

# Section-by-Section Summary and Analysis of Department's 8/29/2013 Gainful Employment Discussion Draft

## Subpart Q – Gainful Employment (GE) Programs

§668.401 Scope and purpose. *This subpart applies to an educational program offered by an eligible institution that is intended to prepare students for gainful employment in a recognized occupation, and establishes the rules and procedures under which –*

*(1) The Secretary determines whether the program prepares students for gainful employment, and the conditions under, which the program remains eligible for title IV, HEA program funds;*

*(2) An institution reports and discloses information about the program.*

## **Summary & Analysis**

This section establishes the authority of the Department to define, assess and require institutional reporting and disclosure of programmatic eligibility under Title I, Sections 101(b)(1), 102(b)(1)(A), and 102(c)(1)(A) of the Higher Education Act of 1965, as amended.

The relevant language reads as follows: "provides an eligible program of training to prepare students for gainful employment in a recognized occupation."

In two court decisions the U.S. District Courts of the District of Columbia have ruled that the Department of Education has the authority to define "gainful employment."

## §668.402 Definitions.

*The following definitions apply to this subpart.*

### Classification of instructional program or CIP:

*A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Educational Statistics (NCES).*

### Debt-to-earnings rates (D/E rates):

*The percentage of a GE program's annual loan payment compared to the earnings of the students who completed that program, as determined under §668.404. For purposes of this subpart, there are two D/E rates: a discretionary income rate and an annual earnings rate, which are calculated as specified under §668.404.*

### Discretionary income:

*The difference between the mean or median annual loan earnings and 150 percent of the Poverty Guideline for a single person in the continental United States. 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> or successor site.*

### Gainful employment program:

*An educational program offered by an institution under §668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID)*

*number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level.*

*(a) The Secretary determines whether an institution accurately assigns a CIP code for a GE program based on the classifications and program codes established by NCES; and*

*(b) The credential levels for identifying a GE program are: less than one year undergraduate certificate or diploma, one year or longer but less than two years undergraduate certificate or diploma, two years or longer undergraduate certificate or diploma, associate degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, and first-professional degree.*

## **Summary & Analysis**

This key definition once again ties back to the corresponding statutory authority of the HEA.

Title I, 101(b) = §668.8(c)(3)

Title I, 102(b)(1)(A) & (c)(1)(A) = §668.8(d)

At its core this definition:

- defines the programs which are subject to the gainful employment regulation;
- establishes new authority of the Secretary to scrutinize the CIP code designations – potentially limiting or denying previously established crosswalks between the program and CIP designation(s) presented by the school, corresponding CIP/SOC crosswalks used by the U.S. Department of Labor; and
- establishes new credential levels to be used for the purpose of classifying gainful employment programs.

*Normal time:*

*Has the same meaning as the term “normal time” in 34 CFR 668.41.*

## **Summary & Analysis**

The definition as prescribed, under 34 CFR 668.41 reads as follows:

*Normal time* is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

As stated, the use of normal time for purposes of determining completion under Section 668.410(f) may not be the actual length of the program, but a timeframe based upon the institution's representation of the amount of time necessary for a student to complete all requirements.

Use of this definition is likely to make it hard, if not impossible, to make comparisons between programs – even within the classification and designations of a gainful employment program. This is not a standardized definition – which is what it appears the Department may be looking for.

**AACS wants to wait and see how other negotiators and the Department view this definition, and are preparing different responses based upon the initial discussions.**

*Student: A regular student, as defined in 34 CFR 600.2, who received title IV, HEA program funds.*

Two-year period:

*The period covering two consecutive award years that are--*

*(a) The third and fourth award years prior to the award year for which the D/E rates are calculated pursuant to §§668.403 and 668.404. For example, if D/E rates are calculated for award year 2014-2015, the two-year period is award years 2010-2011 and 2011-2012; or*

*(b) For a program whose students are required to complete a medical or dental internship or residency, the sixth and seventh award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2014-2015, the two-year period is award years 2007-2008 and 2008-2009. 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 as 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 a State and board certified for professional practice or service.*

## **Summary & Analysis**

This key definition establishes the date ranges used to classify the cohort of students which comprise each assessment.

As described the look back bases determinations on the 3<sup>rd</sup> and 4<sup>th</sup> year prior to designated award year for all students except those who are required to complete a medical or dental internship/residency.

Medical and Dental internship/residency cohorts are based upon the 6<sup>th</sup> and 7<sup>th</sup> prior award years for students who must complete longer programs prior to gaining the credential/license and eligibility/access to the workforce.

