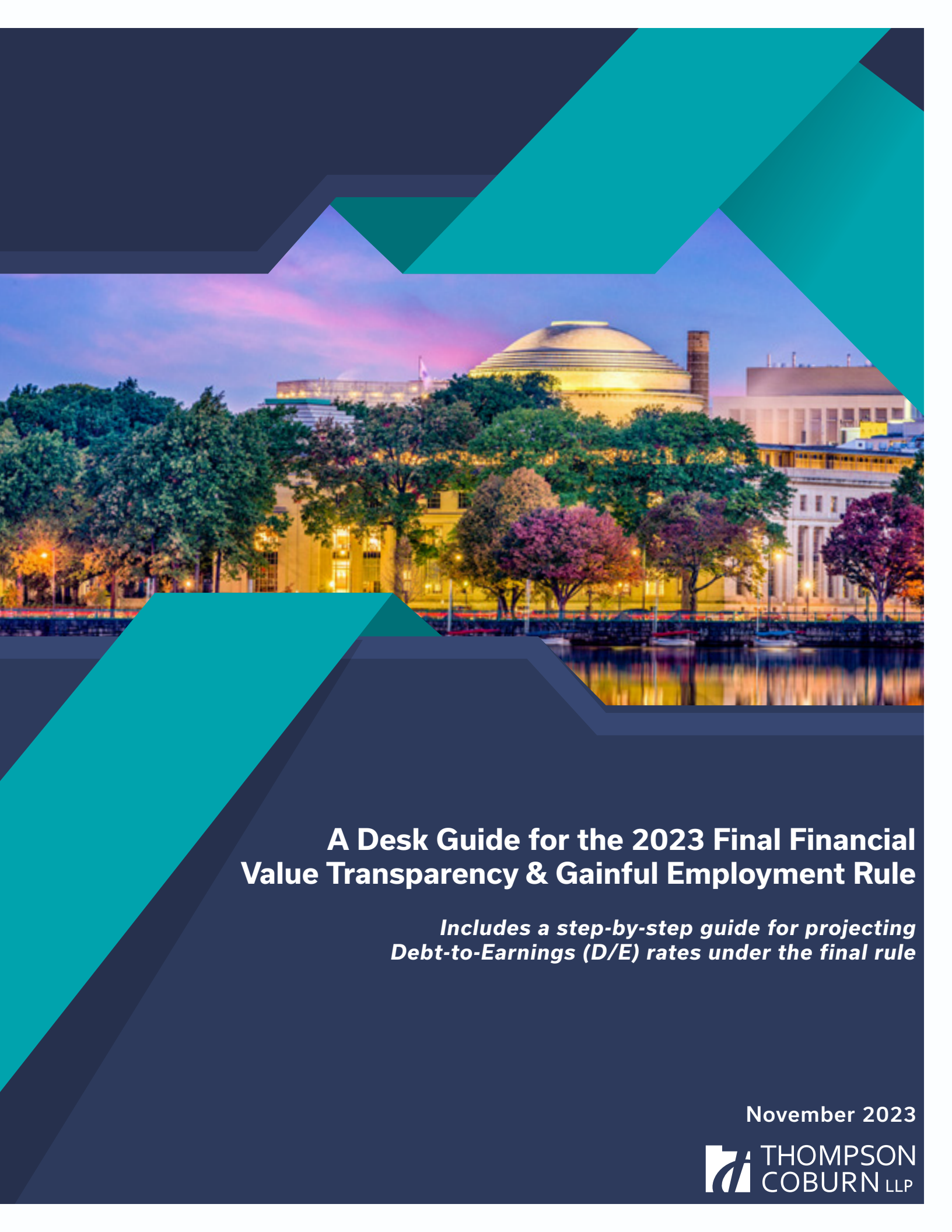
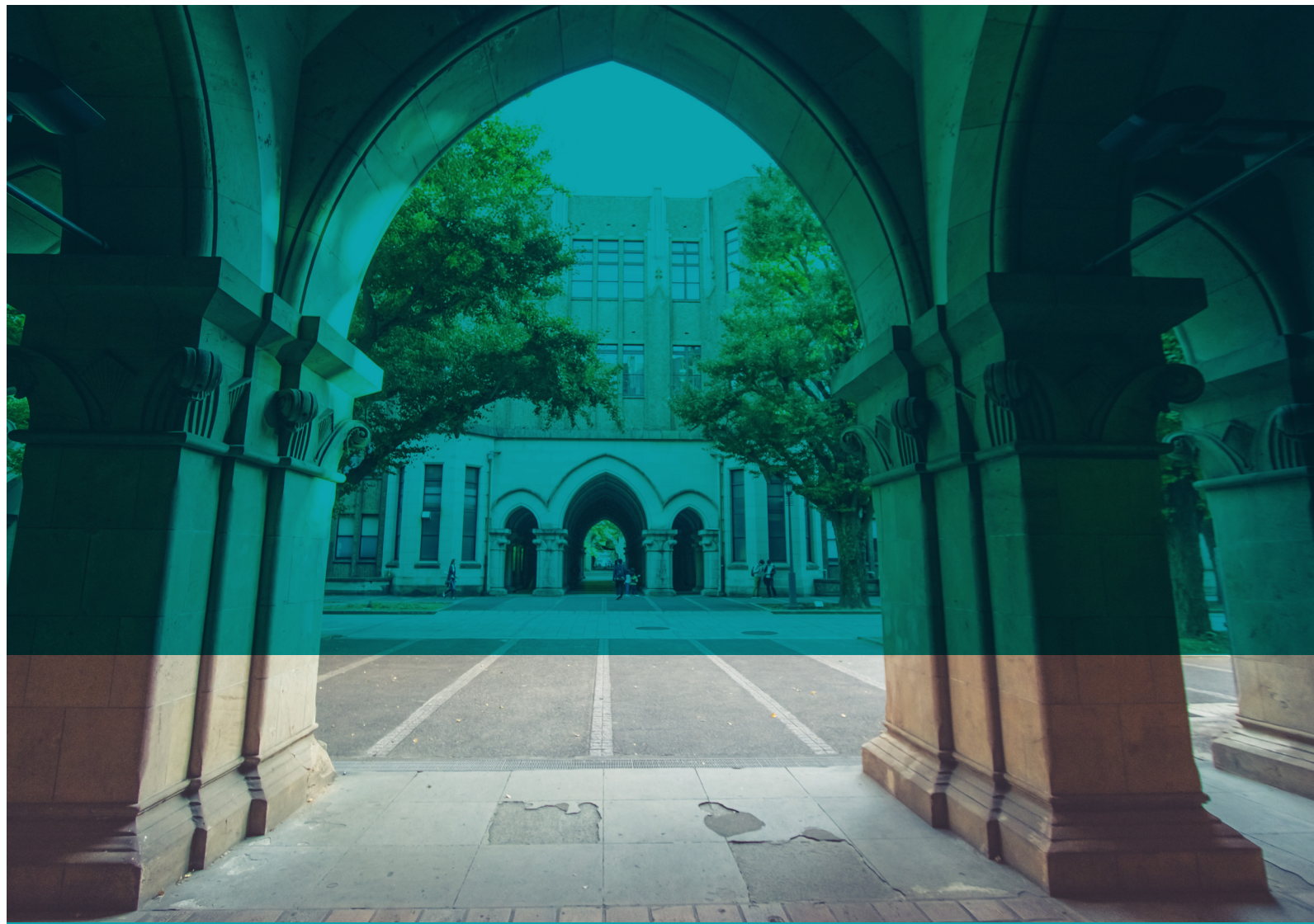




A Desk Guide for the 2023 Final Financial Value Transparency & Gainful Employment Rule

*Includes a step-by-step guide for projecting
Debt-to-Earnings (D/E) rates under the final rule*

November 2023



On October 10, 2023, the U.S. Department of Education (the "Department") published in the Federal Register its new Financial Value Transparency and Gainful Employment Rule (for simplicity, hereinafter the "GE Rule").¹ As discussed on the following pages, this rule represents the agency's third effort at installing a "gainful employment" or "GE" framework in the law. Of particular importance, this latest version of the GE Rule has been expanded to cover all Title IV-participating programs at all Title IV-participating institutions of higher education. Even institutions with high performing programs will be meaningfully impacted, as they work to satisfy the new rule's significant reporting and disclosure requirements. These efforts likely will require substantial time and cooperation across various institutional departments (e.g., financial aid, admissions, academics, and information technology). Further, to ensure that their programs avoid public designation as "low-earning" or "high-debt-burden," institutions will want to understand the Department's metrics and to develop processes that promote strong performance.

