

THE U.S. DEPARTMENT OF EDUCATION'S FINAL RULE ON FINANCIAL VALUE TRANSPARENCY AND GAINFUL EMPLOYMENT

Background

Beginning in 2009, during the Obama administration, the Department of Education (Department) held its first negotiated rulemaking session with a goal of increasing accountability for gainful employment (GE) programs. Gainful employment programs are programs that are intended to lead to employment and includes all programs at proprietary institutions and non-degree programs at nonprofit institutions.

In [2010](#) and [2011](#), the Department issued final rules that were collectively known as the 2011 GE rule. Due to a court ruling in *APSCU vs. Duncan*, most sections of the 2011 GE rule were vacated and only GE disclosures remained enforceable. In 2014, the Department issued another set of final rules that took effect in July 2015. These rules applied a test, known as the debt-to-earnings Ratio (D/E), to all GE programs intended to determine if students in GE programs were earning enough upon leaving the program to reasonably repay the loans they took out to attend. Programs that failed that test in any two out of three years lost access to federal financial aid under Title IV of the Higher Education Act. Additionally, all GE programs of sufficient size had to disclose data on their programs to enable the rule to take effect. The Trump administration [rescinded](#) these GE rules in 2019.

In 2022, now under the Biden administration, the Department convened a group of stakeholders to embark on another negotiated rulemaking process to prepare regulations addressing GE and many other issues. The Department [released](#) a notice of proposed rulemaking addressing GE in May 2023, and ACE sent a [letter](#) offering the higher education community's comments to the Department on the proposed rule. Now, the Department has [issued](#) the final rule, and a summary of the rule is provided below.

Final Rule

- Programs with a two-year or four-year cohort of at least 30 students who are receiving federal student aid will be counted. Also, programs, collectively completing at least 30 students, that are substantially similar will be counted.
 - Programs, using a six-digit Classification of Instructional Programs (CIP) code, will be counted in the GE rule if there is a graduating cohort size of at least 30 students in either a two-year or four-year cohort.
 - Programs, using a four-digit CIP code, will be counted in the GE rule if the programs on campus collectively complete 30 students or more over a four-year period.
- There are two tests that determine whether a program fails or not. The first is a D/E rate, similar to that utilized in the Obama Administration.
 - Only programs at institutions of higher education that directly complete 30 or more students or smaller programs that collectively complete 30 or more students based on their four-digit CIP code will be held accountable to a D/E rate. A program will pass if no more than 8 percent of annual income is put toward student loan repayments or no more than 20 percent of discretionary income (defined as the total of an individual's remaining

income after 150 percent of the federal poverty line is withheld) is put toward student loan repayments. A program will fail if that program's graduates spend a higher percentage of their incomes repaying debt, on average, for two consecutive years or two years in a three-year period.

- The second test is an earnings premium based on an earnings threshold using data from the Census Bureau.
 - A program passes the earnings premium rate if student loan borrowers, who are three years into the workforce, are making more than the median earnings of working adults aged 25-34 with no higher educational attainment other than a high school diploma who either worked during the year or were unemployed. The Census data will be based on students in the state that the institution is in or nationally if fewer than 50 percent of the students in the program are from the state or if the institution is a foreign institution.
- A new section on financial value transparency is created.
 - In an effort to hold more programs at institutions of higher education accountable, most programs will be required to report both D/E rates and earnings premiums as long as the program has a cohort size of at least 30 students, or a collective cohort size of 30 students for programs that are substantially similar, who complete the program in a two- or four-year cohort and have data available on earnings for those students from a federal agency.
- The ability of an institution to appeal the data.
 - An institution will be given the opportunity to seek an appeal of the final determination of the Department that a program has failed the D/E rate or earnings premium by either submitting a written statement to a designated Department official or by filing for a hearing through the Office of Hearings and Appeals. Also, an institution is given the opportunity to correct the list of students used to determine the metrics.
- Institutions are required to retroactively report data for all programs.
 - Institutions are required to retroactively report certain data on each student that is enrolled in a program to include when a student withdrew; the date the student initially enrolled in the program; and any information as prescribed by the secretary in the *Federal Register*. For the first six years, institutions can opt to only report data on the previous two award years with the calculation of transitional D/E rates and earnings premiums calculated on each program.
- Institutions are required to certify GE programs.
 - No later than December 31, 2024, the most senior executive officer at each institution must certify that their GE programs are approved by a recognized accrediting agency or are included in the institution's accreditation by its recognized accrediting agency. Vocational institutions must be recognized by a state agency.
- A disclosure website is created.
 - Institutions of higher education are required to provide information to the Department about all programs, and this information will be posted on a new website the Department will create. Mandatory information includes the length of the program, number of individuals enrolled, and whether the program is accredited. D/E rates and earnings

premium rates must be included for programs that have such rates calculated. The intended audience for this website will be currently enrolled and prospective students. The exact information to be disclosed on this website will be articulated in a *Federal Register* notice, and an institution must provide a permanent link to the federal website from their own institutional website.

- Institutions are required to warn students when programs fail.
 - Two years after the implementation of the final rule, institutions are required to issue an acknowledgement for non-GE programs (undergraduate programs are excluded) and a warning for GE programs if the programs are failing. The acknowledgement is only sent to prospective graduate students and the warnings for GE programs are sent to both current and prospective students. A student enrolled in a GE program is not allowed to use federal financial aid for a failing program until they signify that they have reviewed the warning from the institution through the new disclosure website created by the Department.