0%	0.1%
Private Nonprofit 2-year	394	394	394			
Pass	391	389	386	98.5%	97.4%	96.2%
Fail Once	2	3	4	1.1%	1.5%	2.0%
Fail Twice	1	2	2	0.4%	0.8%	1.0%
Ineligible Year 3	-	1	1	0.0%	0.3%	0.3%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.5%
Private For-profit 2-year	2,187	2,187	2,187			
Pass	2,084	2,029	1,985	91.1%	86.3%	82.4%
Fail Once	67	86	90	5.8%	7.4%	7.8%
Fail Twice	36	48	61	3.1%	4.2%	5.3%
Ineligible Year 3	-	24	24	0.0%	2.1%	2.1%
Ineligible Year 4	-	-	27	0.0%	0.0%	2.3%
Public less-than-2-year	1,482	1,482	1,482			
Pass	1,478	1,475	1,471	99.4%	98.9%	98.4%
Fail Once	3	5	6	0.5%	0.7%	0.9%
Fail Twice	1	2	3	0.1%	0.3%	0.4%
Ineligible Year 3	-	1	1	0.0%	0.1%	0.1%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.2%
Private Nonprofit less-than-2-year	279	279	279			
Pass	275	273	271	98.2%	97.1%	95.8%
Fail Once	2	3	4	1.3%	1.7%	2.2%
Fail Twice	1	2	2	0.5%	0.9%	1.1%
Ineligible Year 3	-	1	1	0.0%	0.3%	0.3%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.5%
Private For-profit less-than-2-year	3,255	3,255	3,255			
Pass	3,197	3,166	3,133	97.1%	95.6%	94.0%
Fail Once	40	49	60	1.9%	2.4%	3.0%
Fail Twice	19	28	34	0.9%	1.4%	1.7%
Ineligible Year 3	-	13	13	0.0%	0.6%	0.6%
Ineligible Year 4	-	-	15	0.0%	0.0%	0.7%

*Programs that had fewer than 30 completers or students entering repayment in a four-year period.

Table A-3(2): Program Transition Results for Small Number Institutions Under the Low Dropout Scenario

	Gainful Employment Programs at Small Institutions			Share of Programs Subject to Debt Measures at Small Institutions*		
	Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public 4-year	7	7	7			
Pass	7	7	7	99.5%	98.8%	97.8%
Fail Once	0	0	0	0.5%	0.9%	1.3%
Fail Twice	-	0	0	0.0%	0.3%	0.5%
Ineligible Year 3	-	-	0	0.0%	0.0%	0.2%
Ineligible Year 4	-	-	0	0.0%	0.0%	0.2%
Private Nonprofit 4-year	4,400	4,400	4,400			
Pass	4,384	4,372	4,359	98.1%	96.7%	95.2%
Fail Once	12	17	22	1.4%	2.0%	2.6%
Fail Twice	4	8	11	0.5%	0.9%	1.3%
Ineligible Year 3	-	3	3	0.0%	0.4%	0.4%
Ineligible Year 4	-	-	5	0.0%	0.0%	0.6%
Private For-profit 4-year	342	342	342			
Pass	328	323	319	88.0%	83.5%	79.8%
Fail Once	9	9	10	7.4%	8.0%	8.4%
Fail Twice	5	6	7	4.7%	5.3%	5.7%
Ineligible Year 3	-	4	4	0.0%	3.2%	3.2%
Ineligible Year 4	-	-	3	0.0%	0.0%	2.9%
Public 2-year	1,382	1,382	1,382			
Pass	1,381	1,380	1,379	99.9%	99.8%	99.6%
Fail Once	1	1	2	0.1%	0.2%	0.3%
Fail Twice	-	-	-	0.0%	0.0%	0.0%
Ineligible Year 3	-	-	0	0.0%	0.0%	0.1%
Ineligible Year 4	-	-	0	0.0%	0.0%	0.1%
Private Nonprofit 2-year	394	394	394			
Pass	391	389	386	98.5%	97.5%	96.3%
Fail Once	2	3	4	1.1%	1.5%	1.9%
Fail Twice	1	2	2	0.4%	0.8%	1.0%