We have developed this Desk Guide to assist institutions as they seek to understand and comply with this new rule.² The Guide is divided into three parts. In Part I, we provide a brief overview of the new regulatory framework, including a discussion of reporting obligations, metrics, processes and consequences. In Part II, which is the primary focus of this Guide, we detail a **step-by-step process** institutions can follow to project debt-to-earnings ("D/E") rates under the GE Rule. Finally, in Part III, we offer guidance regarding how institutions can project an Earnings Premium for each program.

The GE Rule will not take effect until July 1, 2024, and lobbying, elections, and court challenges likely stand between the effective date and the first round of sanctions. This said, the sooner an institution is aware that it has (or may have) 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 may facilitate an institution's accompanying efforts to satisfy the significant reporting obligations present in the final regulation.

We hope you and your institution find this Desk Guide helpful as you navigate this latest version of the GE Rule. For additional assistance, you also may wish to view our two-part webinar series on the new GE Rule, which is available on our Higher Education Resources website.³ Finally, if you have questions regarding the regulation or the projection methodology contained in this Guide, please do not hesitate to reach out. Contact information for our Higher Education Practice is included at the end of the Guide.

Kind regards,



Aaron Lacey
Partner & Chair
Higher Education Practice
Thompson Coburn LLP

¹ 88 Fed. Reg. 70004 (Oct. 10, 2023).

² A previous version of this Desk Guide based on the Department's proposed version of the new GE Rule was released in July 2023. This Desk Guide replaces that prior document in its entirety.

³ The URL is www.thompsoncoburn.com/highered.

PART I: AN OVERVIEW OF THE GE RULE FRAMEWORK

From its enactment in 1965, the Higher Education Act ("HEA") has required all programs offered by proprietary institutions, and all non-degree programs offered by public and private non-profit institutions, to "prepare students for gainful employment in a recognized occupation."⁴ In 2010, the Department determined to develop a system for measuring whether programs were satisfying this "gainful employment" standard.⁵ The Department created a complex gainful employment rule that, among other things, attempted to compare the typical debt a program's graduates took on with their typical earnings after graduation. If a program's D/E rate did not consistently meet certain thresholds established by the Department, the program would lose its Title IV eligibility.

The 2010 GE Rule, the first promulgated by the Obama administration, was largely vacated by the U.S. District Court in D.C. on the grounds that the Department did not sufficiently justify certain of its proposed thresholds.⁶ In 2014, a new GE Rule was created, and again, the Court took issue with the rule, granting the plaintiff's motion for summary judgment and finding, among other things, that the Department acted arbitrarily and capriciously with respect to its overall methodology for determining typical earnings.⁷ In 2019, the Trump administration rescinded the 2014 GE Rule for myriad reasons, concluding that it relied on a D/E rate formula that was "fundamentally flawed," was "inconsistent with the requirements of currently available student loan repayment programs," and failed "to properly account for factors other than institutional or program quality that directly influence student earnings and other outcomes."⁸

The Department now resurrects the GE Rule, in its own words introducing "the most effective set of safeguards ever against unaffordable debt or insufficient earnings for postsecondary students."⁹ Notably, it is advancing this new rule despite having afforded a very brief period to negotiate the rule, and despite unified opposition from those negotiators representing institutions.¹⁰ The Department's new rule resembles the 2014 GE Rule, insofar as it still includes various metrics designed to assess whether a program offers graduates a reasonable return on their investment, as well as certification, reporting, and disclosure requirements. However, the new rule differs in many, significant ways, including:

- With limited exceptions, the Department will now calculate and disclose D/E rates and a new "Earnings Premium" for every Title IV-participating program on a new "program information website." To be clear, it is still the case that Title IV eligibility determinations will only be made for GE programs (Title IV non-degree programs offered by public and private non-profit institutions and all Title IV programs offered by proprietary institutions). But D/E rates and an Earnings Premium for non-GE programs (Title IV degree programs offered by public and private non-profit institutions) will be calculated and disclosed to prospective and current students and will be labeled "low-earning" or "high-debt-burden," per the agency's determination. Moreover, beginning on July 1, 2026, if a Title IV graduate degree program offered by a public or private non-profit institution has failing D/E rates, prospective students must acknowledge that they have reviewed the Department's new program information website before the institution may enter into an agreement to enroll the student.
- In addition to the D/E rates, the GE Rule introduces an "Earnings Premium" that also will be used to determine whether a GE program should remain eligible to participate in Title IV. Even if a GE program's D/E rates are passing, the program will still lose its Title IV eligibility if the median earnings of the program's graduates fail to consistently exceed the median earnings of young adults who have only a high school diploma.

⁴ See Pub. L. 89-329 (Nov. 8, 1965).

⁵ This decision was not made in response to any new legislation or other mandate from Congress.

⁶ See *Ass'n of Priv. Colleges & Universities v. Duncan*, 870 F. Supp. 2d 133 (D.D.C. 2012).

⁷ See *Am. Ass'n of Cosmetology Sch. v. Devos*, 258 F. Supp. 3d 50, 63 (D.D.C. 2017).

⁸ 84 Fed. Reg. 31392 (July 1, 2019).

⁹ See *Biden-Harris Administration Announces Landmark Final Rules to Protect Consumers from Unaffordable Student Debt and Increase Transparency*, U.S. DEP'T OF EDUC., PRESS RELEASE (SEPTEMBER 27, 2023).

¹⁰ The Obama administration devoted 51 hours to negotiating the 2014 GE Rule over the course of seven days and the Trump administration devoted 72 hours to negotiations over the course of nine days prior to rescinding the rule. During this most recent negotiated rulemaking for the new GE Rule, negotiators had two days to discuss the Department's proposed language. During the final tally, all six institutional representatives voted against the Department's proposal, including the negotiators representing minority-serving institutions, two-year public institutions, four-year public institutions, private non-profit institutions, financial aid administrators, and proprietary institutions.

IMPACT PROJECTIONS

In both the proposed and final GE Rule, the Department projected the impact of the new GE framework on non-GE and GE programs. The data set it uses as the basis for these projections, referred to as the “2022 Program Performance Data (2022 PPD),” is described in detail in the preamble to the final rule.¹¹ The 2022 PPD includes data assembled for all Title IV-participating programs operating “as of March 2022 that also had completions reported in the 2015–16 and 2016–17 award years (AY).” The earnings data used in the data set are based on 2018 and 2019 calendar year earnings. As acknowledged in the “[2022 Program Performance Data Description](#),” a standalone document the Department released with the proposed rule, “[t]he variables included in the 2022 PPD are constructed using different methodology than that described in the proposed regulations in several ways.” Nonetheless, this represents the most recent data for GE and non-GE programs released by the Department. The 2022 PPD data description document, as well as the dataset and a related data codebook, all are available at regulations.gov under Docket ID ED-2023-OPE-0089.¹²

In the commentary to the final rule, the Department observes that there are 123,524 non-GE programs at public or private nonprofit institutions included in the 2022 PPD.¹³ The agency projects over 820,000 students in nearly 1,500 failing non-GE programs. Specifically, the Department indicates 842 public programs (representing 555,000 students) and 640 private, non-profit degree programs (representing 264,400 students) would fail at least one of the D/E rate or Earnings Premium tests. Of these, the Department projects 390 are graduate-level, non-GE programs that would be subject to sanctions (representing 122,000 students). According to the agency, “[r]ates of not passing at least one of the metrics are particularly high for professional programs in law (CIP 22, about 19 percent of law programs representing 29 percent of enrollment in law programs), theology (CIP 39, about 7 percent, 25 percent) and health (CIP 51, about 10 percent, 19 percent).” Note that these numbers may be understated. The Department excluded 82.7% of non-GE programs from the data set because the programs had fewer than 30 students in the two-year completer cohorts. Many of these programs may be included under the new GE Rule.