**Given the clear distinction/recognition that this exemption is based upon licensure in order to legally enter the workforce, AACS is considering whether or not it provides us with any type of opportunity to seek similar dispensation?**

§668.403 Gainful employment program framework.

*The Secretary determines whether a GE program provides training that prepares a student for gainful employment in a recognized occupation pursuant to this section.*

*(a) Debt-to-earnings rates. For each award year, the Secretary, pursuant to §668.404, calculates two D/E rates, one rate based on discretionary income (the discretionary income rate) and the*

*other rate based on annual earnings (the annual earnings rate), for each GE program offered by an institution. Based on the GE program's D/E rates, the Secretary determines that the GE program is a passing program, failing program, zone program, or ineligible program as defined in paragraphs (b) through (e) of this section.*

*(b) Passing program. A GE program for which the--*

- (1) Discretionary income rate is equal to or less than 20 percent; or*
- (2) Annual earnings rate is equal to or less than eight percent.*

*(c) Failing program. A GE program for which the--*

- (1) Discretionary income rate is greater than 30 percent; and*
- (2) Annual earnings rate is greater than 12 percent.*

*(d) Zone program. A GE program that is not a passing program and for which the--*

- (1) Discretionary income rate is greater than 20 percent but less than or equal to 30 percent; or*
- (2) Annual earnings rate is greater than eight percent but less than or equal to 12 percent.*

*(e) Ineligible program. A GE program that--*

- (1) Is a failing program in two out of any three consecutive award years for which D/E rates are calculated; or*
- (2) Is not a passing program in any of four consecutive award years for which D/E rates are calculated.*

## **Summary & Analysis**

This section establishes the valuation/designation to be assigned each award year to a program subject to the gainful employment regulations based upon the calculation of the two debt-to-earnings scores (Annual D/E and Discretionary D/E).

For each award year the Secretary assesses and classifies a program as either passing, failing, or "in the zone" between the two pass/fail threshold based up on D/E rates.

- Passing Programs are programs which have either an Annual D/E percentage of 8% or less or a Discretionary D/E of 20% or less.
- Failing Programs are those programs who have both Annual D/E and Discretionary D/E percentages at or in excess of 12% and 30% respectively.
- Zone Programs are those with one of either D/E rates which fall between the thresholds above.

Determinations of a programs eligibility are based upon:

- A program receiving a failing designation in two out of any three consecutive year period; OR
- A program remaining in the zone for a period of four consecutive years.

The Department's new proposal revisits their initial recommendation and implicit assertion – based upon misinterpretation of a study published by Sandy Baum – that quality programs should be capable of producing graduates with earnings capable of repaying their loan obligations using no more than eight percent of their annual income.

**AACS is prepared to enter into deliberations regarding the mischaracterization of the original report, our concerns with the return to these lower thresholds of quality, multiple issues related to the addition of the zone programs, and the reduced and arbitrary eligibility benchmarks.**

§668.404 Calculating D/E rates.

*(a) General. Except as provided in paragraph (f) of this section for D/E rates that are not calculated for each award year, the Secretary calculates D/E rates for a GE program as follows:*

*(1) Discretionary income rate = annual loan payment / (the higher of the mean or median annual earnings – (1.5 x Poverty Guideline)).*

*(2) Annual earnings rate = annual loan payment / the higher of the mean or median annual earnings.*

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

*(1) Determining the median loan debt of the students who completed the program during the two-year period, based on the loan debt incurred by each student as determined under paragraph (d) of this section; and*

*(2) Amortizing the median loan debt over a 10-year repayment period using the annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students in effect on the day the Secretary calculates the D/E rates.*

*(c) Annual earnings. (1) The Secretary obtains from the Social Security Administration (SSA) the most currently available mean and median annual earnings of the students who completed the program during the two-year period and who are not excluded under paragraph (e) of this section; and*

*(2) The Secretary uses the higher of the mean or median annual earnings to calculate the D/E rates.*

*(d) Loan debt. In determining the loan debt for a student, the Secretary--*

*(1) Includes FFEL loans and Direct loans that the student received for attendance in the GE program (except for PLUS Loans made to parents of dependent students or Direct Unsubsidized Loans that were converted from TEACH Grants), any private education loans, and any debt owed to the institution by the student upon the student's completion of the program;*

*(2) Attributes all of the loan debt incurred by the student for attendance in any GE program at the institution to the highest credentialed GE program completed by the student at the institution; and*

*(3) Excludes 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 programs at 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.*

