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

Appendix A - Regulatory Impact Analysis

Introduction

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

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

This Regulatory Impact Analysis is divided into the following sections:

I. Student Demographics
II. Review of Submitted Analyses
III. Summary of Changes from the NPRM
IV. Analysis of Final Regulations
V. Discussion of Costs and Benefits
VI. Paperwork Burden Costs
VII. Net Budget Impacts
VIII. Alternatives Considered
IX. Final Regulatory Flexibility Analysis.

I. Student Demographics

Several commenters discussed the potential effect of the regulations on low-income, minority, female, and first-generation students. As indicated in the NPRM and the submitted comments, the average share of Pell recipients and minority students is higher in the for-profit sector than the public and nonprofit sectors. Many supporters of the regulations point to the high concentration of disadvantaged students in gainful employment programs in certain sectors as a reason the regulations are needed to protect disadvantaged students. Conversely, many opponents of the regulations believe student access to education for disadvantaged students would be threatened by the loss of eligibility of programs serving them.

Several commenters observed a link between the demographics of an institution's student population and either its repayment rate or debt-to-earnings ratios. Some commenters believed that the debt measures are primarily determined by the characteristics of a program's student body, rather than the program's performance. Others said the debt-to-earnings ratio penalizes programs serving disadvantaged students because these individuals -- particularly minority and female students -- earn less than their white and male counterparts. They argued that access would be negatively affected because the proposed thresholds would act as a disincentive to admitting disadvantaged students. Other commenters acknowledged that other factors contribute to institutions' repayment rate performance, but urged the Department to review the effect of the regulations on low-income, first-generation, and minority students.

The Department does not believe that enrolling large numbers of students from disadvantaged backgrounds legitimizes leaving those students with unaffordable debts and poor employment prospects. As described in the preamble, the debt measures identify programs where (1) typical student debt service exceeds recommended levels by more than 50 percent, and (2) fewer than 35 percent of students are paying down the balance of their loans (with consideration given to the variation in amounts borrowed). Programs that help disadvantaged students earn credentials and well-paying jobs are performing a valuable service, but programs that routinely leave their students with debts they cannot afford to repay are not.

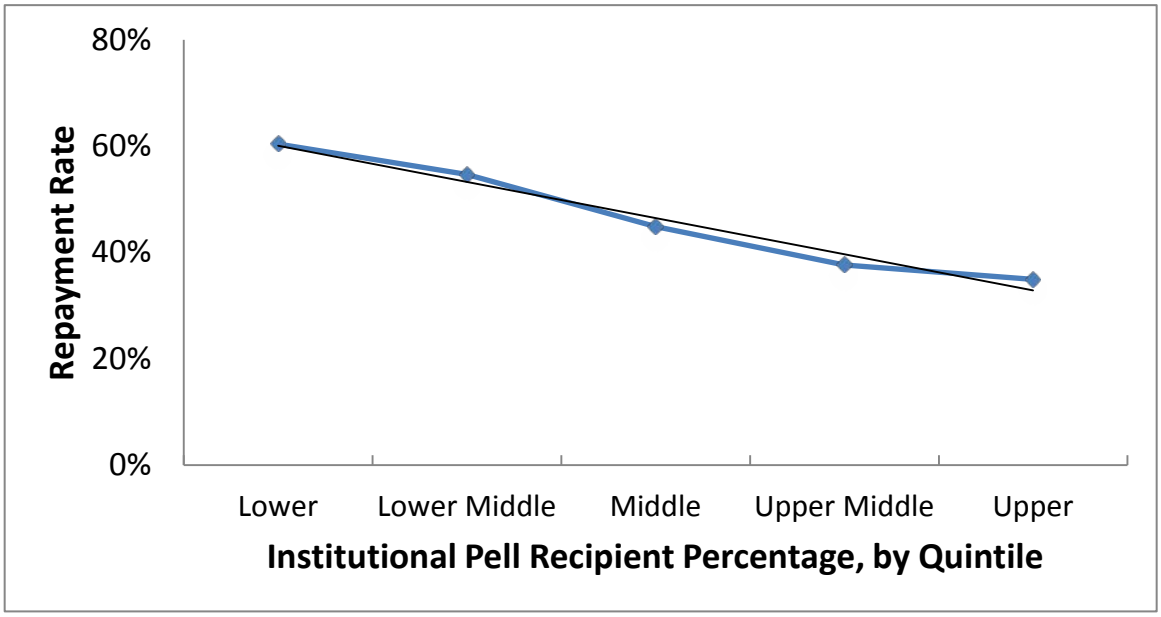
Moreover, many programs across the country succeed in serving students from the most challenging backgrounds. As explained in further detail below, student body characteristics explain a small share of the variation in repayment rates among institutions. Even among programs serving the highest proportions of disadvantaged students, many have repayment rates higher than 35 percent. As a result, all students have choices among many programs that are capable of serving them well. The following paragraphs provide greater detail on the interaction between demographics and institutions' repayment rates and debt-to-earnings ratios.

Repayment Rates and Demographics

Some commenters described very high correlations between student body demographics and repayment rates. In particular, several commenters cited one analysis of the NPRM, which suggested that the repayment rate specified in the NPRM was highly correlated with the percentage of students receiving Pell Grants.

Chart A below displays a regression model similar to that of the analysis frequently cited by commenters.

Chart A: Repayment Rate by Quintile of Enrollment Receiving Pell Grants



Source: Integrated Postsecondary Educational Data System (IPEDS) and National Student Loan Data System (NSLDS).