Ineligible Year 3	-	1	1	0.0%	0.3%	0.3%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.5%
Private For-profit 2-year	2,187	2,187	2,187			
Pass	2,086	2,034	1,993	91.2%	86.7%	83.1%
Fail Once	65	82	86	5.7%	7.1%	7.5%
Fail Twice	36	46	58	3.1%	4.0%	5.0%
Ineligible Year 3	-	24	24	0.0%	2.1%	2.1%
Ineligible Year 4	-	-	26	0.0%	0.0%	2.3%
Public less-than-2-year	1,482	1,482	1,482			
Pass	1,478	1,475	1,471	99.4%	98.9%	98.4%
Fail Once	3	4	6	0.5%	0.7%	0.9%
Fail Twice	1	2	3	0.1%	0.3%	0.4%
Ineligible Year 3	-	1	1	0.0%	0.1%	0.1%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.2%
Private Nonprofit less-than-2-year	279	279	279			
Pass	275	274	271	98.2%	97.2%	96.0%
Fail Once	2	3	4	1.3%	1.6%	2.1%
Fail Twice	1	2	2	0.5%	0.9%	1.1%
Ineligible Year 3	-	1	1	0.0%	0.3%	0.3%
Ineligible Year 4	-	-	1	0.0%	0.0%	0.5%
Private For-profit less-than-<2-year	3,255	3,255	3,255			
Pass	3,198	3,169	3,139	97.2%	95.7%	94.3%
Fail Once	39	48	58	1.9%	2.3%	2.8%
Fail Twice	18	26	32	0.9%	1.3%	1.6%
Ineligible Year 3	-	12	12	0.0%	0.6%	0.6%
Ineligible Year 4	-	-	15	0.0%	0.0%	0.7%

*Programs that had fewer than 30 completers or students entering repayment in a four-year period.

RIA Appendix B:

Tables 12_40% Alt: Estimated Direct Revenue and Expense Effects (Dollars in Millions)

Table 12-A: 4-year Institutions

Public 4-year

		Year 2	Year 3	Year 4	Year 5
High Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	0.6	1.9	3.2	4.5
	Loss From Transfers Out	0.7	2.1	3.5	4.9
	Gain From Transfers In	0.6	2.2	4.2	6.3
Expenses	Reduction from Drop Outs	2.7	8.7	14.8	20.9
	Reduction from Transfers Out	3.1	9.7	16.1	22.6
	Increase from Transfers In	3.2	12.3	23.6	35.5
Net Change in Revenues for Sector		**1.9**	**4.4**	**4.9**	**4.9**
Low Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	0.2	0.7	1.2	1.7
	Loss From Transfers Out	0.8	2.6	4.3	6.0
	Gain From Transfers In	0.7	3.3	6.1	8.8
Expenses	Reduction from Drop Outs	0.9	3.1	5.5	8.0
	Reduction from Transfers Out	3.8	11.9	19.8	28.1
	Increase from Transfers In	4.1	18.7	34.4	49.7
Net Change in Revenues for Sector		**0.2**	**-3.7**	**-8.4**	**-12.5**

Private Nonprofit 4-year

		Year 2	Year 3	Year 4	Year 5
High Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	1.2	3.2	5.8	8.6
	Loss From Transfers Out	1.3	3.6	6.3	9.2
	Gain From Transfers In	16.1	42.8	67.6	90.6
Expenses	Reduction from Drop Outs	2.8	7.6	13.5	20.1
	Reduction from Transfers Out	3.1	8.4	14.6	21.6
	Increase from Transfers In	35.2	93.4	147.7	198.1
Net Change in Revenues for Sector		**-15.7**	**-41.5**	**-64.0**	**-83.6**
Low Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	0.4	1.2	2.2	3.4
	Loss From Transfers Out	1.8	4.6	8.2	12.4
	Gain From Transfers In	14.5	42.8	71.2	98.6
Expenses	Reduction from Drop Outs	0.9	2.7	5.1	7.9
	Reduction from Transfers Out	4.2	10.9	19.2	29.0
	Increase from Transfers In	31.7	93.5	155.6	215.5
Net Change in Revenues for Sector		**-14.3**	**-42.9**	**-70.5**	**-95.8**