*(e) Exclusions. For the award year the Secretary calculates the D/E rates for a GE program, the Secretary excludes a student from the rate calculations if the Secretary determines that—*

*(1) One or more of the student's loans were in a military-related deferment status for at least 60 days during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;*

*(2) One or more of the student's FFEL loans or Direct Loans are either under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 682.402 and 685.212;*

*(3) The student was enrolled on at least a half-time basis for at least 60 days in an eligible institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;*

*(4) The student completed a higher credentialed GE program at the institution subsequent to completing the program; or*

*(5) The student died.*

*(f) Rates not calculated. The Secretary does not calculate D/E rates for a GE program if--*

*(1) Fewer than 10 students completed the program during the two-year period;*

*(2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c) of this section; or*

*(3) The annual or discretionary earnings are zero or less.*

## **Summary & Analysis**

This section establishes the methodology and data used to determine both annual and discretionary D/E rates.

### Annual D/E Rate:

For any program where there are more than ten students who completed the program during the two-year period, the Department will compute an annual debt-to-earnings rate based upon:

The median loan debt of the students who completed the program during the two-year period, based on the loan debt incurred by each student - including all FFEL loans and Direct loans that the students, any private education loans, and any debt owed to the institution by the students upon the students' completion of the program – amortized over a 10-year repayment period using the annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students in effect on the day the Secretary calculates the D/E rates.

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The higher of mean or median annual earnings - as determined by the Social Security Administration's (SSA) calculation of earnings for the students who completed the program during the two-year period.

### Discretionary D/E Rate:

For any program in there are more than ten students who completed the program during the two-year period, the Department will compute an annual debt-to-earnings rate based upon:

The median loan debt of the students who completed the program during the two-year period, based on the loan debt incurred by each student - including all FFEL loans and Direct loans that

the students, any private education loans, and any debt owed to the institution by the students upon the students' completion of the program – amortized over a 10-year repayment period using the annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students in effect on the day the Secretary calculates the D/E rates.

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The higher of mean or median annual earnings - as determined by the Social Security Administration's (SSA) calculation of earnings for the students who completed the program during the two-year period reduced by 1.5x Poverty Guidelines.

Provisions are included for the exclusion of specific loans from the calculations, including:

- loans to students that have been granted military deferments;
- loans discharged – or being considered for discharge – on the basis of students' total and permanent disability;
- students continuing to pursue postsecondary education on at least a half-time basis for a minimum of 60 days;
- students completion of a higher credentialed program at the same institution; and
- deceased students.

**AACS is prepared to offer a number of concerns with the proposed calculation methodology, data, and definitions contained within this section.**

§668.405 Issuing and challenging D/E rates.

*(a) Overview. For each award year beginning with award year 2014-2015, the Secretary determines the D/E rates for a GE program by--*

*(1) Creating a list of the students from the applicable two-year period, as explained in paragraph (b) of this section;*

*(2) Allowing an institution to correct the information about the students on the list, as explained in paragraph (c) of this section;*

*(3) Obtaining from SSA the mean and median annual earnings of the students on the list, as explained in paragraph (d) of this section;*

*(4) Calculating draft D/E rates, as explained in paragraph (e) of this section;*

*(5) Allowing the institution to challenge the median loan debt used to calculate the draft D/E rates, as explained in paragraph (f) of this section;*

*(6) Calculating final D/E rates, as explained in paragraph (g) of this section; and*

*(7) For a failing program, allowing the institution to appeal the final D/E rates by submitting an alternate earnings data survey, as explained in §668.406.*

*(b) Creating the list of students. (1) The Secretary selects the students to be included on the list by--*

*(i) Identifying the students who completed the program during the applicable two-year period from the data provided by the institution under §668.410; and*

*(ii) Removing any student who is excluded under §668.404(e).*

*(2) The Secretary presumes that the list of students and the identity information for those students are correct unless the institution provides evidence to the contrary. The institution bears the burden of proof that the list is incorrect.*

*(c) Institutional corrections to the list. (1) The Secretary provides the institution with the list. No later than 30 days after the date the Secretary provides the list, the institution may--*

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

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

*(2) After the 30-day period expires, the institution may no longer seek to correct the list of students or revise the identity information of those students.*

*(3) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final list.*

*(d) Obtaining earnings data. The Secretary submits the final list to SSA. In response, SSA submits to the Secretary--*

*(1) The mean and median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and*

*(2) The number, but not the identities, of students on the list that SSA could not match.*