This analysis, which used a regression model based on the repayment rate specified in the NPRM, demonstrated a nearly linear relationship between the make-up of an institution's student body and its repayment rate. However, because this analysis reduces the data for thousands of institutions into quintiles, it failed to capture the amount of variation in repayment rates among institutions serving a similar group of students. As described below, when this variation is taken into account, the data reveal a much lower correlation between an institution's concentration of students receiving Pell Grants and its repayment rate. Moreover, Table 1 demonstrates that most institutions have repayment rates that exceed 35 percent, including many serving large numbers of Pell recipients.

Table 1: Share of Programs Passing or Failing Repayment Rate Test, by Pell Quintile

	Pell Concentration Quintile				
	Lowest	Second Lowest	Middle	Second Highest	Highest
Share Passing	**79%**	**82%**	**82%**	**75%**	**48%**
Share Failing	**21%**	**18%**	**18%**	**25%**	**52%**
Max Pell Concentration	14%	22%	31%	48%	80%

Source: NSLDS and IPEDS.

To examine the relationship between repayment rates and student body demographics more carefully, the Department performed a series of multivariate regression analyses, analyzing each

institutional sector separately. The dependent (predicted) variable in each analysis was repayment rate. The independent (predictive) variables in each analysis were informed by comments received through the rule-making process, and included:

Student Body Characteristics

(1) Percent of student body identified as racial/ethnic minorities,
(2) Percent of student body receiving Pell grants,
(3) Percent of student body identified as female,
(4) Percent of student body identified as being under 25 years of age.

Institutional Characteristics – Resources

(5) Per capita instructional expenses,
(6) Per capital core expenses,
(7) Growth rate, 2006 to 2009.

Institutional Characteristics – Retention and Graduation

(8) Retention rate among full-time students,
(9) Retention rate among part-time students,
(10) Graduation rate.

Institutional Characteristics – Selectivity (for 4-year institutions only)

(11) Acceptance rate.

Because of the variables selected, only institutions identified as enrolling undergraduate students were included in the regression analyses. Other factors, such as missing data on predictors, also excluded some institutions from analysis. Additional information about the regressions reported below can be found in a technical appendix that will be published on the Department's Web site.[1]

Generally

As noted above nine separate models were run to explore the relationship between repayment rates and student- and institution-level factors. Models ran from being wholly non-predictive (at less-than two-year public and less-than-two-year not-for-profit institutions) to explaining more than half of the potential variance in repayment rates (75 percent for four-year public institutions, 61 percent for two-year not-for-profit institutions, and 53 percent for four-year not-for-profit institutions). The modeling is summarized below. For each sector, three facets of the modeling is detailed:

[1] http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html

(1) Whether the model was statistically significant overall and the proportion of variance in repayment rate the model could explain;

(2) Whether the proportion of students receiving Pell grants was related to repayment rate, and the unique variance in repayment rate associated with that variable;[2] and

(3) Whether the proportion of students identified as a racial or ethnic minority was related to repayment rate, and the unique variance in repayment rate associated with that variable.

Table 2: Summary of Multivariate Regression Analyses

	Model		Pell		Race/Ethnicity	
	Predictive?	Percent of Total Variance Explained?	Predictive?	Percent of Unique Variance Explained?	Predictive?	Percent of Unique Variance Explained?
4-year Institutions						
Public	Yes	75	Yes	18	Yes	3
Private Nonprofit	Yes	53	Yes	11	Yes	≤1
Private For-profit	Yes	40	Yes	6	No	
2-year Institutions						
Public	Yes	14	Yes	4	Yes	≤1
Private Nonprofit	Yes	61	Yes	18	No	≤1
Private For-profit	Yes	45	Yes	20	Yes	1
Less-than-2-year Institutions						
Public	No		No		Yes	5
Private Nonprofit	No		Yes	33	No	
Private For-profit	Yes	30	Yes	14	Yes	2

Source: NSLDS and IPEDS.

For the nine models, the findings suggest that the relationship between repayment, racial and ethnic composition, and Pell Grant receipt varies considerably from sector to sector. For example, the unique predictive power of Pell Grant varied widely, from 1 percent at two-year, public institutions to nearly 21 percent at two-year, for-profit institutions. Similarly, in seven of the nine models, the proportion of an institution's student body that was represented by students identified as racial or ethnic minorities was a statistically significant predictor. However, in no case did it uniquely explain more than approximately 5 percent of variance in repayment rates. As a result, other factors–which may include institutional characteristics that are difficult to measure directly, such as the quality of the curriculum and student support services and the value of the education–play a greater role in

[2] Based upon the squared semi-partial correlation coefficient.

explaining the repayment rate than the percentage of students who received a Pell Grant or who are a member of a minority group.

Additional context for the results detailed below comes from considering the scope of the proposed regulations, in particular the types of institutions likely to offer gainful employment programs. For example, although Pell receipt explained approximately 20 percent of the variance in repayment rates at two-year for-profit institutions, that sector enrolled only 3 percent of all students in postsecondary education in 2008-09. [3] Student indebtedness at exit, another key component to the proposed regulation, is discussed in more detail in the next section of this filing (see *Debt-to-Earnings Ratios and Demographics*).

Results for Four-Year Public Institutions

In academic year 2008-09, four-year public institutions enrolled 9.0 million students, approximately 33 percent of all students enrolled in postsecondary education and 46 percent of all students enrolled in public institutions.[2] The regression model explained 75 percent of the variance in repayment rate, with the strongest single predictor being the percentage of students enrolled who received a Pell grant.[4] The percentage of Pell recipients uniquely explained 18 percent of the variance in repayment rate. Net of other variables in the model, the percentage of the student body that was identified as racial or ethnic minority was not a significant predictor of institutional repayment rates, uniquely explaining 3 percent of the variance in repayment rates.

