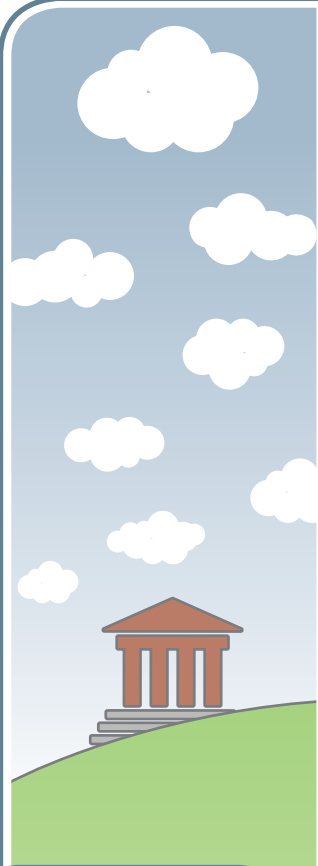


THOMPSON
COBURN LLP

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How to Project Gainful Employment Rates



On October 31, 2014, the U.S. Department of Education promulgated its new “gainful employment” or “GE” regulations. The new rules apply to all programs offered by for-profit, proprietary institutions, as well as to most non-degree programs offered by public and private non-profit institutions (hereafter referred to as “GE programs”).

The Department argues that the regulations are needed, and thus designed, to ensure that GE programs provide a pathway to meaningful employment without saddling graduates with excessive debt. Accordingly, while the GE regulatory framework includes reporting, disclosure, and certification requirements, it most prominently features two metrics, each ultimately intended to assess whether a program offers a reasonable return on investment: (1) the Annual Earnings Rate, and (2) the Discretionary Income Rate. The formula associated with each metric is as follows:

► **Annual Earnings Rate = Annual Loan Payment / Annual Earnings**

► **Discretionary Income Rate = Annual Loan Payment / Discretionary Income**

Generally speaking, these two rates, collectively referred to as the debt-to-earnings or “D/E rates,” measure graduate debt as a percentage of post-graduation earnings. For each award year, and for each eligible GE program offered by an institution, the Department will calculate the D/E rates using information reported by the institution, in accordance with the procedures set out in 34 C.F.R. §§ 668.404-668.406. Programs that consistently produce rates below the requisite thresholds face sanctions, and ultimately may lose access to federal financial aid funds.

Although the regulations will not take effect until July 1, 2015, and lobbying, elections, and court challenges likely stand between the effective date and the first possible sanctions (Spring 2016), many institutions are now attempting to assess whether their GE programs will produce passing rates.

Efforts of this sort are worthwhile, particularly if a significant percentage of an institution’s program portfolio or enrollment involves GE programs. After all, the sooner an institution is aware that it has an issue, the sooner it can begin revising a problem program or creating and seeking approval of a new program to take its place. In addition, gathering data for the purpose of projecting rates likely will facilitate an institution’s accompanying efforts to satisfy reporting obligations under the new regulations (institutions are required to provide to the Department a great deal of data for each GE program by July 31, 2015).

Of course, whether an institution is able to undertake a projection exercise will turn largely on whether it can allocate the time and resources necessary to study the new regulations and determine how the calculations should be carried out. We deeply appreciate that for many schools, both time and resources are in short supply. In an effort to lend a helping hand, we offer below step-by-step resources for projecting D/E rates.

Before we begin, we’re compelled to offer one word of caution. It’s not possible to project with absolute certainty whether a GE program will produce satisfactory rates because the public does not have access to some of the data the Department will use when making its determination for each program. Under the new rules, the annual earnings information for graduates, which informs the denominator in each of the D/E rates, will be obtained directly from the Social Security Administration (“SSA”). Thus, while the process we will be setting out is sound, it is not exact. This having been said, with a few educated assumptions, the steps on the following pages can help most institutions project which programs will pass easily, which will come close, and which likely will fail.

- 1 Determine the Scope of your Institution
- 2 Identify your GE Programs
- 3 Determine which GE Students to Include in your Cohort
- 4 Identify the Applicable Cohort Period
- 5 Determine each GE Student’s Loan Debt
- 6 Calculate the Median Loan Debt for each GE Program
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Step One Determine the Scope of your Institution

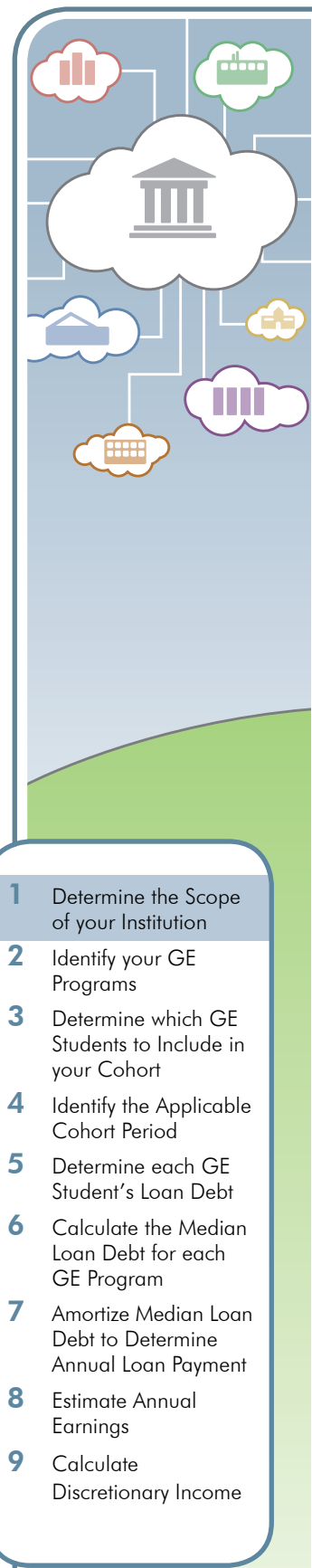
When the Department calculates D/E rates, it does so for each GE program offered within a single institution. Accordingly, an accurate understanding of your institution, as viewed by the Department, is foundational to your rate projections and worthy of attention.