In the preamble to the final rule, the Department observes that there are 32,058 GE programs included in the 2022 PPD.¹⁴ The Department projects nearly 700,000 students in 1,709 failing GE programs. The Department indicates 193 public GE programs (38,000 students), 73 private, non-profit degree programs (32,600 students), and 1,440 proprietary GE programs (620,800 students) would fail at least one of the D/E rate or Earnings Premium tests. Of the 1,440 proprietary GE programs that fail one of the two tests, 939 (65%) are undergraduate certificate programs that fail only the Earnings Premium threshold test. The highest rate of failure is in Personal and Culinary Services, where about 73% of enrolled students are in programs that would have failing metrics (primarily under the Earnings Premium). Note that here, again, the numbers may be understated. The Department excluded 87.7% of GE programs from the data set because they had fewer than 30 students in the two-year completer cohorts.

INSTITUTIONAL EXEMPTIONS

There are two institutional exemptions in the new GE Rule. First, due to data quality concerns, the Department exempts institutions “located in the Territories or freely associated states from most of the requirements in the transparency framework under subpart Q, and from the GE accountability provisions under subpart S.”¹⁵ However, such institutions will still be required to comply with reporting requirements, and the Department will calculate median debt and median earnings for their programs. Second, there is a general exemption for institutions with small program cohorts. Specifically, most elements of the GE Rule do not apply if “over the most recently completed four award years, [an institution] offered no groups of substantially similar programs, defined as all programs in the same four-digit CIP code at an institution, with 30 or more completers.”¹⁶

For all non-exempt Title IV institutions, the Department annually will calculate and disclose D/E rates and an Earnings Premium for every Title IV program, as described below.

¹¹ For the Department’s discussion of the 2022 PPD, see 88 Fed. Reg. 70122-24 (Oct. 10, 2023).

¹² Available at <https://www.regulations.gov/docket/ED-2023-OPE-0089/document>.

¹³ For the Department’s impact projections for non-GE programs, see 88 Fed. Reg. 70129-32 (Oct. 10, 2023).

¹⁴ For the Department’s impact projections for GE programs, see 88 Fed. Reg. 70132-70136 (Oct. 10, 2023).

¹⁵ 88 Fed. Reg. 70027 (Oct. 10, 2023); see also 34 C.F.R. §§ 668.401(b)(1) and 668.601(b)(1) (July 1, 2024).

¹⁶ See 34 C.F.R. §§ 668.401(b)(2) and 668.601(b)(2) (July 1, 2024).

CALCULATING D/E RATES FOR ALL TITLE IV-PARTICIPATING PROGRAMS¹⁷

Under the new rule, there are two D/E rates, each of which attempts to measure graduate debt as a percentage of post-graduation earnings: (1) the Annual D/E Rate, and (2) the Discretionary D/E Rate. The formula associated with each metric is as follows:

Annual D/E Rate	Discretionary D/E Rate
$\frac{\text{Annual Loan Payment}}{\text{Median Annual Earnings}}$	$\frac{\text{Annual Loan Payment}}{\text{Discretionary Earnings}}$

With limited exceptions, each year the Department will calculate the D/E rates for all Title IV-participating programs utilizing data obtained from institutions, the agency's systems, and a federal agency that will provide the earnings information ("Earnings Agency").¹⁸ The Department will determine whether a program "fails" the D/E rates test in any given year in accordance with the thresholds set out below:

FAIL
Annual D/E Rate is greater than 8% (or the denominator of the rate is zero and the numerator is positive) AND Discretionary D/E Rate is greater than 20% (or the income for the denominator of the rate is negative or zero and the numerator is positive)

CALCULATING AN EARNINGS PREMIUM FOR ALL TITLE IV-PARTICIPATING PROGRAMS¹⁹

With limited exceptions, each year the Department also will calculate an "Earnings Premium" for all Title IV-participating programs using the following formula:

Earnings Premium
$\text{Median Annual Earnings} - \text{Earnings Threshold}$

The Department will determine whether a program "fails" the Earnings Premium test in any given year in accordance with the following threshold:

FAIL
Earnings Premium is zero or negative

REPORTING REQUIREMENTS FOR ALL INSTITUTIONS²⁰

Under the GE Rule, all institutions will be required to report to the Department an extraordinary array of data for their Title IV-participating programs and students. A complete listing of all data elements that must be reported is contained in 34 C.F.R. § 668.408. Such data includes, for each Title IV program: the name, CIP code, credential level, and length of the program; whether the program is programmatically accredited and, if so, the name of the accrediting agency; whether the program meets licensure requirements or prepares students to sit for a licensure examination in a particular occupation for each state in the institution's metropolitan statistical area; the total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of Title IV funds; and whether the program is a Qualifying Graduate Program whose students are required to complete postgraduate training programs.²¹

¹⁷ The formulas and thresholds for D/E rates are set out at 34 C.F.R. §§ 668.401-03 (July 1, 2024).
¹⁸ Though no agency has been selected, the Department indicated in the proposed GE Rule that its current preference is the Internal Revenue Service. 88 Fed. Reg. 32328 (May 19, 2023).
¹⁹ The formulas and thresholds for the Earnings Premium are set out at 34 C.F.R. §§ 668.401-02, and 404 (July 1, 2024).
²⁰ The reporting requirements for both standard and transitional cohorts are detailed at 34 C.F.R. § 668.408 (July 1, 2024).
²¹ The GE Rule includes a new definition of "qualifying graduate program" at 34 C.F.R. § 668.2 (July 1, 2024). See Part II for additional discussion.

For each student in a Title IV program, institutions must report for the applicable award year (or years), the student's attendance dates, attendance status, enrollment status, and residency tuition status; the amount of tuition and fees assessed; the amount of institutional grants and scholarships disbursed; the amount of other state, tribal, or private grants disbursed; and the amount of any private education loans disbursed to the student for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution.

Institutions also must report additional data for each student who completed or withdrew from a Title IV program during the applicable award year (or years). This additional data includes, but is not limited to, the date the student completed or withdrew; the total amount the student received from private education loans for the program that institution is, or should reasonably be, aware of; the total amount of institutional debt the student owed any party after completing or withdrawing from the program; and the total amount of tuition and fees assessed the student for his or her entire enrollment in the program.

For programs **other** than Qualifying Graduate Programs, institutions generally will be required to report by July 1, 2024, all required data for the second through seventh award years prior to July 1, 2024. This would include data for award years 2017-2018 through 2022-2023. For Qualifying Graduate Programs, institutions generally will be required to report by July 1, 2024, all required data for the second through eighth award years prior to July 1, 2024. This would include data for award years 2016-2017 through 2022-2023. In future years, institutions would be required to annually report by October 1 all required data for the prior award year.

We strongly recommend that institutions begin developing reporting plans as early as possible. In addition, please note the following important exceptions to the general reporting framework.

First, for the first six years for which D/E rates and an Earnings Premium are calculated, institutions may elect to only report the required data for the two most recently completed award years. For the initial round of reporting, this would be award years 2022-2023 and 2023-2024. If an institution provides "transitional reporting," as it is labeled in the regulation, the Department will calculate "transitional" D/E rates and Earnings Premium measures using the median debt for individuals who completed the program during the two award years reported. As the Department observes in the commentary to the final rule, "[d]uring this transition period, changes to programs' borrowing outcomes will be reflected more rapidly in the D/E rates published by the Department." When calculating these transitional rates, the Department indicates that it will use "the earnings for six years." Though not clear, we understand this to mean that the agency will use the median earnings data for the students who completed during the standard two-year or four-year completer cohorts.

Second, only institutions "offering any group of substantially similar programs, defined as all programs in the same four-digit CIP code at an institution, with 30 or more completers in total over the four most recent award years" must comply with the noted reporting requirements.

Finally, as with prior versions of the rule, the Department appears to anticipate that some institutions may no longer have data on hand for years that exceed record retention requirements. Per the new rule, if an institution fails to report all or some of the information required, it may submit to the agency an explanation regarding why it is unable to fulfill the requirement.

PROGRAM INFORMATION WEBSITE AND NEW DISCLOSURE REQUIREMENTS

Annually, the Department will compile for each program a draft list of all students it believes graduated during the applicable cohort period (a "Completer List") and provide institutions 60 days to review and correct the list.²² The final Completer List will be sent to the Earnings Agency to obtain the Median Annual Earnings of the students on the list. Once the earnings information is received, the Department will calculate the D/E rates and Earnings Premium for each program.