Results for Four-Year Private Nonprofit Institutions

In academic year 2008-09, four-year private nonprofit institutions enrolled 4.5 million students, approximately 16 percent of all students enrolled in postsecondary education and 98 percent of all students enrolled in not-for-profit institutions.[2] The regression model explained 53 percent of the variance in repayment rate, and, as was the case among four-year, public institutions, the strongest single predictor in the model was the percentage of students who received a Pell grant. Similarly, the racial and ethnic composition of an institutions' student body was predictive of repayment rates for four-year private nonprofit institutions, but its unique contribution to explaining variance in repayment rates was less than one percent.

[3] See Table 10 in Knapp, L. (2010). Postsecondary Institutions and Price of Attendance in the United States: Fall 2009 and Degrees and Other Awards Conferred: 2008-09, and 12-Month Enrollment 2008-09 (NCES 2010-161). Washington, DC: U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics.

[4] Based upon the standardized metric (i.e., beta) regression coefficient.

Results for Four-Year Private For-Profit Institutions

In academic year 2008-09, four-year private for-profit institutions enrolled 2.1 million students, approximately 8 percent of all students enrolled in postsecondary education (82 percent of all students enrolled in for-profit institutions).[2] Approximately 40 percent of the variance in repayment rates among 4-year, for-profit institutions was explained by the regression model. Unlike other four-year institutions, the most predictive variable in the model was the percentage of undergraduate enrollees who were under 25 years of age, which uniquely explained 14 percent of variance in repayment rates. The percentage of students receiving Pell was a statistically significant predictor, net of other variables in the model, uniquely explaining approximately 6 percent of the variability in repayment rates.

Results for Two-Year Public Institutions

In academic year 2008-09, two-year, public institutions enrolled 10.5 million students, approximately 38 percent of all students enrolled in postsecondary education.[2] Our model predicted 14 percent of the variance in repayment rates found at two-year, public institutions. Among variables in the model, the percentage of students receiving Pell grants and graduation rates were found to have the strongest relationship to repayment rates. Each variable uniquely explained approximately 4 percent of the variability in repayment rates, respectively. Although less influential in the model, the percentage of the student body identified as female explained the largest share of unique variance, at approximately 4 percent.

Results for Two-Year Private Nonprofit Institutions

In academic year 2008-09, two-year, private nonprofit institutions enrolled 59,000 students, less than 1 percent of all students enrolled in postsecondary education.[2] About 61 percent of the variance in repayment rates at two-year, nonprofit institutions was explained by our model. Net of other variables in the model, the percentage of students receiving Pell grants was the strongest single predictor of repayment rates. The rate of Pell receipt uniquely explained 18 percent of the variance noted in the dependent variable. Holding all other model variables constant, the proportion of the student body represented by racial/ethnic minorities was not a significant predictor of repayment rates at two-year, not-for-profit institutions.

Results for Two-Year Private For-Profit institutions

In academic year 2008-09, two-year, private for-profit institutions enrolled 674,000 students, approximately 3 percent of all students enrolled in postsecondary education.[2] Our regression model explained 45 percent of the variance found in repayment rates at two-year, for-profit institutions. Pell receipt was the single strongest predictor, uniquely explaining almost 20 percent of the total variability. Although a statistically significant predictor, racial/ethnic composition of the student body had relatively little unique explanatory power, around 1 percent of all variance.

Results for Less-than-Two-Year Public Institutions

In academic year 2008-09, less-than-two-year, public institutions enrolled 107,000 students, less than 1 percent of all students enrolled in postsecondary education.[2] Overall, our regression model was not statistically significant for less-than-two-year, public institutions. The simple correlation—that is, the correlation *not* controlling for other variables in the model—between repayment rates and the racial/ethnic composition of the student body was statistically significant, with the two variables sharing approximately 5 percent of their joint variance.