*(e) Calculating draft D/E rates. (1) The Secretary uses the higher of the mean or median annual earnings submitted by SSA to calculate draft D/E rates for a GE program.*

*(2) If SSA reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt the same number of the highest loan debts as the number of students whose earnings SSA did not match. For example, if SSA is unable to match three students, the Secretary does not include the three highest loan debts in the calculation of the median loan debt.*

*(f) Institutional challenges to draft D/E rates.*

*(1)(i) The Secretary notifies the institution of the draft D/E rates for a GE program and provides the mean and median earnings obtained from SSA and the individual student loan information used to calculate the rates, including the loan debt for each student on the list.*

*(ii) The draft D/E rates and the data described in paragraphs (b) through (f) of this section are not considered public information.*

*(2) The Secretary presumes that the loan debt information is correct unless the institution provides evidence that the information is inaccurate. The institution bears the burden of proof to show that the loan debt information is incorrect, and to show how it should be corrected.*

*(3) No later than 45 days after the Secretary notifies an institution of the draft D/E rates for a GE program, the institution may challenge the accuracy of the loan debt information that the Secretary used to calculate the median loan debt for the program by submitting evidence showing that the median loan debt calculated by the Secretary is inaccurate.*

*(4) In a challenge under this section, the Secretary does not consider--*

*(i) Any objections to the mean or median annual earnings that SSA submitted to the Secretary;*

*(ii) More than one challenge to the draft D/E rates for a GE program for an award year; or*

*(iii) Any challenge that is not timely submitted.*



(5) *The Secretary considers any evidence provided by an institution challenging the median loan debt and notifies the institution of whether the challenge is accepted or the reasons why the challenge is not accepted.*

(6) *If the data from an accepted challenge change the median loan debt of the program, the Secretary recalculates the program's draft D/E rates.*

(7) *Except as provided under §668.406, an institution that does not timely challenge the draft D/E rates for a program waives any objection to those rates.*

(g) *Final D/E rates. (1) Upon expiration of the 45 day period and subject to resolution of any challenge under paragraph (f) of this section, a GE program's draft D/E rates (including those determined pursuant to §668.408) constitute final D/E rates.*

(2) *The Secretary informs the institution of the final D/E rates for each of its GE programs by issuing the notice of determination described in §668.407(a).*

(3) *After the Secretary provides the notice of determination, the Secretary may publish the final D/E rates.*

(h) *Conditions for corrections, challenges, and appeals.*

*An institution must ensure that any material that it submits to make any correction, challenge, or appeal is complete, timely, accurate, and in a format acceptable to the Secretary as described in this subpart and consistent with any instructions provided to the institution with the notice of its draft D/E rates and the notice of determination.*

## **Summary & Analysis**

The Section outlines the process and timeline to be used to generate the annual and discretionary D/E rates. In sequential order the process is as follows:

**Step One:** Each award year the institution is required to provide the Department with a list of students for the two-year period (containing all of the specific information detailed in Section 668.09 – not 669.10 as noted in the proposed draft).

**Step Two:** The Secretary will review the list submitted by the institution, identifying those students who completed the program, and removing students who meet the exclusions discussed in the prior section (i.e. military deferments, total and permanently disabled students).

**Step Three:** The revised list is returned to the institution who then has 30 days to review and correct the list, adding or removing students and providing updated information.

**Step Four:** The Secretary reviews, and approves or denies the revisions (note: revisions not received within the 30 day window will not be accepted.). The resulting list is the FINAL List of students for the cohort which will be used to determine the program's annual and discretionary D/E rates.

**Step Five:** The Secretary submits the FINAL List to the SSA who generates aggregate information of the mean and median earnings of the students on the list the SSA was able to match, along with a total number of individuals for whom the SSA could not locate earnings information.

**Step Six:** The Secretary uses this information to first modify the median earnings factor – removing from the list of students an equivalent number of students with the highest loan debt – resulting in a new median earnings number/factor. The Secretary then assess whether the resulting median earnings factor or mean is higher and uses whichever is higher as a portion of

the denominator used to calculate the annual and discretionary D/E rates – and calculates the DRAFT rates.

**Step Seven:** The Secretary notifies the institution of their DRAFT rates for all the programs and provides the supporting information for both earnings and loan debt upon which the calculations have been made.

**Step Eight:** The institution then has 45 days to review the DRAFT rates and data and determine whether or not there is a reason to challenge the median loan debt information. (Note: Institutions are prohibited from challenging the earnings information provided by the SSA and can only submit one challenge for any cohort.)