²² The annual process is detailed at 34 C.F.R. § 668.405 (July 1, 2024).

As part of the new GE Rule framework, the Department will establish a new “program information website” with information about “institutions and their educational programs.”²³ Per the regulation, the website will include a wide range of data for each GE and non-GE program, including program length, cost, enrollment, median loan debt, and median earnings, as well as the program’s D/E rates and Earnings Premium, in every case as calculated and determined by the agency. The Department also may include completion, withdrawal, and loan repayment rates, among other discretionary items. In the preamble to the final rule, the Department indicates that, despite objections, it also intends to move forward with labeling programs as “low-earning” or “high-debt-burden” if they fail to meet the required thresholds.²⁴ However, it offers that it will “consider adding language to the Department’s program information website noting that the debt and earnings outcomes of programs are a subset of the myriad of factors students may consider important in deciding where to attend.”²⁵ The rule states that the Department must “establish and maintain” the new website “[b]eginning on July 1, 2026.”²⁶

For their part, institutions will be required to provide a “prominent link to, and any other needed information to access,” the Department’s disclosure website “on any webpage containing academic, cost, financial aid, or admissions information about the program or institution.” The Department may require institutions to “modify a webpage if the information is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.” In addition, institutions will be required to distribute the information needed to access the disclosure website to current Title IV recipients on a periodic basis, and to “any prospective student, or a third party acting on behalf of the prospective student, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.”

In the **commentary** to the final rule, the Department states that it has “specified that the [disclosure] requirements under § 668.43(d)... are not applicable until July 1, 2026.”²⁷ However, there does not appear to be any exemption from the disclosure requirements located in the regulatory text at 34 C.F.R. 668.43(d). Should the Department launch its program information website before July 1, 2026, we recommend that institutions consult counsel regarding whether to begin making their disclosures.

CONSEQUENCES OF FAILURE FOR NON-GE PROGRAMS

Each year, upon finalizing the D/E rates and Earnings Premium, the Department will issue a notice of determination to the institution informing it of the D/E rates and Earnings Premium measure for each program, as well as whether each program is passing or failing, and the consequences of that determination.²⁸

Beginning on July 1, 2026, if a non-GE graduate degree program (*i.e.*, a Title IV graduate degree program offered by a public or private, non-profit institution) has failing D/E rates, prospective students must acknowledge that they have reviewed the Department’s new program information website before the institution may enter into an agreement to enroll the student. The Department will “administer and collect the acknowledgment from students through the program information website.”²⁹ Prospective students will be required to provide the acknowledgement until the program has achieved passing D/E rates or three years have passed since the Department notified the institution that the program had failing D/E rates, whichever is earlier.

Significantly, in the final rule, the Department exempts non-GE undergraduate degree programs from the acknowledgement requirement, “thus avoiding undue burden for programs where prospective students may not generally apply to a particular major (but rather ‘declare’ a major after being enrolled for some time in the institution).”³⁰ The Department also has limited the acknowledgement requirement to prospective graduate students, thereby relieving concerns regarding disruptions to current graduate students. It is unclear how and to what extent institutions that do not utilize enrollment agreements would be required to comply with the acknowledgement requirement for non-GE graduate degree programs. We speculate, however, that the Department will expect prospective students to complete the acknowledgement prior to beginning their enrollment.

²³ Provisions relating to the new program information website are located at 34 C.F.R. § 668.43(d) (July 1, 2024).

²⁴ 88 Fed. Reg. 70072 (Oct. 10, 2023).

²⁵ 88 Fed. Reg. 70074 (Oct. 10, 2023).

²⁶ 34 C.F.R. § 668.43(d)(1) (July 1, 2024).

²⁷ 88 Fed. Reg. 70077 (Oct. 10, 2023).

²⁸ The provisions concerning the notice of determination are located at 34 C.F.R. § 668.406.

²⁹ 34 C.F.R. § 668.407(b)(2) (July 1, 2024).

³⁰ 88 Fed. Reg. 70076 (Oct. 10, 2023).

CONSEQUENCES OF FAILURE FOR GE PROGRAMS

The GE Rule outlines three fundamental consequences of failure for GE programs:

- **Loss of Title IV Eligibility.** A GE program becomes ineligible for federal financial aid if the program (1) fails the D/E rates test in two out of any three consecutive award years for which the program's D/E rates are calculated, **OR** (2) fails the Earnings Premium test in two out of any three consecutive award years for which the program's Earnings Premium is calculated.³¹
- **Warnings and Acknowledgements.** Beginning July 1, 2026, an institution must provide a warning to current and prospective students if its GE program could become ineligible in the next award year for which D/E rates or the Earnings Premium are calculated.³² As a practical matter, this means institutions will be required to issue warnings if a GE program fails a single year, because a GE program would be one year from potentially losing eligibility following a single failure. Among other things, the warning must inform the student that the program has not passed the Department's standards based on student debt and reported earnings, and direct the student to the Department's program information website. An institution may not sign an enrollment agreement, complete registration, enter a financial commitment with, or disburse Title IV funds to a prospective student earlier than three business days after the institution delivers the warning and until the prospective student completes an acknowledgment on the Department's website. An institution may not disburse Title IV funds to a current student until the student completes the acknowledgment on the Department's website. The GE Rule includes further, detailed instructions regarding how and when an institution must deliver the warning to current and prospective students.
- **Period of Ineligibility.** An institution "may not seek to reestablish the eligibility of a failing GE program that it discontinued voluntarily either before or after D/E rates or the Earnings Premium measure are issued for that program, or reestablish the eligibility of a program that is ineligible under the D/E rates or the Earnings Premium measure, until three years following the earlier of the date the program loses eligibility... or the date the institution voluntarily discontinued the failing program."³³ Significantly, this prohibition covers any "substantially similar program," which includes any program with "the same four-digit CIP code," even, it appears, if the two programs are offered at different credential levels.³⁴

APPEAL RIGHTS

Unlike prior versions of the GE Rule, the new regulation includes neither an opportunity for institutions to review and correct D/E rates prior to reaching determinations, nor an alternate earnings appeal. Institutions may be able to challenge the accuracy of the Department's calculations, but only in very limited circumstances.³⁵

CERTIFICATION REQUIREMENTS

As a condition of continued participation in the federal financial aid programs, an institution must certify that each GE program it offers is "approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation."³⁶ Institutions will have to make initial certifications for all GE programs by December 31, 2024, and update certifications within 10 days "if there are any changes in the approvals for a program, or other changes for a program that render an existing certification no longer accurate."

³¹ See 34 C.F.R. § 668.602 (July 1, 2024). Note that in determining a program's eligibility, the Department disregards any D/E rates or Earnings Premium calculated more than five "calculation years" prior to the year for which eligibility is being determined.

³² Warning requirements are discussed at 34 C.F.R. § 668.605 (July 1, 2024).

³³ 34 C.F.R. § 668.603(c) (July 1, 2024).

³⁴ 34 C.F.R. § 668.2 (July 1, 2024) ("Substantially similar program"). Curiously, the rule further states that the Department "presumes a program is not substantially similar to another program if the two programs have different four-digit CIP codes, but the institution must provide an explanation of how the new program is not substantially similar to the ineligible or voluntarily discontinued program..." This seems to suggest that even where a new program is radically different from an ineligible one (e.g., a certificate in cosmetology and a doctor of nursing practice), the school will have to provide the required explanation.

³⁵ See 88 Fed. Reg. 70090 (Oct. 10, 2023); see also 34 C.F.R. § 668.603(a) (July 1, 2024).

³⁶ Certification requirements are discussed at 34 C.F.R. § 668.604 (July 1, 2024).

Part II: Projecting Debt-to- Earnings Rates

Step 1: Determine the
Scope of Your Institution

Step 2: Identify your
"Programs"

**Step 3: Determining which
Students to Include in your
Base Cohort**

Step 4: Identifying the
Applicable Cohort Period

Step 5: Determining Each
Student's Loan Debt

Step 6: Calculation of the
Median Loan Debt for Each
Program

Step 7: Amortization of
the Median Loan Debt to
Determine the Annual
Loan Payment

Step 8: Annual Earnings

Step 9: Discretionary
Earnings

PART II: Projecting Debt-to-Earnings Rates

As noted in Part I, with limited exceptions, the Department annually will calculate the following two D/E rates for all Title IV-participating programs:

Annual D/E Rate	Discretionary D/E Rate
$\frac{\text{Annual Loan Payment}}{\text{Median Annual Earnings}}$	$\frac{\text{Annual Loan Payment}}{\text{Discretionary Earnings}}$

In this Part II, we set forth a nine-step process institutions can follow to project D/E rates as calculated under the GE Rule.