Private For-profit 4-year

		Year 2	Year 3	Year 4	Year 5
High Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	63.3	152.3	227.7	294.6
	Loss From Transfers Out	35.0	94.0	147.6	194.5
	Gain From Transfers In	14.8	32.4	51.6	68.3
Expenses	Reduction from Drop Outs	51.3	123.4	184.5	238.7
	Reduction from Transfers Out	28.3	76.2	119.6	157.6
	Increase from Transfers In	12.1	26.6	42.4	56.1
Net Change in Revenues for Sector		**-16.0**	**-41.0**	**-62.0**	**-80.6**
Low Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	26.4	64.7	98.4	129.9
	Loss From Transfers Out	42.9	112.1	174.8	232.5
	Gain From Transfers In	19.5	42.4	66.4	88.2
Expenses	Reduction from Drop Outs	21.4	52.4	79.7	105.3
	Reduction from Transfers Out	34.7	90.8	141.6	188.4
	Increase from Transfers In	16.1	34.8	54.6	72.4
Net Change in Revenues for Sector		**-9.7**	**-26.0**	**-40.0**	**-53.1**

Table 12-B: 2-year Institutions

Public 2-year

		Year 2	Year 3	Year 4	Year 5
High Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	1.0	2.6	4.3	6.1
	Loss From Transfers Out	1.0	2.6	4.2	5.9
	Gain From Transfers In	1.5	3.6	5.1	6.3
Expenses	Reduction from Drop Outs	2.7	7.2	11.7	16.7
	Reduction from Transfers Out	2.7	7.1	11.5	16.3
	Increase from Transfers In	3.0	7.4	10.5	12.8
Net Change in Revenues for Sector		**1.9**	**5.3**	**9.4**	**14.4**
Low Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	0.4	1.0	1.7	2.5
	Loss From Transfers Out	1.2	3.2	5.1	7.3
	Gain From Transfers In	2.1	4.9	6.7	8.2
Expenses	Reduction from Drop Outs	1.0	2.8	4.7	6.7
	Reduction from Transfers Out	3.3	8.7	14.0	19.9
	Increase from Transfers In	4.3	10.0	13.7	16.6
Net Change in Revenues for Sector		**0.6**	**2.2**	**4.8**	**8.4**

Private Nonprofit 2-year

		Year 2	Year 3	Year 4	Year 5
High Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	0.1	0.3	0.6	1.0
	Loss From Transfers Out	0.1	0.3	0.6	1.0
	Gain From Transfers In	7.5	18.8	33.5	46.5
Expenses	Reduction from Drop Outs	0.1	0.2	0.4	0.8
	Reduction from Transfers Out	0.1	0.2	0.4	0.8
	Increase from Transfers In	12.7	31.6	56.3	78.0
Net Change in Revenues for Sector		**-5.2**	**-12.9**	**-23.0**	**-32.0**
Low Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.2	0.5
	Loss From Transfers Out	0.1	0.4	0.8	1.4
	Gain From Transfers In	16.9	37.1	57.6	76.2
Expenses	Reduction from Drop Outs	0.0	0.1	0.2	0.4
	Reduction from Transfers Out	0.1	0.3	0.6	1.1
	Increase from Transfers In	28.4	62.3	96.7	128.0
Net Change in Revenues for Sector		**-11.5**	**-25.3**	**-39.3**	**-52.2**