Results for Less-than-Two-Year Private Nonprofit Institutions

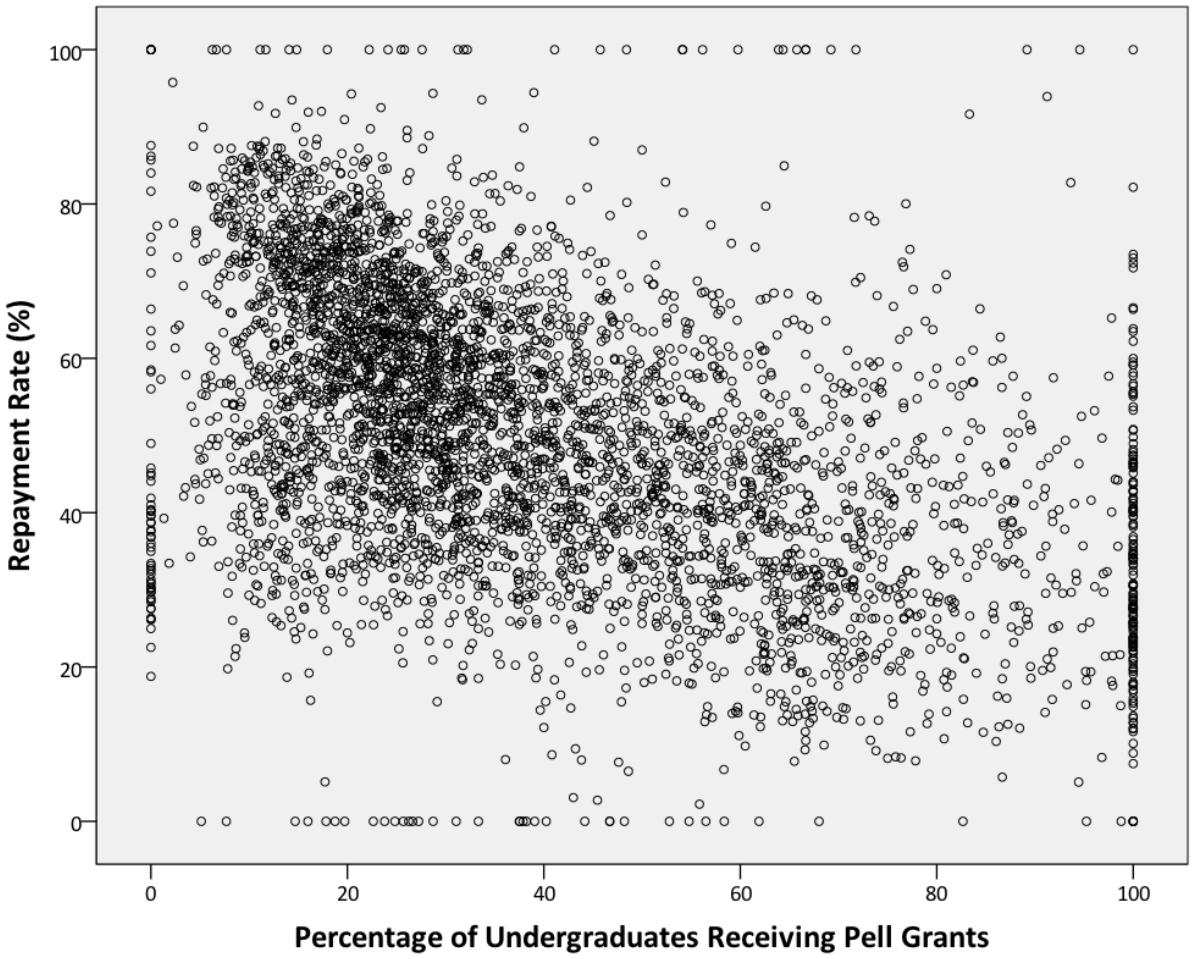
In academic year 2008-09, less-than-two-year, private nonprofit institutions enrolled 24,000 students, less than 1 percent of all students enrolled in postsecondary education.[2] Overall, our regression model was not statistically significant for less-than-two-year, private nonprofit institutions. The simple (i.e., "uncontrolled") correlation between repayment rates and the percentage of the student body receiving Pell grants was statistically significant, with the two variables sharing approximately 33 percent of their joint variance.

Results for Less-than-Two-Year Private For-Profit Institutions

In academic year 2008-09, less-than-two-year, private for-profit institutions enrolled 466,000 students, approximately 2 percent of all students enrolled in postsecondary education.[2] Approximately 30 percent of the variance noted in the repayment rates of less-than two-year, private for-profit institutions could be explained by our model. The strongest single predictor was the percentage of students receiving Pell grants, which uniquely explained around 14 percent of the total variability in repayment rates. The racial/ethnic composition of an institution's student body was found to be predictive of its repayment rate, but it explained only around 2 percent of its variability.

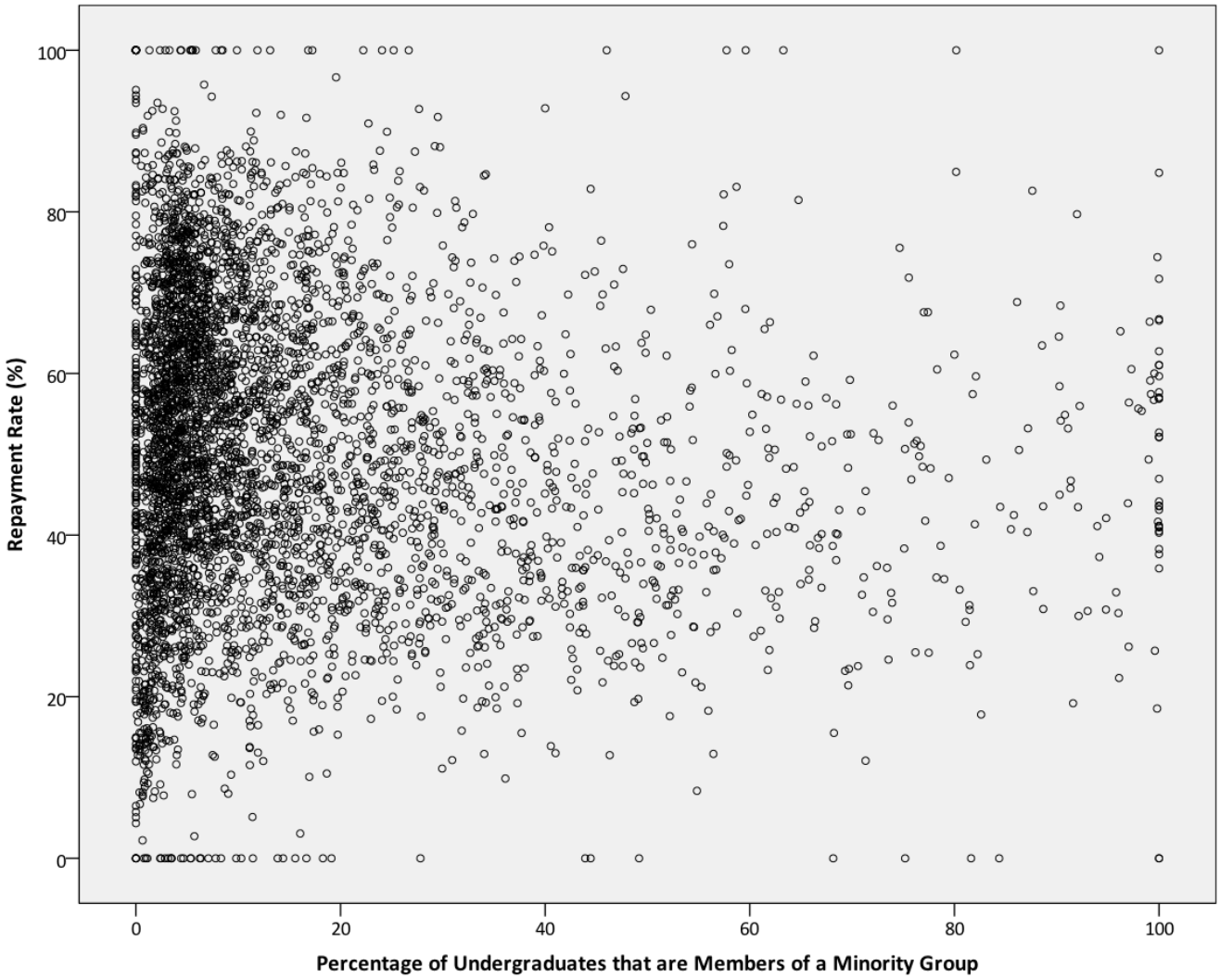
A visual representation more clearly illustrates the lack of a strong relationship between repayment rates and an institution's student demographics, as is seen in Chart B showing the limited relationship between the percentage of students receiving Pell Grants and its repayment rate. As noted above, the percentage of students receiving Pell Grants explains between 21 percent and 1 percent of the variance in repayment rates. Chart C presents similar data on the relationship between the percentage of the students that are members of a minority group at an institution and its repayment rate. The percentage of the students that are members of a minority group explains no more than 3 percent of the variance in repayment rates.