When an institution first is approved to participate in the federal financial aid programs, the Department assigns it a unique six-digit Office of Postsecondary Education Identification number ("OPE ID"). This OPE ID includes the institution's main campus and any additional locations the Department associates with that main campus. From the Department's perspective, the "institution" and the OPE ID are one in the same.

For many institutions, all locations — and all programs — fall within a single OPE ID. However, on occasion, and for various reasons, a single "institution" may include more than one OPE ID. For example, if a large university merged with an existing local college, the college ostensibly could retain its own OPE ID after the transaction. In such an instance, the Department would continue to view the university and the college as distinct "institutions," even if the public viewed them as a unified postsecondary entity. When calculating D/E rates, the Department would calculate separate rates for the university's programs and the college's programs, respectively.

It also can be the case that institutions considered completely unrelated by the public are, in fact, part of a single OPE ID. For example, assume the same large university acquired a small, well-known college located in a different state, and all agreed that the college would retain its name and much of its autonomy. If, as part of the transaction, the college's own OPE ID was dissolved and it was joined to the OPE ID of the large university, the Department would deem them a single institution, without regard to whether the public was aware of their affiliation.

With these concepts in mind, the first step in calculating your D/E rates is to identify your OPE ID, and to ensure that you know the universe of locations (e.g., main, branch, satellite, extension, etc.) and programs included within the scope of the OPE ID.

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Step Two Identify your GE Programs

Once you have confirmed the scope of your institution (*i.e.*, your OPE ID), you'll need to identify each GE program for which you are projecting D/E rates. Once again, this step, like the previous one, can be deceptively complex, as the Department's view of a "program" may differ from your own. When calculating rates, the Department defines a "GE program" as a Title IV-eligible program identified by a combination of (1) OPE ID, (2) six-digit Classification of Instructional Programs ("CIP") code, and (3) credential level. 34 C.F.R. 668.402.

For purposes of this analysis, we are assuming that you are calculating GE accountability rates for a single OPE ID. Thus, from a regulatory perspective, the Department views all of your programs as being part of, and offered by, a single institution. As a consequence, the only two factors distinguishing one GE program from another within your OPE ID are the credential level and the six-digit CIP code. In the definition of "credential level" found in 34 C.F.R. 668.402, the Department identifies the following eight credential levels for purposes of the GE analysis:

1. Undergraduate certificate or diploma
2. Associate degree
3. Bachelor's degree
4. Post-baccalaureate certificate
5. Graduate certificate (including a postgraduate certificate)
6. Master's degree
7. Doctoral degree
8. First professional degree (*e.g.*, MD, DDS, JD)

If your institution offers more than one program at a single credential level (*e.g.*, multiple graduate certificate programs), you will need to examine the six-digit CIP code for each program within the credential level.

If each program you offer within a given credential level has a unique CIP code, then the Department, like the institution, will view each program as distinct. However, if within a single credential level your institution offers two or more programs with the same CIP code, when calculating your GE accountability rates, *the programs with identical CIP codes will need to be consolidated.*

Indeed, neither the name of the program, nor the location where it is offered, is relevant to the Department. Thus, an institution could be required to combine its two graduate certificate programs even if they have separate names and are offered at completely different locations. Again, if they are offered within the same OPE ID, and share the same credential level and six-digit CIP code, the Department considers them to be a single GE program and requires that they be consolidated when calculating D/E rates.

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Step Three Determine which GE Students to Include in your Cohort

Having identified your OPE ID, and isolated the GE programs offered within that OPE ID (steps one and two in our nine-step process), you now are ready to determine the students who will be included in each GE program's cohort (i.e., the students for whom you will be analyzing debt and earnings data).

For purposes of calculating D/E rates, the Department defines a "student" as any "individual who received Title IV, HEA program funds for enrolling in the GE program." 34 C.F.R. 668.402. Notably, this definition of student includes individuals who received any form of federal financial aid. Thus, for example, a student who received only Pell grants would be included, even if she did not receive any loans.