Before we begin, we offer a word of caution. It is not possible to project with absolute certainty whether a program will produce satisfactory D/E rates because the public does not have access to some of the data the Department will use when making its determination for each program. Most significantly, under the GE Rule, the Median Annual Earnings information for completers, which informs the denominator in each of the D/E rates, will be obtained directly from the yet-to-be-named Earnings Agency. This having been said, the steps set forth below should help institutions project whether programs will pass easily, will come close, or will likely fail.



Part II: Projecting Debt-to- Earnings Rates

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STEP ONE: DETERMINE THE SCOPE OF YOUR INSTITUTION

When the Department calculates D/E rates, it does so for each 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 is first 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 organization may operate more than one OPE ID. For example, assume a local college merged into a large university, but the college retained 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. In this example, 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 independent identity. If, as part of the transaction, the college’s OPE ID was retired 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 projecting 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.



Part II: Projecting Debt-to- Earnings Rates

Step 1: Determine the
Scope of Your Institution

**Step 2: Identify your
"Programs"**

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STEP TWO: IDENTIFY YOUR "PROGRAMS"

Once you have confirmed the scope of your institution (*i.e.*, your OPE ID), you'll need to identify each 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.

Because under its "financial value transparency framework" the Department will use the same methodology to calculate D/E rates for both GE programs and non-GE programs, we use the term "Program" in this Desk Guide to cover both. To be clear, the GE Rule does not define the term "Program" – that is our defined term. The GE Rule does, however, include definitions for "gainful employment program" and "eligible non-GE program," respectively.³⁷ Both are defined as an educational program included in an institution's participation in the Title IV Programs, identified by a combination of (1) OPE ID, (2) credential level, and (3) six-digit CIP code.³⁸

For purposes of this analysis, we are assuming that you are projecting D/E 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 Program from another within your OPE ID are the credential level and the six-digit CIP code assigned to the program. In the definition of "Credential level" found in 34 C.F.R. § 668.2, the Department identifies the following eight credential levels:

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

If your institution offers more than one educational 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 educational 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 six-digit CIP Code, when projecting your D/E rates, *the programs with identical CIP codes will be consolidated.*

Indeed, neither the name of the educational program, nor the location where it is offered, is relevant to the Department. An institution could be required to combine its two graduate certificate programs even if they have different names *and* they 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 "Program" and will consolidate them when calculating D/E rates.

³⁷ See 34 C.F.R. § 668.2 (July 1, 2024).

³⁸ Every Title IV program has a Classification of Instructional Program code or "CIP" code. It is derived from the system of instructional program classifications and descriptions developed by the Department's National Center for Education Statistics.

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STEP THREE: DETERMINING WHICH STUDENTS TO INCLUDE IN YOUR COHORT

Having identified your OPE ID and isolated the Programs offered within that OPE ID (steps one and two in our process), you now are ready to determine the students who will be included in each 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” a non-GE or GE Program.³⁹ 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.

When determining which students to include in your cohort, you will eliminate students who did not receive *any* Title IV funds for enrolling in the Program. In addition, pursuant to § 668.403(e), you also will exclude from your cohort any student satisfying one or more of the following criteria:

1. One or more of the student’s Direct Loans are under consideration by the Department, or have been approved, for a discharge on the basis of the student’s total and permanent disability;
2. The student was enrolled full time in any other eligible Program at the institution or at another institution during the calendar year for which the Department obtains earnings information;
3. For undergraduate Programs, the student completed a higher credentialed undergraduate Program at the institution subsequent to completing the Program as of the end of the most recently completed award year prior to the calculation of the D/E rates;
4. For graduate Programs, the student completed a higher credentialed graduate Program at the institution subsequent to completing the Program as of the end of the most recently completed award year prior to the calculation of the D/E rates;
5. The student is enrolled in an approved prison education program;
6. The student is enrolled in a comprehensive transition and postsecondary program; or
7. The student died.

Any student who received Title IV funds for enrolling in his or her Program, and who does not fall into one of the excluded categories detailed above, would be eligible to be included in the cohort for the Program (a “Student”), provided he or she completed the program during the applicable cohort period.

³⁹ 34 C.F.R. § 668.2 (July 1, 2024).

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STEP FOUR: IDENTIFYING THE APPLICABLE COHORT PERIOD⁴⁰

As noted in the prior step, the D/E rates for each Program are based on the debt and earnings data for Students who completed the Program *during the applicable cohort period*. In order to finalize the cohort for your Programs, you first will need to determine whether to use a two-year cohort period or a four-year cohort period for each Program (the only two options). The rule is straightforward. Use the two-year cohort period when the number of Students completing the Program during the two-year cohort period is 30 or more. Use the four-year cohort period when the number of Students completing the Program in the two-year cohort period is fewer than 30.

Next, you will have to determine the specific award years that comprise the applicable cohort period. The Department defines the two-year cohort period as the third and fourth award years prior to the year for which the most recent earnings data are available “from the Federal agency with earnings data at the time the D/E rates and Earnings Premium measure are calculated.” The four-year cohort period, in turn, is defined as the third, fourth, fifth, and sixth award years prior to the award year for which the most recent earnings data are available.

In the commentary to the proposed rule, the Department indicated that “given current data production schedules” the initial D/E rates and Earnings Premium “would be calculated in late 2024 or early in 2025.”⁴¹ With this in mind, the agency observed that the two-year cohort period would be comprised of qualified completers who completed in “award years 2017–2018 and 2018–2019” using their earnings data measured in calendar years 2021 and 2022, as applicable. The Department confirmed these timetables in the final rule, observing “[t]he first official rates published under these regulations will, for most programs, be based on students who completed a program in award years 2018 and 2019, measuring their earnings outcomes in 2021 and 2022.”⁴²

Let us assume then that you are projecting D/E rates for award year 2024–2025 (the first full award year following the effective date of the rule). If, after applying all the exclusions discussed in step three, 30 or more Students completed your Program during award years 2017–2018 and 2018–2019, then 2017–2018 and 2018–2019 would comprise the applicable two-year cohort period for the Program. If, however, fewer than 30 Students completed your Program during award years 2017–2018 and 2018–2019, then you would have to expand the cohort period for the Program to include the applicable four award years: 2015–2016, 2016–2017, 2017–2018, and 2018–2019.

If, for any given award year, 30 or more 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 that award year.⁴³ However, for purposes of this projection 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.

⁴⁰ Details concerning the determination of cohort periods are found in the definition of that term, located at 34 C.F.R. § 668.2 (July 1, 2024).

⁴¹ 88 Fed. Reg. 32329 (May 19, 2023).

⁴² 88 Fed. Reg. 32329 (May 19, 2023).

⁴³ See 34 C.F.R. § 668.403(f)(1) (July 1, 2024). The Department also will decline to calculate D/E rates if the Earnings Agency does not provide the median earnings for the program.

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QUALIFYING GRADUATE PROGRAMS⁴⁴

Under the new GE Rule, the two- and four-year cohort periods must be adjusted for Qualifying Graduate Programs, which are programs in fields for which graduates must complete required postgraduation training to obtain licensure (e.g., medicine, osteopathy, dentistry, clinical psychology). For Qualifying Graduate Programs only, the two-year cohort period will be the sixth and seventh award years prior to the calendar year for which the most recent earnings data are available, and the four-year cohort period will be the sixth, seventh, eighth, and ninth award years prior to the calendar year for which the most recent earnings data are available. If you are projecting D/E rates in award year 2024-2025 for such a Program, the two-year cohort period would be comprised of award years 2014-2015 and 2015-2016, and the four-year cohort period would be award years 2012-2013, 2013-2014, 2014-2015, and 2015-2016.