Chart B: Repayment Rates by Pell Recipient Concentration



Source: **NSLDS and IPEDS.**

Chart C: Repayment Rates by Minority Student Concentration



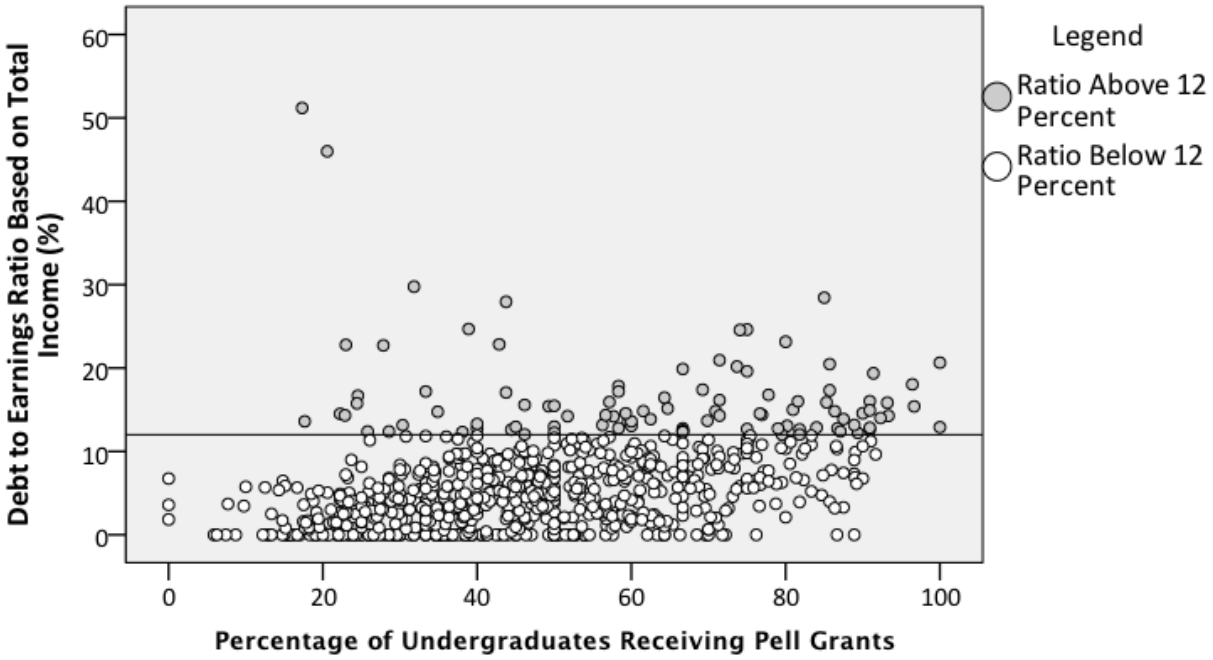
Source: **NSLDS and IPEDS.**

Debt-to-Earnings Ratios and Demographics

The Department also examined the implications of the debt-to-earnings ratio on students. Programs fail the debt-to-earnings ratio if the debts for the majority of students exceed both measures of affordability by at least 50 percent. While the Department recognizes that some groups may face greater obstacles in the labor market than others, we do not agree that the appropriate response to those obstacles is to accept that disadvantaged students will bear even higher debt burdens.