In terms of exclusions, when determining which students to include in your cohort, you will eliminate students who did not receive any Title IV, HEA program funds for enrolling in the program. In addition, pursuant to section 668.404(e) of the new regulations, you also will need to exclude from your cohort any student satisfying one or more of the following criteria:

1. One or more of the student's Title IV loans were in a military-related deferment status at any time during the calendar year for which earnings information is being gathered (e.g., for the 2014-2015 D/E rates, calendar year 2014);
2. The Department is considering or has approved a discharge of one or more of the student's Title IV loans on the basis of the student's total and permanent disability;
3. The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which earnings information is being gathered;
4. For undergraduate GE programs, the student completed a subsequent, higher-credentialed undergraduate GE program at your institution by the end of the most recently completed award year prior to the calculation of your D/E rates;
5. For graduate GE programs, the student completed a subsequent, higher credentialed graduate GE program at your institution by the end of the most recently completed award year prior to the calculation of the your D/ E rates; or
6. The student is deceased.

Any student who received Title IV, HEA program funds for enrolling in his or her GE program, and who fails to fall into one of the excluded categories detailed above, would be included in the cohort for the GE program (a "GE Student").

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Step Four Identify the Applicable Cohort Period

The D/E rates for each GE program are based on the debt and earnings data for GE Students who completed the program *during the applicable cohort period*. Accordingly, in order to finalize the student cohort for each GE program, you will need to determine whether to use a two-year cohort period or a four-year cohort period (the only two options). The process is “relatively” straightforward.

The Department defines the two-year cohort period as the period covering the two consecutive award years that are the third and fourth award years prior to the award year for which your D/ E rates are being calculated. A four-year cohort period, in turn, is defined as the third, fourth, fifth, and sixth award years prior to the award year for which your D/E rates are calculated. Pursuant to the new regulations, the Department uses the two-year cohort period when the number of GE Students completing the program is 30 or more, and the four-year cohort period when the number of GE Students completing the program in the two-year cohort period is less than 30 and the number of GE Students completing the program in the four-year cohort period is 30 or more. 34 C.F.R. 668.402.

By way of example, let’s assume that we are projecting accountability rates for the 2014-2015 award year (the first award year for which the Department will calculate rates). If after applying all the exclusions discussed in step three, 30 or more GE Students completed the GE program during award years 2010–2011 and 2011–2012, then the 2010–2011 and 2011–2012 award years represent the applicable two-year cohort period for the program. If, however, at least 30 GE Students did not complete the GE program during award years 2010–2011 and 2011–2012, then you will have to expand the cohort period for the program to include the following four award years: 2008–2009, 2009–2010, 2010–2011, and 2011–2012. In the graphic below, we’ve illustrated both the two-year and four-year cohort periods described:

► Cohort Rates: Prior-Year Illustration

2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
6th Prior AY	5th Prior AY	4th Prior AY	3rd Prior AY	2nd Prior AY	1st Prior AY	AY for which D/E Rates are being calculated.
		Two-Year Cohort Period				
Four-Year Cohort Period						

If, after applying all exclusions, 30 or more GE Students did not complete the program over the expanded four-year cohort period, the Department will not calculate D/E rates for the program for the 2014-2015 award year. 34 C.F.R. 668.404(f)(1). However, for purposes of this exercise, we suggest that you simply proceed with the four-year cohort, with the understanding that projecting rates based on a 25-student cohort is better than not projecting them at all.

Before concluding this step, there are a couple of additional points we should address. First, if the Department does not calculate or issue D/E rates for a GE program because the program’s expanded cohort has fewer than 30 GE students, it does not mean that the program passes the rate thresholds established in the new regulations. Rather, the GE program receives a “no result” for that award year and keeps the same status as in the previous award year, when rates were calculated. 34 C.F.R. 668.403(c)(5). Commenting on this provision, the Department offered the following insight in the preamble to the final regulations:

(Step four continued on next page.)

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Step Four Identify the Applicable Cohort Period *(continued)*

“For example, where a program receives its first failing result and the institution is required to give student warnings as a result, the program will still be considered to be a first time failing program and the institution will continue to be required to give student warnings in the next award year even if the program’s next D/ E rates are not calculated or issued because it did not meet the minimum n- size requirement.” 79 Fed. Reg. 64928 (October 31, 2014).

Importantly, the “no result” year would not constitute the program’s second year of failure and thus render the program ineligible. Rather, the Department makes explicit that the program would “still be considered to be a first time failing program.” Also of note, if the Department does not calculate D/E rates for a GE program for four or more consecutive award years, it will disregard the program’s D/E rates for any award year prior to the four-year period when determining the program’s eligibility. 34 C.F.R. 668.403(c)(5).

Second, in certain circumstances, the Department will calculate “transitional rates” using a different cohort period. Pursuant to the new regulations, a GE program failing to satisfy the requisite rate thresholds will be deemed a “failing” or “zone” program. For a period, the Department will calculate for such programs a set of alternative, “transitional” D/E rates, in addition to the standard rates (the period ranges from five to seven award years following the first year the Department calculates D/E rates, and varies depending on program length). 34 C.F.R. 668.404(g).

The transitional rates will be calculated using the standard methodology described herein, except that the Department will use the median loan debt only of the students who completed the program during the most recently completed award year, instead of the median loan debt of all students who completed the program during the applicable cohort period. The Department would then assess the program’s compliance using the lower of the standard or transitional D/E rates. 34 C.F.R. 668.404(g).