TRANSITIONAL COHORTS⁴⁵

As discussed in Part I of the Guide, for the first six years for which D/E rates and the Earnings Premium are calculated, institutions may elect to only report the required data for the two most recently completed award years. For the initial round of reporting, this would be award years 2022-2023 and 2023-2024. If an institution elects transitional reporting, the Department will calculate transitional D/E rates and Earnings Premiums "using the median debt for the period reported." In other words, instead of using cost and debt data for students who completed in award years 2017-2018 and 2018-2019, which would be the standard two-year cohort, the Department would use cost and debt data for students who completed in award years 2022-2023 and 2023-2024.

Our suggestion is that, when modeling D/E rate performance, schools consider projecting rates using both the standard and transitional cohorts, which will provide useful data as they develop reporting and compliance strategies. Below, we have included a chart that sets out the standard and transitional cohort periods for the initial round of calculations.

Cohort Period	Periods for First Year Calculations Standard Cohorts			Periods for First Year Calculations Transitional Cohorts	
	Award Years (AY) used for Cost/Debt: Standard Programs	Award Years (AY) used for Cost/Debt: Qualifying Graduate Programs	Calendar Years (CY) used for Earnings	Award Years (AY) used for Cost/Debt	Calendar Years (CY) used for Earnings
2-Year Cohort	2018-2019 2017-2018	2015-2016 2014-2015	2022 2021	2023-2024 2022-2023	2022 2021 2020 2019
4-Year Cohort	2018-2019 2017-2018 2016-2017 2015-2016	2015-2016 2014-2015 2013-2014 2012-2013	2022 2021 2020 2019		

⁴⁴ The new definition of "qualifying graduate program" is located at 34 C.F.R. § 668.2 (July 1, 2024). Note that the process for determining which programs satisfy this definition changes slightly following the first three award years for which the Department calculates D/E rates.

⁴⁵ See 4 C.F.R. § 668.408(c) (July 1, 2024).

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STEP FIVE: DETERMINING EACH STUDENT'S LOAN DEBT

Once you have determined the applicable cohort period for each Program for which you are projecting rates, you will be able to identify the universe of Students who will be included in each Program's cohort. With this data in hand, you are 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) net direct costs.⁴⁶ Thus, for each Student, you will have a choice to make regarding which number to include when calculating the median loan debt for the cohort. Keep in mind that the lesser number may vary from Student to Student, depending on his or her personal circumstances.

Under the GE Rule, when calculating each Student's actual loan debt, you will need to include any debt that falls into the following three categories:⁴⁷

- Any Direct Loans that the Student borrowed (total amount disbursed less any cancellations or adjustments except for those related to false certification, borrower defense discharges, or categorical debt relief initiated under the Secretary's statutory authority) for enrollment in the Program, excluding Direct PLUS Loans made to parents of dependent Students and Direct Unsubsidized Loans that were converted from TEACH Grants; **AND**
- Any private education loans as defined in 34 C.F.R. § 601.2,⁴⁸ including private education loans made by the institution, that the Student borrowed for enrollment in the Program and that are required to be reported to the Department under the GE framework; **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 Program attended at the institution that the Student is obligated to repay after completing the Program, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term "private education loan" in 34 C.F.R. § 601.2.

When calculating net direct costs for each Student, you will need to include the following amounts:

- The total amount for tuition and fees; **AND**
- The total amount of the allowances for books, supplies, and equipment included in the Student's Title IV Cost of Attendance ("COA") for each award year in which the Student was enrolled in the Program, or a higher amount if assessed the Student by the institution for such expenses; **LESS**
- The amount of institutional grant or scholarship funds provided to the Student.⁴⁹

⁴⁶ Details regarding the calculation of debt and costs for each Student are found at 34 C.F.R. § 668.403(b)(1)(i) (July 1, 2024).

⁴⁷ See 34 C.F.R. § 668.403(d) (July 1, 2024).

⁴⁸ Pursuant to 34 C.F.R. § 601.2, a "private education loan" includes any "loan provided by a private educational lender that is not a Title IV loan and that is issued expressly for postsecondary education expenses to a borrower, regardless of whether the loan is provided through the educational institution that the student attends or directly to the borrower from the private educational lender." The term excludes an "extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling" or an "extension of credit in which the educational institution is the lender if (i) the term of the extension of credit is 90 days or less; or (ii) an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments."

⁴⁹ 34 C.F.R. § 668.2 (July 1, 2024) defines "institutional grants and scholarships" as "[a]ssistance that the institution or its affiliate controls or directs to reduce or offset the original amount of a student's institutional costs and that does not have to be repaid. Typically, an institutional grant or scholarship includes a grant, scholarship, fellowship, discount, or fee waiver."

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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 net direct 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/net direct costs incurred by the Student for attendance in the institution’s undergraduate Programs will be attributed to the highest credentialed undergraduate Program subsequently completed by the Student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates.⁵⁰ Similarly, all of the actual loan debt/net direct costs incurred by a Student for attendance in any graduate Programs will be attributed to the highest credentialed graduate Program subsequently completed by the Student at the institution as of the end of the most recently completed award year prior to the calculation of the D/E rates.⁵¹

The second wrinkle involves Students with no loan debt. Recall that for purposes of calculating D/E rates, the Department will only include students “who received Title IV, HEA program funds for enrolling in” the applicable Program.⁵² Notably, this will include individuals who receive only Pell grants and other grants under Title IV, even if they did not receive any loans. Thus, it is possible that you may have Students properly included in your cohort who have no associated loan debt.

Finally, as a general rule, the Department will exclude any loan debt incurred by a 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 Programs at other institutions if your institution and the “other” institutions are under common ownership or control, as determined by the agency.⁵³ We expect that in the coming months and years the Department will establish parameters for the exercise of this discretion.

⁵⁰ 34 C.F.R. § 668.403(d)(2)(i) (July 1, 2024).

⁵¹ 34 C.F.R. § 668.403(d)(2)(ii) (July 1, 2024).

⁵² 34 C.F.R. § 668.2 (July 1, 2024).

⁵³ 34 C.F.R. § 668.403(d)(3) (July 1, 2024).



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STEP SIX: CALCULATION OF THE MEDIAN LOAN DEBT FOR EACH PROGRAM

At this point in the process, for each Program you should have a list of the 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 net direct cost). You now are prepared to determine the median loan debt for the cohort that will be used in your D/E rate projection. 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 this idea:

Program Cohort			
Student Number	Actual Debt	Net Direct Costs	Lesser of Debt/Cost
Student 12	\$0	\$60,000	\$0
Student 10	\$0	\$80,000	\$0
Student 2	\$5,000	\$80,000	\$5,000
Student 13	\$30,000	\$25,000	\$25,000
Student 7	\$50,000	\$45,000	\$45,000
Student 6	\$50,000	\$45,000	\$45,000
Student 11	\$50,000	\$80,000	\$50,000

The median loan debt for the Program cohort set out above is the highlighted value: \$25,000. 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 individuals 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.



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STEP SEVEN: AMORTIZATION OF THE MEDIAN LOAN DEBT TO DETERMINE THE ANNUAL LOAN PAYMENT⁵⁴

The final step in determining the numerator for your D/E rates is to amortize the median loan debt for each Program over a 10-, 15-, or 20-year repayment period. Under the GE Rule, the credential level of the Program determines the repayment period. A ten-year repayment period will be used for Programs that lead to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate. Fifteen years will be used for Programs that lead to a bachelor’s degree or a master’s degree. And twenty years will be used for any other Program.

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 rates applicable to undergraduate students that were in effect during the three consecutive award years ending in the final year 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 rates applicable to graduate students that were in effect during the three consecutive award years ending in the final year of the cohort period.
- For bachelor’s degree Programs, the Department will use the average of the Federal Direct Unsubsidized Loan interest rates applicable to undergraduate students that were in effect during the six consecutive award years ending in the final year 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 rates applicable to graduate students that were in effect during the six consecutive award years ending in the final year of the cohort period.

By way of example, assume you were projecting the D/E rates for the 2024-25 award year for a bachelor’s degree Program using a two-year cohort period, such that the applicable cohort period was award years 2017–2018 and 2018–2019. The repayment period would be fifteen years (because the credential level is a bachelor’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 2013–2014 through 2018–2019 (*i.e.*, the six consecutive award years ending in 2018–2019).

⁵⁴ Provisions relating to the amortization of the median loan debt are located at 34 C.F.R. § 668.403(b) (July 1, 2024).