**Step Nine:** The Secretary reviews and either approves or denies challenges to the median loan debt (note: revisions not received within the 45 day window will not be accepted.). The resulting decision – and recalculation if approved – results in the program's FINAL annual and discretionary D/E rates.

**Step Ten:** The Secretary notifies the institution of all FINAL D/E rates for each program and at that time has the authority to make the information public (the entire process up until this point is confidential).

**AACS is prepared to offer a number of recommendations and concerns related to the process, limits on challenges, the aggressive timeline for implementation, among others.**

§668.406 Alternate earnings appeals.

*(a) General. An institution may appeal a final D/E rate that would render a GE program a failing program by proving that the difference between the mean or median annual earnings the Secretary obtained from SSA and the mean or median annual earnings derived from an institutional survey in the form, and conducted in accordance with the standards described in paragraph (b)(2) of this section is sufficient to warrant revision to the final D/E rate.*

*(b) Survey requirements. To appeal a final D/E rate under this section, an institution must—*

*(1) Conduct a survey of earnings information from students who completed the program during the applicable two-year period in accordance with the NCES standards referenced in paragraph (b)(2) of this section;*

*(2) Certify that the survey was conducted in accordance with the methodology established by NCES and available at <http://nces.ed.gov>; and*

*(3) Submit an examination–level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the methodology established by NCES. The attestation must be conducted in accordance with the general, fieldwork, 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.*

*(c) Alternate earnings appeal procedure.*

*(1) In accordance with procedures established by the Secretary and provided in the notice of draft D/E rates and the notice of determination, the institution must--*

*(i) Notify the Secretary of its intent to use survey earnings data no earlier than the date that the Secretary provides the institution with its draft D/E rates but no later than 3 business days after the date the Secretary issues the notice of determination informing the institution of its final D/E rates under §668.407(a); and*

*(ii) Submit all supporting documentation outlined in paragraph (b) of this section related to recalculating the D/E rates using the survey earnings data no later than 60 days after the date the Secretary issues the notice of determination.*

*(2) An institution that timely submits an alternate earnings appeal that meets the requirements of this section is not subject to the provisions of §668.407 while the Secretary considers the challenge. If the Secretary has published final D/E rates under §668.405(g), the program's final rates will reflect that they are under appeal.*

*(3)(i) If the Secretary determines that the institution's appeal submission is not sufficient to warrant revising the final D/E rates under §668.407(a), the Secretary notifies the institution of the reasons for the decision, and the D/E rates under §668.407(a) remain the final D/E rates for the program for the award year; or*

*(ii) If the Secretary determines that the institution's appeal submission is sufficient to warrant revising the final D/E rates under §668.407(a), the Secretary recalculates the D/E rates and notifies the institution that the recalculated D/E rates are the final D/E rates for the program for the award year. If the Secretary has published final D/E rates under §668.405(g), the program's published rates will be updated to reflect the new final rates.*

## **Summary & Analysis**

This section establishes the parameters for a singular appeal of the mean and median earnings determinations of the SSA based upon results of institutional survey data.

As proposed by the regulations, the only means of appealing the SSA earnings data is if the institution chooses to undertake a survey of all of the students enrolled within the program over the two-year period – to be completed within 60 days of the Secretary's notices to the institution of the programs DRAFT rates (Step Six).

**AACS opposes the limited appeals rights provided under the proposed regulation, the unrealistic expectations associated with the sole option provided, and are very concerned that under this new proposed regulation institutions would no longer have the ability to appeal the student earnings information based upon a list of alternative options – including Bureau of Labor Statistics data.**

**AACS will pursue revisions to the regulations retaining the ability for institutions to challenge earnings data based upon BLS information.**

### §668.407 Final determination and consequences of D/E rates.

*(a) Notice of determination. For each year for which the Secretary calculates D/E rates for a GE program, the Secretary issues a notice of determination informing an institution of the following:*  
*(1) The final D/E rates for the program as determined under §668.405 and, if applicable, §668.406.*

(2) *The final decision of the Secretary as to whether the program is a passing, failing, zone, or ineligible program, and the consequences of that classification.*

(3) *Instructions for appealing a final D/E rate that renders the program a failing program, pursuant to §668.406.*

(4) *If the program is classified as an ineligible program, the consequences of that ineligibility, as explained in paragraph (d)(1) of this section.*

(5) *Whether the program, if classified as a zone or failing program for the subsequent award year, would be classified as an ineligible program.*

(6) *Whether the institution is required to provide student warnings under paragraph (c) of this section.*