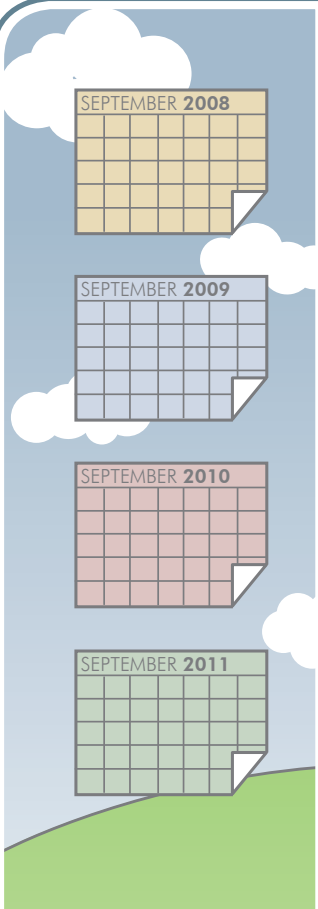
If you would like to calculate transitional D/E rates for a GE program, you can follow all of the steps described in this article, with one exception: limit your student cohort to GE Students who completed the program during the most recently completed award year. We’ve included below another graphic that may assist in putting the various cohort options and transitional periods into perspective.

Award Year	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
2-Year Cohort (AY)	2010-2011 - 2011-2012	2011-2012 - 2012-2013	2012-2013 - 2013-2014	2013-2014 - 2014-2015	2014-2015 - 2015-2016	2015-2016 - 2016-2017	2016-2017 - 2017-2018
4-Year Cohort (AY)	2008-2009 - 2011-2012	2009-2010 - 2012-2013	2010-2011 - 2013-2014	2011-2012 - 2014-2015	2012-2013 - 2015-2016	2013-2014 - 2016-2017	2014-2015 - 2017-2018
Transitional Cohort (AY)	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Transitional rate period for programs of one year or less.							
Transitional rate period for programs between one and two years.							
Transitional rate period for programs of more than two years.							

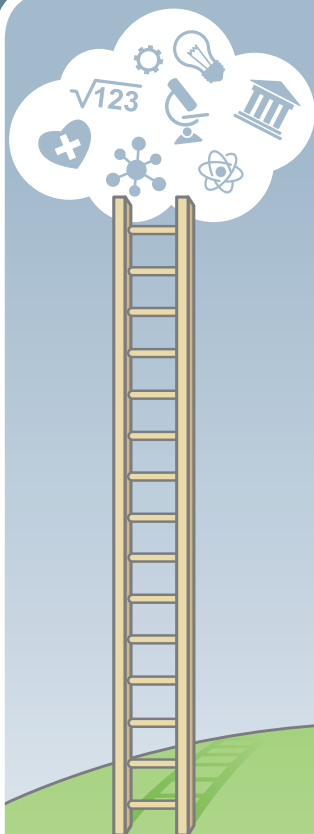
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Step Four Identify the Applicable Cohort Period *(continued)*

Finally, we note that there is one exception to the two- and four-year cohort periods set out above. The exception relates to medical and dental programs whose students are required to complete an internship or residency after completion of the program. For these programs only, the two-year cohort period would be the sixth and seventh award years prior to the award year for which D/E rates are calculated, and the four-year cohort period would be the sixth, seventh, eighth, and ninth award years prior to the award year for which D/E rates are being calculated. 34 C.F.R. 668.402

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Step Five Determine each GE Student's Loan Debt

Once you have determined the applicable cohort period for each GE Program for which you are projecting rates (step four in our process), you will be able to identify the universe of GE Students who will be included in each program's cohort. With this data in hand, you're ready to determine the loan debt for each individual student.

Significantly, the amount used for each student's "loan debt" in the D/E rate calculations is, in fact, the lesser of the student's (1) actual loan debt, or (2) total costs. 34 C.F.R. 668.404(b)(1). Thus, for each student, you'll have a choice to make regarding which number to include when calculating the median loan debt for the cohort. And keep in mind that the lesser number may vary from student to student, depending on his personal circumstances.

Under the new regulations, when calculating a student's actual loan debt, you will need to include any debt that falls into the following three categories:

- ▶ Any Title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments) for enrollment in the GE program (Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants are not included); **AND**
- ▶ Any private education loans, including private education loans made by the institution that the student borrowed for enrollment in the program; **AND**
- ▶ The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any GE program attended at the institution that the student is obligated to repay after completing the GE program.

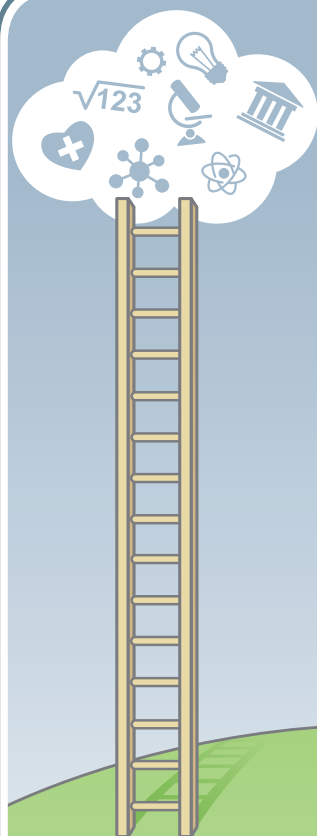
34 C.F.R. 668.404(d)(1). When calculating total costs for each student, you will need to include the following amounts:

- ▶ The total amount of tuition and fees assessed the student for the student's entire enrollment in the GE program; **AND**
- ▶ The total amount of the allowances for books, supplies, and equipment included in the student's Title IV Cost of Attendance for each award year in which the student was enrolled in the program, **OR** a higher amount if assessed the student by the institution. 4 C.F.R. 668.404(d)(2); 34 C.F.R. 668.411(a)(2)(iv)-(v).