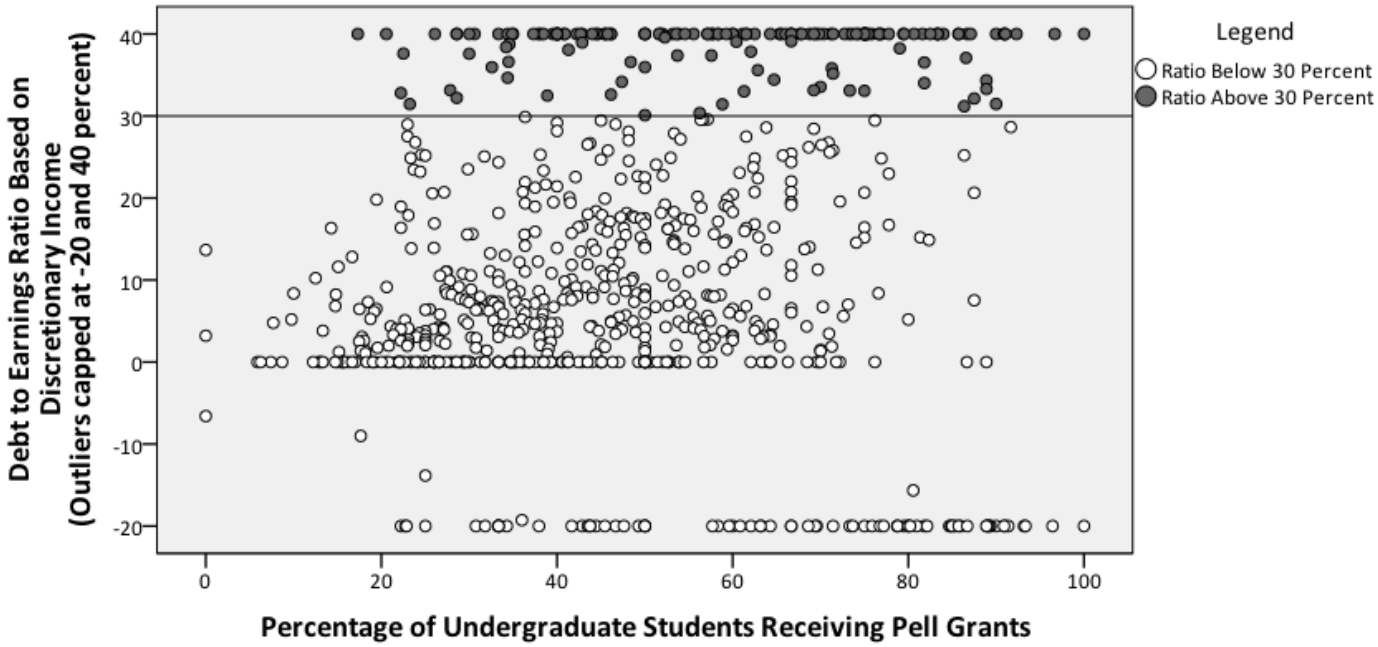
Moreover, similar to the repayment rate, the data reveal a wide variation in performance on the debt-to-earnings ratio among programs serving similar groups of students. As shown in Chart D, many programs serving large numbers of Pell recipients have debt-to-earnings ratios below 12 percent of total income or 30 percent of discretionary income. Each circle in the chart represents a program.

Chart D-1: Debt-to-earnings Ratios Based on Total Earnings by Percentage of Students Receiving a Pell Grant



Source: Missouri Department of Higher Education (MDHE) and NSLDS.

Chart D-2: Debt-to-earnings Ratios Based on Discretionary Earnings by Percentage of Students Receiving a Pell Grant



Source: MDHE and NSLDS.

Nor is it true that all low-income students will face higher debt-to-earnings ratios after graduation. While low-income students are more likely to borrow money for college, the amount of those loans is similar to those borrowed by their higher-income peers. As shown in Table 3, students who received a Pell Grant and those who did not typically graduate with similar levels of debt.

Table 3: Average Cumulative Student Loan Debt for 2007-08 Graduating Undergraduates, by Pell Receipt and Sector

	Received Pell		Did Not Receive Pell	
	Average Debt	Percent of Students Who Borrow	Average Debt	Percent of Students Who Borrow
4-year Institutions				
Public	21,741	84	17,475	46
Nonprofit	28,435	90	26,277	58
For-Profit	24,735	99	24,346	93
4-year Institutions				
Public	11,253	56	9,164	24
Nonprofit	15,484	63	13,839	66
For-Profit	17,145	98	17,911	96
4-year Institutions				
Public	11,198	52	8,442	22
For-Profit	10,089	90	10,235	75

Source: National Postsecondary Student Aid Study: 2008 (NPSAS 2008).

II. Review of Submitted Analyses

Two comments written by economists included detailed alternative estimates of the impact of the regulations proposed in the NPRM. The first, submitted by Jonathan Guryan and Matthew Thompson of Charles River Associates, questioned whether the proposed regulations properly addressed the estimation problems they identify and presented other ways to measure the returns to education.[5] The report also critiqued the cost estimates proposed in the NPRM, provided alternative numbers of the number of students and programs that would be affected, and provided some suggestions for how the regulations should be changed.

The Charles River Associates report argued that an analysis of earnings should focus on income gains over a longer time period because students take this into consideration when making cost/benefit decisions about whether to enroll in postsecondary education and whether to use loans to finance its cost. The report argues that it is appropriate to use longer periods to measure the benefits from schooling because research shows that the annual earnings benefit for each year of schooling is between 7 and 15 percent, meaning that a student could recapture the value of his or her education debt over time because of the greater earning power associated with each year of higher education. These alternative measurements are discussed in the Alternatives Considered section of this RIA.

The Charles River Associates report included its own estimate of the effects of the NPRM using data from member institutions from the Association of Private Sector Colleges and Universities (then known as the Career College Association), representing 308 institutions, 450 campuses, 10,000 programs, and 600,000 students. Student and loan level information were available based on the population include in the 2006, 2007, and 2008 Cohort Default Rate calculations. Adjustments were made based on the Integrated Postsecondary Educational Data System (IPEDS) and data from the 2008 NPSAS, both conducted by the National Center for Education Statistics (NCES), for students who did not take out any loans and for students who also borrowed private loans in addition to Federal loans. The Charles River Associates report approximated the debt-to-earnings tests by using information on specific occupations from the Current Population Survey. It calculated repayment rates by using information about loans in repayment from the cohort default rate files provided by surveyed institutions.

The report's initial results found that 7.1 percent of the programs for which data were available would be ineligible under the proposed regulations, a designation that would affect 7.5 percent of students in the report's sample. After making some adjustments to estimated repayment rates so that they conformed more to the repayment rates released by the Department, the report revised its estimate to say that 8.8 percent of programs in its sample would be ineligible, affecting 13.0 percent of students. These findings are similar to the Department's estimates that under the proposed regulations would 16 percent of for-profit programs would lose eligibility.