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Over the last decade, the historic fixed interest rates for graduate and undergraduate Direct Unsubsidized Loans are as follows:⁵⁵

First Disbursement Date	Undergraduate	Graduate or Professional
7/1/22–6/30/23	4.99%	6.54%
7/1/21–6/30/22	3.73%	5.28%
7/1/20–6/30/21	2.75%	4.30%
7/1/19–6/30/20	4.53%	6.08%
7/1/18–6/30/19	5.05%	6.6%
7/1/17–6/30/18	4.45%	6%
7/1/16–6/30/17	3.76%	5.31%
7/1/15–6/30/16	4.29%	5.84%
7/1/14–6/30/15	4.66%	6.21%
7/1/13–6/30/14	3.86%	5.41%
7/1/06–6/30/13	6.8%	6.8%

Based on the data above, the average of the interest rates used for undergraduate Federal Direct Unsubsidized Loans for award years 2013–2014 through 2018–2019 is 4.35%.⁵⁶

Once you have determined the applicable repayment period and interest rate for each of your Programs, you will have all the data points you need to calculate each Program's Annual Loan Payment. Specifically, you will determine the monthly loan payment associated with each Program using the monthly amortization formula and associated values set forth below, then multiply the monthly payment by twelve to determine the Annual Loan Payment.

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

A = monthly loan payment

P = median loan debt for the 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)

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

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

⁵⁵ See *Previous Years' Interest Rates*, U.S. DEP'T EDUC., available at <https://studentaid.gov/understand-aid/types/loans/interest-rates#older-rates>.

⁵⁶ (3.86% + 4.66% + 4.29% + 3.76% + 4.45% + 5.05%) / 6 = 4.35%.

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

D = median loan debt for the Program

I = annual interest rate

Y = number of years for repayment

If you are projecting the Annual Loan Payment for an undergraduate bachelor's program for the 2024-2025 award year, and the median loan debt for the Program is \$25,000, the values for your calculation would be as follows:

D = \$25,500

I = 4.35%

Y = 15

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

$$\text{Annual Loan Payment} = 12 * (25000 * ((0.0435/12) * ((1 + (0.0435/12))^{(15*12)})) / ((1 + (0.0435/12))^{(15*12)} - 1))$$

The calculation, once performed, yields an Annual Loan Payment of \$2,272. You now have the numerators for your two D/E rate calculations, and are ready to move to the final steps of the projection process.



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STEP EIGHT: ANNUAL EARNINGS

In our prior step, we discussed how to finalize the Annual Loan Payment for each Program, which constitutes the numerator for both Annual D/E Rate and Discretionary D/E Rate calculations. With the Annual Loan Payment in hand, all that remains is to calculate the denominator for each equation.

In order to determine the Median Annual Earnings for each Program, the Department will obtain from the Earnings Agency "the most currently available median annual earnings of the students who completed the program during the cohort period and who are not excluded..."⁵⁷ Each year the Department will take the Completer List and send it to the Earnings Agency requesting the median for the cohort. The Earnings Agency will retrieve the reported earnings for each Student on the Completer List for the calendar year that is approximately three years following the award year during which the Student graduated.

Recall our example above, in which you were projecting the D/E rates for the 2024-25 award year for a bachelor's degree Program using a two-year cohort period, such that the applicable cohort period was award years 2017-2018 and 2018-2019. For this Program, we anticipate that the Completer List would include some Students who graduated in 2017-2018, and some who graduated in 2018-2019. For the Students who graduated in 2017-2018, the Earnings Agency would retrieve income reported for calendar year 2021, and for those who graduated in 2018-2019, the Earnings Agency would retrieve income reported for calendar year 2022.⁵⁸ Thus, the interval between the award year of graduation and the calendar year for which earnings are calculated would be approximately the same for every Student. The graphic below illustrates this relationship between the award years of graduation and the calendar year for which earnings would be retrieved.

Award Year During Which Students Graduate	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Calendar Year Earnings Data	2019	2020	2021	2022	2023	2024

If the Earnings Agency is unable to match one or more of the Students on the Completer List, the Department would exclude from the median debt calculation the same number of Students with the highest loan debts as the number of Students whose earnings could not be matched.⁵⁹ Also, if the Earnings Agency ultimately is unable to retrieve earnings for at least 30 Students on the Completer List, the Department would not calculate D/E rates or an Earnings Premium for the Program.⁶⁰

Because the Median Annual Earnings for each program will not be made available to schools prior to the issuance of the D/E rates, for these projections you will have to develop a proxy for the 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.

⁵⁷ 34 C.F.R. § 668.404(b) (July 1, 2024). Though no agency has presently been selected, the Department indicates that its current preference is the Internal Revenue Service. See 88 Fed. Reg. 32328 (May 19, 2023).

⁵⁸ We observe that this is a significant change from prior versions of the GE Rule, which calculated D/E rates using the earnings from the same calendar year for all students in cohort, without regard to their award year of graduation.

⁵⁹ "For example, if the Federal agency with earnings data is unable to match three students out of 100 students, the Secretary orders by amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts." 34 C.F.R. § 668.405(d)(2) (July 1, 2024).

⁶⁰ See 34 C.F.R. § 668.403(d) (July 1, 2024).

Part II: Projecting Debt-to- Earnings Rates

Step 1: Determine the
Scope of Your Institution

Step 2: Identify your
“Programs”

Step 3: Determining which
Students to Include in your
Base Cohort

Step 4: Identifying the
Applicable Cohort Period

Step 5: Determining Each
Student’s Loan Debt

Step 6: Calculation of the
Median Loan Debt for Each
Program

Step 7: Amortization of
the Median Loan Debt to
Determine the Annual
Loan Payment

Step 8: Annual Earnings

Step 9: Discretionary
Earnings

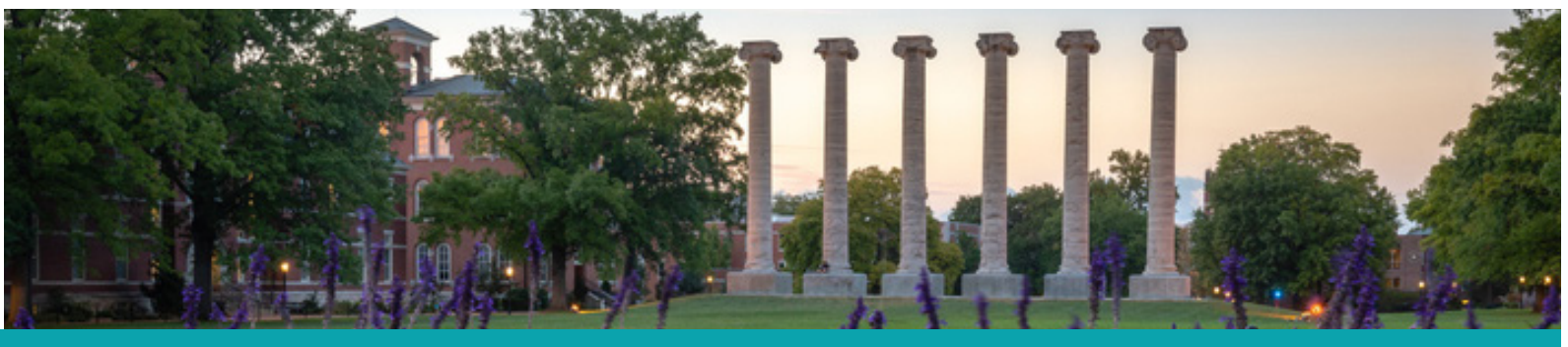
If your institution conducts graduate surveys that include salary information, it may be that you are able to estimate the typical earnings of your graduates based on actual salary data. Alternatively, you might be able to determine typical earnings by interviewing regional employers regarding their salary practices. Faculty, staff, program advisory committees, and experienced career services personnel also may be able to provide insight into the typical salary of graduates in particular fields. This having been said, we remind you that a Program’s Annual Earnings number will incorporate earnings data for *all* graduates in the applicable cohort, including, for example, those who are not working or who may underreport their income. We recommend that institutions take a very conservative approach, and remember to factor in earnings for all graduates when you estimate your median, not just those who are successfully employed and accurately reporting their earnings.