(Step five continued on next page.)

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Step Five Determine each GE Student's Loan Debt (*continued*)

There are a handful of additional wrinkles that may surface at this step, and that should be taken into account when calculating each student's actual loan debt and total costs. The first concerns the management of students who may have completed multiple programs at your institution (e.g., a student who completed an associate's degree, then went on to get her bachelor's degree). In such instances, all of the actual loan debt/total costs incurred by a student for attendance in an institution's undergraduate GE Programs would be attributed to the highest credentialed undergraduate GE Program she completed at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates. 34 C.F.R. 668.404(d)(2)(i). Similarly, all of the actual loan debt/total costs incurred by a student for attendance in any graduate GE Programs would be attributed to the highest credentialed graduate GE Program completed at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates. 34 C.F.R. 668.404(d)(2)(ii).

The second wrinkle involves GE Students with no loan debt. Recall that for purposes of calculating D/E rates, the Department defines a "student" as any "individual who received Title IV, HEA program funds for enrolling in the applicable GE program." 34 C.F.R. 668.402. Notably, this definition of student would include individuals who received only Pell grants and other grants under Title IV, even if they did not receive any loans. It thus is possible that you may have students properly included in your cohort that have no associated loan debt.

Finally, as a general rule, the Department excludes any loan debt incurred by the student for enrollment in programs at other institutions. But note that the Department, in its discretion, may include loan debt incurred by a student for enrollment in GE programs at other institutions if your institution and the "other" institutions are under common ownership or control. 34 C.F.R. 668.404(d)(3). We expect that in the coming months and years the Department will establish parameters for the exercise of this discretion.

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Step Six Calculate the Median Loan Debt for each GE Program

At this point in the process, for each GE Program you should have a list of the GE Students included in the program's cohort, accompanied by each such student's total loan debt (or more precisely, the lesser of each student's actual loan debt or total cost). You now are prepared to determine the median loan debt for the cohort. The median of a set of values is the "middle" value. Thus, to determine the median loan debt, one simply need place the loan debt numbers in value order and identify the middle number. The graphic below illustrates the idea:

► Median Illustration

Student Number	Total Debt/Cost
Student 12	\$0
Student 10	\$0
Student 2	\$2,552
Student 13	\$11,064
Student 7	\$13,400
Student 6	\$13,550
Student 11	\$18,000

The median loan debt for the GE Program cohort set out above is the highlighted value: \$11,064. In instances where your program cohort includes an even number of students, you would identify the middle pair of numbers and calculate the value that would be halfway between them (i.e., add them together and divide by two). Also note, in instances where more than half of the students in your cohort have no associated loan debt, the median loan debt for the program would indeed be \$0.

We appreciate that most folks tasked with projecting rates will not be doing so manually, but instead will be using some form of software to facilitate the process. For those using an Excel spreadsheet, you can calculate the median of a group of numbers by using the MEDIAN function. (For the example above, the function would be [median=(B2:B8)]).

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Step Seven Amortize the Median Loan Debt to Determine the Annual Loan Payment

The final step in determining the numerator for your D/E rates is to amortize the median loan debt for each GE Program over a 10-, 15-, or 20-year repayment period. The credential level of the program determines the repayment period. A ten-year repayment period is used for programs that lead to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate. Fifteen years is used for programs that lead to a bachelor's degree or a master's degree. And twenty years is used for programs that lead to a doctoral or first-professional degree. 34 C.F.R. 668.404(b)(2)(i).

When calculating D/E rates, the interest rate the Department will use to amortize the median loan debt will vary, depending on the length and type of program, as follows:

- ▶ For undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs, the Department will use the average of the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students for the three-year period prior to the end of the cohort period.
- ▶ For graduate certificate programs and master's degree programs, the Department will use the average of the Federal Direct Unsubsidized Loan interest rate applicable to graduate students for the three-year period prior to the end of the cohort period.
- ▶ For bachelor's degree programs, the Department will use the average of the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students for the six-year period prior to the end of the cohort period.
- ▶ For doctoral programs and first professional degree programs, the Department will use the average of the Federal Direct Unsubsidized Loan interest rate applicable to graduate students for the six-year period prior to the end of the cohort period. 34 C.F.R. 668.404(b)(2)(ii).

By way of example, assume you were projecting the D/E rates for the 2014-15 award year for an associate's degree program using a two-year cohort period, such that the applicable cohort period was award years 2010-2011 and 2011-2012. The repayment period would be ten years (because the credential level is an associate's degree), and the applicable interest rate would be the average of the interest rates used for undergraduate Federal Direct Unsubsidized Loans for award years 2009-2010 through 2011-2012 (i.e., the three-year period prior to the end of the cohort period). The graphic below helps illustrate, for our example, the relationship between the applicable cohort period and the applicable interest rate period.