Private For-profit 2-year

		Year 2	Year 3	Year 4	Year 5
High Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	26.3	53.1	83.6	104.6
	Loss From Transfers Out	21.4	43.1	66.2	81.9
	Gain From Transfers In	15.6	41.3	65.6	88.1
Expenses	Reduction from Drop Outs	11.8	23.8	37.6	47.0
	Reduction from Transfers Out	9.6	19.3	29.8	36.8
	Increase from Transfers In	7.0	18.5	29.4	39.5
Net Change in Revenues for Sector		**-17.7**	**-30.2**	**-46.4**	**-54.1**
Low Dropout Scenario					
Tuition and Fee Revenue	Loss From Drop Outs	11.7	23.7	37.3	47.0
	Loss From Transfers Out	26.9	53.2	81.4	101.1
	Gain From Transfers In	15.8	44.4	72.5	99.4
Expenses	Reduction from Drop Outs	5.3	10.7	16.7	21.1
	Reduction from Transfers Out	12.1	23.9	36.6	45.4
	Increase from Transfers In	7.1	19.9	32.5	44.6
Net Change in Revenues for Sector		**-12.6**	**-17.9**	**-25.4**	**-26.7**

Table 12-C: Less-than-2-year Institutions

Sector	Category	Item	Year 2	Year 3	Year 4	Year 5
Public Less-than-2-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.3	0.5
		Loss From Transfers Out	0.0	0.1	0.3	0.5
		Gain From Transfers In	2.3	6.3	10.0	13.0
	Expenses	Reduction from Drop Outs	0.0	0.1	0.2	0.4
		Reduction from Transfers Out	0.0	0.1	0.2	0.3
		Increase from Transfers In	2.1	5.9	9.3	12.1
	Net Change in Revenues for Sector		**0.1**	**0.3**	**0.5**	**0.5**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.1	0.3
		Loss From Transfers Out	0.0	0.2	0.3	0.6
		Gain From Transfers In	2.8	5.0	7.8	10.6
	Expenses	Reduction from Drop Outs	0.0	0.0	0.1	0.2
		Reduction from Transfers Out	0.0	0.1	0.2	0.4
		Increase from Transfers In	2.6	4.7	7.3	9.9
	Net Change in Revenues for Sector		**0.2**	**0.3**	**0.4**	**0.4**
Private Nonprofit Less-than-2-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.1	0.2	0.3	0.5
		Loss From Transfers Out	0.1	0.2	0.3	0.4
		Gain From Transfers In	1.8	5.4	9.4	12.8
	Expenses	Reduction from Drop Outs	0.1	0.2	0.3	0.5
		Reduction from Transfers Out	0.0	0.1	0.3	0.4
		Increase from Transfers In	1.6	4.8	8.4	11.3
	Net Change in Revenues for Sector		**0.2**	**0.6**	**1.0**	**1.4**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.2	0.3
		Loss From Transfers Out	0.1	0.2	0.4	0.6
		Gain From Transfers In	2.2	6.7	12.1	16.8
	Expenses	Reduction from Drop Outs	0.0	0.1	0.2	0.3
		Reduction from Transfers Out	0.1	0.2	0.3	0.6
		Increase from Transfers In	1.9	6.0	10.8	14.9
	Net Change in Revenues for Sector		**0.2**	**0.7**	**1.3**	**1.8**
Private For-profit Less-than-2-year	**High Dropout Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	8.7	19.4	29.3	38.0
		Loss From Transfers Out	6.0	13.8	20.6	26.7
		Gain From Transfers In	13.7	26.4	36.8	45.0
	Expenses	Reduction from Drop Outs	3.9	8.6	13.0	16.9
		Reduction from Transfers Out	2.7	6.1	9.2	11.9
		Increase from Transfers In	6.7	13.0	18.1	22.1
	Net Change in Revenues for Sector		**-1.2**	**-5.0**	**-9.0**	**-13.1**
	Low Dropout Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	4.7	10.3	15.2	19.7
		Loss From Transfers Out	7.9	17.5	25.9	33.4
		Gain From Transfers In	14.3	27.2	38.4	47.8
	Expenses	Reduction from Drop Outs	2.1	4.6	6.8	8.7
		Reduction from Transfers Out	3.5	7.8	11.5	14.8
		Increase from Transfers In	7.0	13.4	18.9	23.5
	Net Change in Revenues for Sector		**0.2**	**-1.6**	**-3.3**	**-5.2**

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