(7) *Whether the program is subject to the enrollment limits in paragraph (d)(3) of this section.*

*(b) Effective date of Secretary's decision. The Secretary's decision is effective five business days after the date the Secretary issues the notice of determination, unless an institution timely files a notice of intent to submit an alternate earnings appeal for a failing program under §668.406(c)(1)(i) and timely submits the appeal under §668.406(c)(1)(ii).*

*(c) Student warnings. For any award year in which the Secretary notifies an institution that a GE program could become ineligible based on its final D/E rates for the subsequent award year, the institution--*

*(1) Must provide a written warning directly to each enrolled student no later than 30 days after the date of the notice. The warning must--*

*(i) State that: "you may not be able to use title IV funds (Federal grants or student loans) to pay for the cost of attending the program after this year because recent graduates of the program are carrying levels of debt in comparison to their earnings that do not meet the U.S. Department of Education's standards" or any alternative warning language specified by the Secretary in a notice published in the Federal Register; and*

*(ii) Describe the options available to the student to continue his or her education at the institution, or at another institution, in the event that the program loses its eligibility for title IV, HEA program funds. The warning must explain whether the institution will--*

*(A) Allow the student to transfer to another program at the institution;*

*(B) Continue to provide instruction in the program to allow the student to complete all or part of the program;*

*(C) Refund the tuition, fees, and other required charges paid by, or on behalf of, the student for attending the program;*

*(D) Facilitate a transfer that would enable the student to complete his or her program at another institution; and*

*(E) Offer any other options to the student to continue his or her education; and*

*(2) For each prospective student--*

*(i) At the time the student first contacts the institution, must provide a written warning directly to the student—stating: "you may not be able to use title IV funds (Federal grants or student loans) to pay for the cost of attending the program after this year because recent graduates of the program are carrying levels of debt in comparison to their earnings that do not meet the U.S. Department of Education's standards" or any alternative language specified by the Secretary in a notice published in the Federal Register; and*

*(ii) May not enroll the student earlier than--*

(A) *Three business days after the warning was first provided to the student; or*  
(B) *If more than 30 days pass from the date the warning is first provided to the student, three business days after the institution provides another warning as required by paragraph (c)(2)(i) of this section.*

*(d) Restrictions. (1) Ineligible program. Except as provided in §668.26(d), an institution may no longer disburse title IV, HEA program funds to students enrolled in an ineligible program.*

*(2) Period of ineligibility. An institution may not seek to reestablish the eligibility of a failing or zone program that it voluntarily discontinued, reestablish the eligibility of an ineligible program, or establish the eligibility of a program that is substantially similar to the discontinued or ineligible program, until the end of the third award year following the award year the program was discontinued or became ineligible. A program is substantially similar if it has the same first four digits of the CIP code as that of the discontinued or ineligible program.*

*(3) Enrollment limit. For the 12-month period beginning the month after the Secretary notifies an institution that a GE program is a failing program, the total number of students (receiving title IV, HEA program funds) that the institution may enroll in the program may not exceed the number of students (receiving title IV, HEA program funds) who were enrolled in the program during the previous 12 months.*

*(4) Restoring eligibility. An ineligible program, or a failing or zone program that an institution voluntarily discontinues, remains ineligible until the institution reestablishes the eligibility of that program. For this purpose, an institution voluntarily discontinues a failing or zone program on the date the institution provides written notice to the Secretary that it relinquishes the title IV, HEA program eligibility of that program.*

## **Summary & Analysis**

This section outlines how the final determinations will affect the institutions and what responsibilities they must undertake if they are classified as failing and therefore potentially ineligible program.

The two key portions of this section are the warning notifications which institutions must provide for programs that receive notification based upon the FINAL D/E rates that the program is "failing" and the enrollment restrictions placed upon any program that receives the "failing" notification.

**AACS is prepared to offer our recommendations and concerns related to this section of the proposed regulation, including opposition to the proposed enrollment restrictions, concerns regarding the warning requirements, and recommendations related to other portions of the regulations.**

### §668.408 Transition period.

*(a) If a GE program would be a failing or zone program based on draft D/E rates calculated in accordance with §668.404 for award years 2014-2015, 2015-2016, or 2016-2017, the Secretary calculates transitional draft D/E rates for the program by using--*

*(1) The median loan debt of the students who completed the program during the most recently completed award year; and*

(2) *The earnings used to calculate the original draft D/E rates.*

(b) *For the award years listed in paragraph (a) of this section, the Secretary determines the final D/E rates for the program by using the lower of the draft D/E rates calculated under §668.405 or the transitional draft D/E rates calculated under this section.*

(c) *The institution may correct the list of students or challenge the transitional draft D/E rates under the procedures in §668.405 and may appeal the final D/E rates under §668.406.*

## **Summary & Analysis**

This section provide for an alternative calculation of program's D/E rates for the first three years of the new regulations (AY14, AY15, and AY16), based upon more recent data.