▶ Interest Rate Period Illustration

2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
5th Prior AY	4th Prior AY	3rd Prior AY	2nd Prior AY	1st Prior AY	AY for which D/E Rates are being calculated.
Two-Year Cohort Period					
Period for which interest rates are averaged for associate's degree program.					

(Step seven continued on next page.)

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Step Seven Amortize the Median Loan Debt to Determine the Annual Loan Payment (*continued*)

It so happens that the interest rate for *all* undergraduate, graduate, and professional level Direct Unsubsidized Loans first disbursed between July 1, 2006, and June 30, 2013, was fixed at 6.8%. Thus, the average of the interest rates used for Federal Direct Unsubsidized Loans to undergraduates for award years 2009–2010 through 2011–2012 is 6.8%.

Once you have determined the applicable repayment period and interest rate for each of your GE Programs, you will have all the data points you need to calculate each program's Annual Loan Payment. Because students typically make monthly loan payments (not a single, annual payment), we'll actually determine the *monthly* loan payment associated with each GE program, and then multiply the monthly payment by twelve to determine the Annual Loan Payment.

The monthly amortization formula, with associated values, is detailed below:

$$A = P \frac{r(1+r)^n}{(1+r)^n - 1}$$

A = monthly loan payment

P = median loan debt for the GE Program

r = monthly interest rate (annual interest rate divided by 12)

n = total number of monthly payments (number of years for repayment multiplied by 12)

Because we appreciate that most institutions likely will use Excel, or some similar software, to carry out their GE calculations, we've set out below a spreadsheet-friendly version of the formula that you can use to calculate the Annual Loan Payment for your GE Programs (the formula calculates the monthly payment using the amortization formula above, then multiplies the result by twelve).

$$\text{Annual Loan Payment} = 12 * (D * ((I/12) * ((1 + (I/12)) ^ (Y * 12))) / ((1 + (I/12)) ^ (Y * 12) - 1))$$

The values included in this spreadsheet-friendly version of the formula are defined as follows:

D = median loan debt for the GE Program

I = annual interest rate

Y = number of years for repayment

Now let's put it all together. If you are projecting the Annual Loan Payment for an undergraduate associate's degree program for the 2014-2015 award year, and the median loan debt for the program is \$11,064, the values for your calculation would be as follows:

D = \$11,064

I = 6.8%

Y = 10

When we input these values into the Annual Loan Payment formula above, we get the following:

$$12 * (11064 * ((0.068/12) * ((1 + (0.068/12)) ^ (10 * 12))) / ((1 + (0.068/12)) ^ (10 * 12) - 1))$$

The calculation, once performed, yields an Annual Loan Payment of \$1,528. We now have the numerators for our two D/E rate calculations, and are ready to move to the final steps of the projection process.

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Step Eight Estimate Annual Earnings

In our prior step, we discussed how to finalize the Annual Loan Payment for each GE Program, which constitutes the numerator for both the Annual Earnings Rate and Discretionary Income Rate calculations, as illustrated below:

$$\text{Annual Earnings Rate} = \text{Annual Loan Payment} / \text{Annual Earnings}$$

$$\text{Discretionary Income Rate} = \text{Annual Loan Payment} / \text{Discretionary Income}$$

With the Annual Loan Payment in hand, all that remains is to calculate the denominator for each equation.

When determining Annual Earnings for a GE program, the Department will obtain from the Social Security Administration the most currently available mean and median annual earnings for the GE Students who completed the GE Program during the applicable cohort period, and use the higher of the mean or median annual earnings for purposes of the calculation. 34 C.F.R. 668.404(c). Thus, when computing the 2014-15 D/E rates, for example, the Department will use SSA earnings data from calendar year 2014. We've set out below a chart that illustrates the earnings data that will be used in the coming award years.

► Calendar Year Earnings Illustration

Award Year	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Calendar Yr. Earnings Data	2014	2015	2016	2017	2018	2019	2020

Because this SSA data is not (and presumably will not be) made available to the public, for each GE Program, you will have to develop a proxy for the SSA earnings information. There are a variety of ways an institution can go about estimating earnings data, and the methodology used might differ from program to program, depending on the information available. Ultimately, your institution should seek to identify and use data that is most likely to resemble that of the SSA information that will be utilized by the Department.

For example, if your institution conducts graduate surveys that include salary information, it may be that you are able to estimate the average earnings of your graduates based on actual salary data. Alternatively, you might be able to determine a reasonable average by interviewing regional employers regarding their salary practices. Faculty, staff, program advisory committees, and experienced career services personnel also may be able to provide insight into the likely average salary of new graduates in particular fields.

You also could estimate earnings using the data included with the 2012 GE Informational Rates released by the Department in connection with the 2014 negotiated rulemaking (available at <http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html>). For every GE Program (at every institution), the 2012 GE Informational Rates spreadsheet includes 2011 calendar year annual earnings data for GE Students who completed the program between October 1, 2007, and September 30, 2009, as reported by SSA. If you adjust the 2011 earnings data for each of your GE programs, taking into account occupational demand, inflation, and other relevant variables, you may be able to formulate a very reliable earnings.