You also could estimate earnings using the data that was prepared and released by the Department in connection with the 2022 PPD.⁶¹ As noted in Part I of this Desk Guide, this data set includes median earnings for all Title IV-participating programs operating “as of March 2022 that also had completions reported in the 2015–16 and 2016–17 award years.” The earnings data used in the data set are based on 2018 and 2019 calendar year earnings and represents the most recent earnings data for Programs released by the Department.

Institutions may want to inform their median earnings determination using data made available by the [U.S. Department of Labor, Bureau of Labor Statistics](#), or by one or more [State Employment Security Agencies](#) (regional earnings data may 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. Take a conservative approach when interpreting this data, and be mindful regarding the impact of geography, market events, and graduate behavior, among other factors, when estimating your Program median.

Finally, 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 earnings 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.

⁶¹ For the Department’s discussion of the 2022 PPD, see 88 Fed. Reg. 70122-24 (Oct. 10, 2023).



Part II: Projecting Debt-to- Earnings Rates

Step 1: Determine the Scope of Your Institution

Step 2: Identify your "Programs"

Step 3: Determining which Students to Include in your Base Cohort

Step 4: Identifying the Applicable Cohort Period

Step 5: Determining Each Student's Loan Debt

Step 6: Calculation of the Median Loan Debt for Each Program

Step 7: Amortization of the Median Loan Debt to Determine the Annual Loan Payment

Step 8: Annual Earnings

Step 9: Discretionary Earnings

STEP NINE: DISCRETIONARY EARNINGS

The final step in our process involves calculating the Discretionary Earnings for each Program, which constitutes the denominator of the Program's Discretionary D/E Rate. For each Program, the Discretionary Earnings are calculated by subtracting from the Annual Earnings figure 150% of the Poverty Guideline for a single person in the continental United States, as published by the U.S. Department of Health and Human Services. The Department will use the Poverty Guideline for the most recent calendar year for which annual earnings are obtained.⁶²

By way of example, the 2022 Poverty Guideline for a single person residing in the United States was \$13,590. Thus, to determine the Discretionary Earnings for a Program with an Annual Earnings of \$40,000, an institution would complete the following calculation:

$$\$40,000 - (\$13,590 \times 1.5) = \$19,615$$

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

RATE PROJECTION TEMPLATE

The following chart gathers together all of the information for our hypothetical bachelor's degree Program. Recall that for this Program, the Median Debt was \$25,000, which resulted in an Annual Loan Repayment of \$2,272. We have estimated for purposes of our calculation that the Median Annual Earnings is \$40,000. If we apply the appropriate Repayment Period (15 years), Average Interest Rate (4.35%), and Poverty Guideline (\$13,590), we project an Annual D/E Rate of 5.7% and a Discretionary D/E Rate of 11.6%, which pass the new GE Rule thresholds of 8% and 20%.

2024-2025 D/E Rate Projections for a Bachelor's Degree Program	
Median Annual Earnings (Estimated)	\$40,000.00
Poverty Guideline * 1.5 (2022)	\$20,385.00
Discretionary Earnings (Estimated)	\$19,615.00
Median Debt	\$25,000.00
Annual Interest Rate	4.35%
Repayment Period	15
Annual Loan Payment	\$2,272
Annual D/E Rate Projection	5.7%
Discretionary D/E Rate Projection	11.6%

⁶² See 34 C.F.R. § 668.403(a)(1) (July 1, 2024).

PART III: Projecting Earnings Premiums

As you will recall from Part I of this Desk Guide, with limited exceptions, each year the Department will also calculate an “Earnings Premium measure” for all Title IV-participating programs. The Earnings Premium will be calculated using the following formula:

Earnings Premium
Median Annual Earnings – Earnings Threshold

The Earnings Premium for each Program is simply the amount by which the Program’s Median Annual Earnings exceed the Earnings Threshold.⁶³

In Step Eight of Part II, above, we offer suggestions for how an institution might project the Median Annual Earnings for each Program. Because, under the GE Rule, the same Median Annual Earnings figure is used in both the D/E rates calculations and the Earnings Premium calculation, the suggestions in Step Eight of Part II can be used to determine a Median Annual Earnings for your Earnings Premium projections.

In the GE Rule, the Earnings Threshold is defined as “[b]ased on data from the Census Bureau, the median earnings for working adults aged 25-34, who either worked during the year or indicated they were unemployed (i.e., not employed but looking for and available to work) when interviewed, with only a high school diploma (or recognized equivalent) (1) In the State in which the institution is located; or (2) Nationally, if fewer than 50 percent of the students in the program are from the State where the institution is located, or if the institution is a foreign institution.”⁶⁴ The Department indicates in the regulatory text that each year it will publish the applicable Earnings Thresholds “through a notice in the Federal Register.”⁶⁵

Though we cannot predict the Earnings Thresholds for future years, we do have access to the various thresholds that the Department included with the 2022 PPD data set and used as the basis for its impact projections. The data documents accompanying the proposed GE Rule indicate that the national Earnings Threshold used by the Department was \$25,453, which represents the “[m]edian earnings for a high school graduate without postsecondary education (age 25-34) that is currently in the labor force in the US, according to 2019 American Community Survey (ACS) and Puerto Rico Community Survey (PRCS) 5-year estimates. Weighted with perwt.”⁶⁶ The Earnings Threshold used by the Department for each State is detailed in *Table 4.1-Earnings Thresholds by State, 2019*, which is set forth in the final rule commentary.⁶⁷

Using the Median Annual Earnings calculated under Step Eight of Part II, above, and the Earnings Thresholds included with the GE Rule, institutions should be able to determine generally whether the Earnings Premium test is likely to present a challenge for their Programs.

⁶³ See 34 C.F.R. § 668.2 (July 1, 2024).

⁶⁴ 34 C.F.R. § 668.2 (July 1, 2024).

⁶⁵ 34 C.F.R. § 668.404(b)(3) (July 1, 2024).

⁶⁶ *GE Data 2* - Data Codebook*, available at <https://www.regulations.gov/docket/ED-2023-OPE-0089/document>.

⁶⁷ 88 Fed. Reg. 70125 (Oct. 10, 2023).



INQUIRIES

Institutions with questions regarding the GE Rule discussed in this document are welcome to contact Aaron Lacey at alacey@thompsoncoburn.com or Hope Watson at hwatson@thompsoncoburn.com. Aaron Lacey is the Chair of Thompson Coburn LLP's Higher Education practice, host of the firm's popular Higher Education Webinar Series, and editorial director of [REGucation](#), the firm's higher education law and policy blog. Hope is an attorney in the Higher Education practice who works on regulatory and corporate matters for postsecondary institutions, and has a particular focus on the proposed Financial Value Transparency and Gainful Employment rule.

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CHICAGO

55 East Monroe Street
37th Floor
Chicago, IL 60603
312 346 7500

DALLAS

2100 Ross Avenue
Suite 3200
Dallas, TX 75201
972 629 7100

LOS ANGELES

10100 Santa Monica Boulevard
Suite 500
Los Angeles, CA 90067
310 282 2500

NEW YORK

488 Madison Avenue
New York, NY 10022
212 478 7200

SOUTHERN ILLINOIS

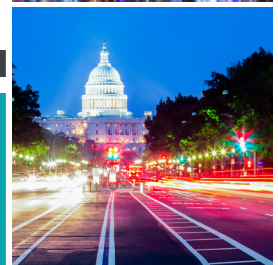
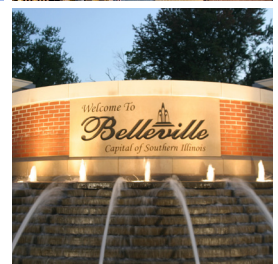
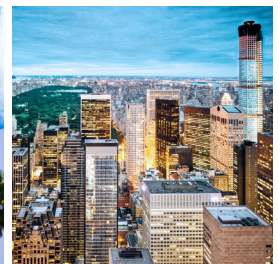
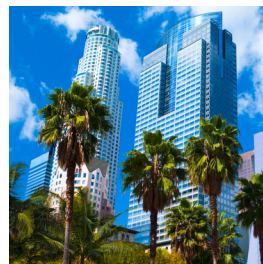
525 West Main Street
Suite 300
Belleville, IL 62220
618 277 4700

ST. LOUIS

One US Bank Plaza
St. Louis, MO 63101
314 552 6000

WASHINGTON, D.C.

1909 K Street, N.W.
Suite 600
Washington, D.C. 20006
202 585 6900



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