**AACS is reviewing the impact of this proposal and will be prepared to discuss this and other alternative approaches on how best to transition institutions and their programs into the new regulatory requirements.**

### §668.409 Reporting requirements for GE programs.

(a) *Every award year, in accordance with procedures established by the Secretary, an institution must report--*

(1) *For each student enrolled in a GE program during an award year--*

(i) *Information needed to identify the student and the institution the student attended;*

(ii) *The name, CIP code, credential level, and normal time of the program;*

(iii) *Whether the program is a medical or dental program whose students are required to complete an internship or residency;*

(iv) *The date the student began initial attendance in the program; and*

(v) *The student's attendance dates and enrollment status in the program during the award year;*

(2) *If the student completed or withdrew from the GE program during the award year--*

(i) *The date the student completed or withdrew from the program;*

(ii) *The total amount the student received from private education loans for attendance in the program; and*

(iii) *The total amount of debt arising from institutional financing plans the student owes the institution upon completing or withdrawing from the program; and*

(3) *As described in a notice published by the Secretary in the Federal Register, any other information requested by the Secretary to carry out the provisions of this subpart.*

(b)(1) *An institution must report the information required under paragraph (a) of this section no later than--*

(i) *July 31, 2015, for information from the 2011-2012 through 2013-2014 award years; and*

(ii) *For the 2014-2015 award year and subsequent award years, October 1 following the end of the award year, unless the Secretary establishes a different date in a notice published in the Federal Register.*

(2) *For any award year, if an institution is unable to provide all or some of the information in paragraph (a) of this section, the institution must provide the Secretary with an explanation of why the missing information is not available.*

## Summary & Analysis

This section lays out the student reporting information and deadlines for submission of the information an institution must provide for each program subject to the gainful employment regulations.

**AACS is prepared to offer recommendations and concerns stemming from the definitions, data sets, and timeframes proposed in this section.**

### §668.410 Disclosure requirements for GE programs.

*(a) Disclosure template. An institution must use the disclosure template provided by the Secretary to disclose information about each of its GE programs to enrolled and prospective students. The Secretary identifies the information that must be included in the template in a notice published in the Federal Register. That information may include, but is not limited to:*

*(1) The primary occupations (by name and SOC code) that the GE program prepares students to enter, along with links to occupational profiles on O\*NET ([www.onetonline.org](http://www.onetonline.org)) or its successor site.*

*(2) The GE program's completion rates as calculated by the Secretary under paragraph (f) of this section.*

*(3) As calculated by the Secretary under paragraph (g) of this section, the loan repayment rate for any one or all of the following groups of students who entered repayment during the two-year period:*

*(i) All students who attended the program.*

*(ii) Students who completed the program.*

*(iii) Students who withdrew from the program.*

*(4) The total cost of tuition, fees, and books and supplies that a student would incur for completing the program within normal time.*

*(5) The placement rate for the program, if the institution is required by its accrediting agency or State to calculate a placement rate.*

*(6) As calculated by the institution, the median loan debt, including all of the loans described in §668.404(d)(1), incurred by any one of the following groups of students:*

*(i) Students who completed the program during the most recently completed award year.*

*(ii) Students who withdrew from the program during the most recently completed award year.*

*(iii) All of the students described in paragraph (a)(6)(i) and (ii) of this section.*

*(7) The median earnings, of any one of the following groups of students:*

*(i) Students who completed the program during the two-year period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.*

*(ii) Students who withdrew from the program during the two-year period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.*

*(iii) All of the students described in paragraph (a)(7)(i) and (ii) of this section.*

*(8) A link to the U.S. Department of Education's College Navigator Web site at <http://nces.ed.gov/collegenavigator/>, or its successor site; and*

*(9) If applicable, whether the program, with respect to the occupations for which the program prepares the student as disclosed by the institution under paragraph (a)(1) of this section,*

*satisfies the educational prerequisites for professional licensure in the State in which the program is offered.*

*(10) As specified in a notice published by the Secretary in the Federal Register, any other information about the program that the Secretary requires the institution to disclose.*