(Step eight continued on next page.)

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How to Project Gainful Employment Rates

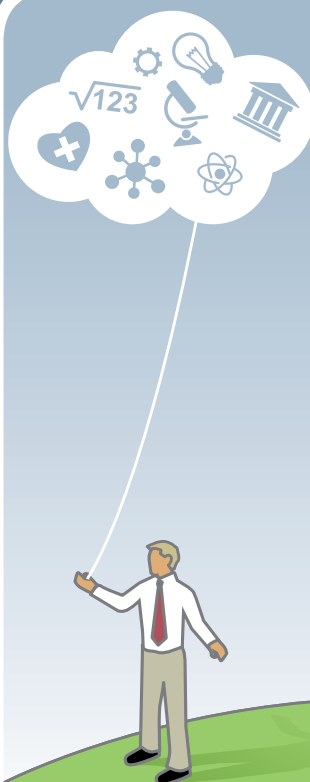
Step Eight Estimate Annual Earnings (*continued*)

estimate for use with your current projections. Note, because the Department's data also can be sorted and filtered by state, zip code, industry sector, and CIP code, an institution also can calculate average earnings for programs in a select area, for example, or national earnings information for programs offered by a certain sector. This may prove useful if there is no 2011 data for your specific GE program (e.g., because your program was only recently introduced), or if your graduate population has shifted (e.g., because you recently began offering your program online).

Institutions unable to obtain wage and salary information using the methods described above may attempt to estimate average earnings using data made available by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), or by one or more State Employment Security Agencies (regional earnings data likely will be a better proxy for actual earnings where most graduates find employment within a specific geographic area).

If your institution decides to move in this direction, your best starting point may be the O*NET Online website. This website, sponsored by the U.S. Department of Labor, Employment and Training Administration, compiles both federal and state wage data in a single location. Institutions can locate salient earnings information through the website's crosswalk page, which permits a user to search for job-specific data using a variety of inputs, including the CIP code associated with the program, or the Standard Occupational Classification ("SOC") code associated with the occupation into which most graduates' are placed.

Keep in mind, however, that earnings information generated by a government agency may not be a particularly worthy proxy for the SSA data the Department will compile for your institution. Indeed, in the preamble to the proposed rules, the Department dedicates several paragraphs to explaining why BLS salary data is *unlikely* to accurately represent the actual earnings of a GE program's graduates. 79 Fed. Reg. 64941-42. Accordingly, if you do not presently gather actual earnings data from graduates through surveys or other means, you may want to introduce a process for doing so. Although this effort may not assist you with your near-term projections, it will provide you better data for projections made in years to come. Also, if you ever intend to challenge the SSA data the Department uses in calculating your D/E rates, you likely will need salary information gathered through institutional surveys to use as the basis of your claim.

- 
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Step Nine Calculate Discretionary Income

The final step in our process involves calculating the Discretionary Income for each GE program, which constitutes the denominator of the program's Discretionary Income Rate. For each GE program, the Discretionary Income is calculated by subtracting from the program's Annual Earnings 150 percent of the Poverty Guideline for a single person residing in the continental United States, as published by the U.S. Department of Health and Human Services. The Department applies the Poverty Guideline for the calendar year immediately following the calendar year for which annual earnings are obtained. 34 C.F.R. 668.404(a)(1).

By way of example, the 2014 Poverty Guideline for a single person residing in the United States is \$11,670. (Ideally, we would use the 2015 Poverty Guideline, but it is not yet available.) Thus, to calculate the Discretionary Income for a program with an Annual Earnings of \$28,000, an institution would execute the following calculation:

$$\$28,000 - (\$11,670 \times 1.5) = \$10,495$$

The Poverty Guideline for a single person in the continental United States as published by the U.S. Department of Health and Human Services is available at <http://aspe.hhs.gov/poverty>. 34 C.F.R. 668.402. Each year, institutions will want to check this website to ensure that the most current number is being used in the school's GE projections.

► Rate Projection Template

The chart below illustrates how the various concepts discussed above might be brought together in a projections spreadsheet.

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Associate Degree Program	Projected D/E Rates for AY 14-15
Annual Earnings (Estimated)	\$28,000
Poverty Guideline x 1.5 (2014)	\$17,505
Discretionary Income (Estimated)	\$10,495

Median Loan Debt	\$11,064
Annual Interest Rate	6.8%
Repayment Period	10
Annual Loan Payment	\$1,528

Annual Earnings Rate	5.5%
AER Passing Threshold	8.0%
Discretionary Income Rate	14.6%
DIR Passing Threshold	20.0%

How to Project Gainful Employment Rates

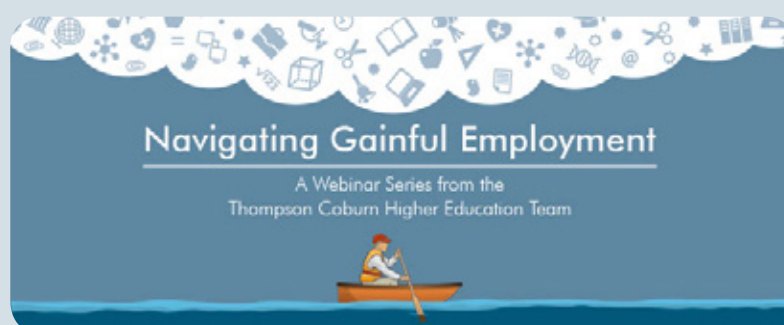
Consolidated Gainful Employment Data Timetable

On a final note, we've included below a table consolidating various data points we've discussed above, and also incorporating certain reporting and sanction timelines. We've found this useful when putting together projections, and thought you might, as well.