[5] http://www.regulations.gov/#!documentDetail;D=ED-2010-OPE-0012-13610.1

The report questioned the Department's estimates on the number of students that would leave postsecondary education altogether as a result of the regulations, without providing any data that would support alternative assumptions. Using different assumptions about the percentage of students that would drop out and whether any programs in the then-proposed restricted category would shut down, the report estimated that somewhere between 1.1 million and 2.4 million students would be impacted by the regulations over a 10-year period. The Department carefully considered the likely behavior of students enrolled in failing and ineligible program and is confident that it has adopted a reasonable set of assumptions. We have described the data and analysis we relied upon in the section of this RIA titled Estimation of Effects on Students under Analysis of Final Regulations.

Finally, the Charles River Associates report discussed the implications of "restricted" status, the regulations' impact on new programs, the regulations' potential impact on low-income students and members of racial and ethnic minorities, and several concerns about the implementation of the regulations. These comments are discussed in the Analysis of Comments and Changes section of the preamble and the section of this RIA titled Student Demographics.

In a second analysis, Roger Brinner of the Parthenon Group argued that the Department should have adjusted the Missouri sample data to account for debt level, income level, and repayment rate.[6] Using those adjustments, the study estimates that 30 percent of all students enrolled in programs subject to gainful employment regulations would be in ineligible programs, compared to the Department's estimate of 8 percent. The Parthenon Group study attributed the difference between its estimate and the Department's estimate to the Parthenon Group's inclusion of private student loan debt and students without any earnings in the debt-to-earnings calculation. The study relied upon a BLS estimate that 17 percent of students were out of the workforce the whole year and therefore had zero income, apparently based on the assumption that students completing career education programs were no more likely to be employed than other young adults.

In its analysis of the final regulations, the Department revised its estimation methodology to account for private student loan debt and graduates without earnings. The Federal debt in the data was adjusted to an estimated total debt for a program, including private loans, using NPSAS information by institutional sector for the 2007-08 year. The earnings amounts were adjusted to include 25 percent of exiters with zero earnings and to represent earnings three to four years into employment. These adjustments are also described in the section of this RIA titled Analysis of Final Regulations.

The Parthenon Group study also questioned the Department's estimates of the number of students who would decide to transfer or drop out after their program lost eligibility, asserting that for-profit and public institutions would face capacity constraints that would prevent more than about 60 percent (or 600,000) of the 1 million displaced students from reenrolling elsewhere. The Department does not agree with these pessimistic projections. First, for-profit institutions are capable

[6] Dr. Roger Brinner, The Parthenon Group, *Assessment of Missouri Estimate of Impact*, September 9, 2010, available athttp://www.regulations.gov/#!documentDetail;D=ED-2010-OPE-0012-12859.1.

of rapid growth. The sector has recently grown by hundreds of thousands of students a year, and its total enrollment continued to grow in the mid-1990s even as hundreds of institutions lost student aid eligibility due to their cohort default rates. Finally, the Parthenon Group's conclusion that access would be constrained is dependent on its belief that a large number of students will leave their current program. Its estimate that existing programs could accommodate 600,000 additional students in a year, for example, would appear to support a conclusion that large numbers of students could switch programs before reaching limits on access.

Finally, the Parthenon Group study estimated that these 400,000 students would experience 15 percent lower income levels due to not having a postsecondary education, which would decrease government tax revenues by $400 million. Looking at student-to-employee ratios and economic modeling multipliers, the study further estimated that 95,000 employees would lose their jobs due to the 400,000 students leaving postsecondary education, and that those lost jobs would decrease government tax revenues by $2.9 billion. For students who would continue their educations at public and nonprofit schools, the study argued that it costs taxpayers more for students to attend public and non-profit schools than for-profit institutions. The study estimated that students transferring to the public and non-profit sectors would cost taxpayers $2 billion based upon other projected adjustments. While the final regulations differ in a number of significant respects from the proposal analyzed by the Parthenon Group, the Department has considered the approach and estimates in the Parthenon Group study when formulating its own estimates of the impact of the final regulations on the number of college graduates, jobs, and government budgets. The economic consequences outlined in Parthenon's analysis are dependent on the Parthenon Group's estimates of the number of programs that will lose eligibility and the number of students who will leave postsecondary education. Moreover, the Parthenon Group's analysis fails to consider the benefits to students, taxpayers, and the economy as a whole from better performing programs that are tied more closely to labor market demands, lead to lower debt levels, and typically achieve higher retention and graduation rates. The Department presents its view of the costs and benefits of the final regulations in the section of this RIA entitled Discussion of Costs and Benefits.

III. Summary of Changes from the NPRM

Definition of a Program

In response to uncertainty concerning the definition of a program, the Department has clarified that a program would be defined by the combination of the six–digit Office of Postsecondary Education ID (OPEID), six-digit Classification of Instructional Programs (CIP) code, and credential level. A program offered at multiple locations reporting under the same six-digit OPEID would be evaluated as one program, and the credential levels to be considered are undergraduate certificate, associate's degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, and first-professional degree.

To estimate the number of programs for this analysis, the Department identified the six digit CIP code and credential combinations for which awards were granted at the institutions in the IPEDS data set generated for the final regulations. For the approximately 92 institutions that did not have program information available, the average number of regulated programs for their sector was applied.