*(b) Disclosure updates. (1) In accordance with procedures and timelines established by the Secretary, the institution must update at least annually the information contained in the disclosure template for each of its GE programs.*

*(2) The institution must update the disclosure template within 30 days of receiving notice from the Secretary that the institution must provide student warnings for the program under §668.407(c) in order to notify enrolled and prospective students that the program has failed to meet U.S. Department of Education standards and that students enrolled or enrolling in the program may not qualify to receive title IV, HEA program funds for the duration of the entire program.*

*(c) Web link to disclosure information. On any Web page containing general, academic, or admissions information about a GE program, the institution must provide a prominent and direct link (one click) to the disclosure template for that program.*

*(d) Promotional materials. (1) All promotional materials about the GE program that an institution makes available to prospective students must include--*

*(i) The information on the disclosure template in a prominent manner; or*

*(ii) Where space or airtime constraints would preclude a full disclosure of the required information, the Web address (URL) of, or the direct link to, the disclosure template, provided that, the institution identifies the URL or link as "Important Federal Student Aid Information You Need to Know."*

*(2) Promotional materials include, but are not limited to, an institution's catalogs, invitations, flyers, billboards, and advertising on radio, television, the Internet, or social media account.*

*(3) The institution must ensure that all promotional materials, including printed materials, about a GE program are accurate and current at the time they are published, approved by a State agency, or broadcast.*

*(e) Direct distribution to students. An institution must provide to each prospective student as a separate document, at the time the institution first provides the student information about the program and at the time the student enrolls in the program, a copy of the disclosure template.*

*(f) Completion rates. The Secretary calculates the completion rates of a GE program as follows:*  
*Number of students in the enrollment cohort who completed the program within 100% of normal time*

*Number of students in the enrollment cohort*

*Number of students in the enrollment cohort who completed the program within 150% of normal time*

*Number of students in the enrollment cohort*

*The enrollment cohort is the number of students who began attending the program at any time during a particular award year.*



*(g) Loan repayment rate. For the most recently completed award year, the Secretary calculates a loan repayment rate for borrowers who attended a GE program as follows:*

*Number paid in full plus number in active repayment*

*Number entering repayment*

*(1) Number entering repayment. The total number of borrowers who entered repayment during the two-year period on FFEL Loans or Direct Loans received for attendance in the GE program.*

*(2) Number paid in full. Of the number of borrowers entering repayment, the number who have fully repaid loans received for attendance in the GE program.*

*(3) Number in active repayment. Of the number of borrowers entering repayment, the number who, during the most recently completed award year—*

*(i) Made loan payments sufficient to reduce by at least one dollar the outstanding principal balance of each loan, including consolidation loans that include a loan received for attendance in the GE program, by comparing the outstanding principal balance at the beginning and end of the award year. The outstanding principal balance of a loan includes any unpaid accrued interest that has not been capitalized; or*

*(ii) Made all loan payments required under an income-driven repayment plan.*

*(4) Loan defaults. A borrower who defaulted on a loan is not included in the numerator of the formula.*

*(5) Rates for borrowers who completed or withdrew. The Secretary may modify the formula in this paragraph to calculate repayment rates only for those borrowers who completed the program or only those borrowers who withdrew from the program.*

*(6) Exclusions. For the award year the Secretary calculates the loan repayment rate for a GE program, the Secretary excludes a borrower from the repayment rate calculation if the Secretary determines that--*

*(i) One or more of the borrower's loans were in a military-related deferment status for at least 60 days during the most recently completed award year;*

*(ii) One or more of the borrower's FFEL loans or Direct Loans are either under consideration by the Secretary, or have been approved for a discharge on the basis of the borrower's total and permanent disability, under 34 CFR 682.402 and 685.212.*

*(iii) The borrower was enrolled on at least a half-time basis for at least 60 days in an eligible institution during the most recently completed award year; or*

*(iv) The borrower died.*

## **Summary and Analysis**

This final section of the proposed regulation details the disclosure information which an institution must provide for each program – based upon a template developed by the Secretary, the requirements of how this information is to be provided to both enrolled and potential students, timelines for required updates of the information, and new definitions, data sets, and calculation methodologies regarding completion rates, annual loan repayment rates, and others.

**AACS has developed a comprehensive list of recommendations and concerns related to this portions of the new proposed regulations. They include, but are not limited to the inclusion of annual loan repayment rates in the new template, limits on the disclosure of placement rates to only institutions who are required by their accrediting agencies or the State, and the new completion rate calculations to name a few.**

**AACS is prepared to present these recommendations and concerns throughout the course of the negotiations.**