Award Year	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
2-Year Cohort (AY)	2010-2011 - 2011-2012	2011-2012 - 2012-2013	2012-2013 - 2013-2014	2013-2014 - 2014-2015	2014-2015 - 2015-2016	2015-2016 - 2016-2017	2016-2017 - 2017-2018
4-Year Cohort (AY)	2008-2009 - 2011-2012	2009-2010 - 2012-2013	2010-2011 - 2013-2014	2011-2012 - 2014-2015	2012-2013 - 2015-2016	2013-2014 - 2016-2017	2014-2015 - 2017-2018
Transitional Cohort (AY)	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
	Transitional rate period for programs of one year or less.						
	Transitional rate period for programs between one and two years.						
	Transitional rate period for programs of more than two years.						
Earnings Data (CY)	2014	2015	2016	2017	2018	2019	2020
Poverty Guideline	2015	2016	2017	2018	2019	2020	2021
Data Submission Due	7/31/15 & 10/1/15	10/1/2016	10/1/2017	10/1/2018	10/1/2019	10/1/2020	10/1/2021
Final Rates Released	Early 2017	Early 2018	Early 2019	Early 2020	Early 2021	Early 2022	Early 2023
					Early 2020: First-time ineligibility for GE Programs with 4 consecutive years in the Zone.		
					Early 2019: First-time warning sanctions for GE Programs with 3 consecutive years in the Zone.		
					Early 2018: First-time ineligibility for GE Programs that have failed 2 consecutive years.		
					Early 2017: First-time warning sanctions for GE Programs that fail.		

Looking for more information on the new Gainful Employment rules?

In an effort to assist institutions as they navigate the Department's gainful employment rules, Thompson Coburn's Higher Education Team offered a series of in-depth webinars in February and March of 2016, each focused on a different aspect of the gainful employment requirements. Recordings and Power Points for this five-part webinar series are free and available on demand at <http://www.thompsoncoburn.com/GEwebinarseries>.



How to Project Gainful Employment Rates

About Aaron Lacey

Aaron Lacey is a partner in Thompson Coburn's Higher Education practice, and editorial director of REGucation, the firm's postsecondary law and policy blog (available at www.thompsoncoburn.com/regucation). An experienced higher education attorney, with time served both as outside and in-house counsel, Aaron counsels clients with regard to the myriad federal, state, and accrediting agency laws and standards that govern institutions of higher education, to include requirements relating to the federal financial aid programs. Aaron also represents institutions and lenders in administrative proceedings before state agencies, accreditors, and the U.S. Department of Education, guides clients through policy creation and compliance systems design, and assists in the drafting and negotiation of a wide variety of agreements. You can find Aaron on Twitter (@HigherEdCounsel) and LinkedIn, and reach him at (314) 552-6405 or alacey@thompsoncoburn.com.

About Thompson Coburn's Higher Education Practice

Thompson Coburn deeply appreciates that institutions of higher education are complex, multi-layered organizations that contend with a wide array of legal and compliance challenges. We also understand that postsecondary institutions vary greatly by mission, organization, and structure. Such challenges — and their corresponding solutions — are informed by each institution's particular set of circumstances, including fiscal resources, labor constraints, and vulnerability to changing regulatory and political agendas.

To manage these myriad challenges effectively, postsecondary institutions of all shapes and sizes, as well as the companies that serve them, require legal counsel that can swiftly and comprehensively respond to their needs. This is especially true in the present environment, where institutions face close scrutiny from local, state, and federal entities, accreditors and, increasingly, the general public.

Thompson Coburn's higher education practice features a core group of attorneys with extensive experience managing regulatory, policy, and lobbying matters for postsecondary institutions. These industry attorneys work in concert with other members of the firm to offer our postsecondary clients insightful, creative, and efficient legal counsel across a broad range of matters.

Our litigators have defended postsecondary institutions in lawsuits and arbitrations brought by former students in multiple jurisdictions, as well as in audits, government investigations, charges brought by regulators, False Claims Act actions, and employee-related litigation. Our transactional attorneys, in turn, have assisted our higher education clients in the drafting and negotiation of a wide variety of agreements, including domestic and international articulation, consortium, licensing, marketing, and agency contracts, and in the case of institutional sales and acquisitions, stock and asset purchase agreements.

At Thompson Coburn, we are committed to assisting institutions of all types in managing their legal challenges and advancing their educational and operational missions. We understand that the higher education community is unique, and consider ourselves privileged to serve postsecondary clients on a wide variety of issues.

For a complete listing of the services we offer to our higher education clients, visit www.thompsoncoburn.com/highered

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