Small Numbers Provision

The small numbers provision finalized in §668.7(d) requires at least 30 completers in the evaluation pool for the debt-to-earnings measure and at least 30 borrowers entering repayment in the evaluation period for calculation of the repayment rate in order to determine whether a program satisfies the debt measures. Under the NPRM, the treatment of programs with a small number of completers was not fully determined. Under the final regulations, programs that do not meet the minimum threshold of 30 completers in the 2YP or the 2YP-R will be evaluated for a four-year period consisting of years three to six in repayment (4YP) or years six to nine in repayment (4YP-R). Programs that do not meet the 30 completer or borrower requirement in the 4YP or 4YP-R will not be evaluated for ineligibility. Ultimately, if there are insufficient observations, we will not assess an institution's performance against the debt measures. Table 4 summarizes the estimated number of total and regulated programs by sector and the application of the small numbers provision.

Table 4: Gainful Employment Programs by Sector and Size

	Total Programs	Gainful Employment Programs	Gainful Employment Programs Affected by Small Numbers Provision (Exempt)	Other Gainful Employment Programs (Regulated)
4-year Institutions				
Public	59,367	4,943	3,644	1,299
Private Nonprofit	60,123	4,400	3,548	851
Private For-profit	4,246	4,243	1,902	2,341
2-year Institutions				
Public	59,922	30,232	20,684	9,548
Private Nonprofit	903	394	187	207
Private For-profit	4,762	4,754	1,929	2,825
Less-than-2-year Institutions				
Public	2,061	2,043	1,013	1,030
Private Nonprofit	305	279	101	177
Private For-profit	4,126	4,117	1,347	2,770
Total	195,816	55,405	34,356	21,049

*Defined as programs with 30 or fewer completers in a four-year period.

Source: NSLDS and IPEDS.

This small numbers provision is designed to address the greater risk of statistical fluctuation in measuring the performance of programs with small numbers of borrowers or completers, the reduced risk to students or taxpayers posed by these programs, and the need to protect the privacy of individual student borrowers. While the 30 completer and borrower standards remove a number of programs from possible ineligibility under the debt measures, they reduce the chance that the performance of one or two borrowers could result in large variability in a program's performance on the debt measures from year to year. Additionally, while the percentage of programs affected by the small numbers provision is high, especially at four-year institutions, the remaining regulated programs still represent approximately 92 percent of all students enrolled in gainful employment programs.

Program Eligibility for Continued Funding

Under §668.7(i), a failing program becomes ineligible after failing the minimum standards for three out of the last four most recently completed fiscal years. Whenever that occurs, the Department notifies the institution that the program is ineligible and that the institution may not disburse title IV, HEA program funds to students enrolled in or attending that program for any payment period that begins after the date of the Department's notice. This is a change from the proposed regulations, which allowed institutions to disburse title IV, HEA program funds to students already enrolled in programs for an additional year beyond the payment period in which the notice was received.

Repayment Rate Thresholds

Instead of the three-tiered approach proposed in the NPRM that would have established a restricted zone for programs with repayment rates of at least 35 percent but less than 45 percent, the regulations establish a single, 35 percent repayment rate threshold for eligibility.

Repayment Rate Evaluated Cohorts

The repayment rate calculated for the NPRM evaluated borrowers one to four years into repayment. For most programs, the final regulations will evaluate borrowers three to four years into repayment, so the rate calculated with fiscal year 2012 data and released in 2013 will be based on borrowers who entered repayment in FYs 2008 and 2009. For a program whose students are required to complete a medical or dental internship or residency, a two-year period is the sixth and seventh FYs (2YP-R) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2015, the 2YP-R is FYs 2008 and 2009. Finally, to provide an alternative for institutions that take immediate steps to improve a program's loan repayment rate, we will calculate the repayment rate based on a two-year period (2YP-A) that includes loans for borrowers who entered repayment during the first and second FYs prior to the current FY. These programs will be evaluated based on the repayment rate from the 2YP or 2YP-A, whichever is higher.

Repayment Rate Balance Comparison

The total balance (principal plus interest) of a borrower's loans associated with a program will be evaluated for the borrower's inclusion in the numerator of the repayment rate calculation instead of the approach described in the NPRM of using only the principal balance.

Borrowers in Alternative Repayment Plans

The final regulations will include the balance of loans in negative amortization or for which borrowers are paying accrued interest only up to 3 percent of the Original Outstanding Principal Balance (OOPB) in the denominator of the ratio instead of the approach described in the NPRM. For the loans associated with a particular program at an institution for which the Department has actual data on borrower repayment plans and scheduled payment amounts, that data will be used to calculate the amount to be included in the OOPB of Payments-Made Loans (PML). For programs at institutions for which the Department does not yet have sufficient actual institutional data on a program's borrowers because the loans are not held and serviced by the Department, 3 percent of the OOPB of PML will be included in the numerator. The Department may increase the 3 percent limitation through a notice published in the Federal Register if borrowers increase their reliance on interest-only and negative amortization loans over time, except that the limitation may not exceed the estimated percentage of all outstanding Federal student loan dollars that are interest-only or negative amortization loans.

Consolidation Loans of Students at Post-Baccalaureate Programs

When calculating the repayment rate for post-baccalaureate programs, we will consider a borrower with a consolidation loan to be successfully repaying his or her loans if the outstanding balance does not increase over the course of the most recently completed fiscal year.

Data Corrections for Repayment Rates

No later than 45 days after the Secretary issues the draft repayment rate results of the loan repayment rate for a program, in accordance with procedures established by the Secretary, an institution may challenge the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate by submitting evidence showing that the borrower loan data is inaccurate. An institution may also challenge the accuracy of the list of borrowers included in the applicable two- or four-year period used to calculate the draft loan prepayment rate by submitting evidence showing that a borrower should be included on or removed from the list or correcting or updating the identity information provided for a borrower on the list, such as name, Social Security Number, or date of birth. If the Secretary accepts the information provided by the institution through the data correction process, the Secretary will use the corrected information to recalculate the repayment rate for the program. The Secretary notifies an institution of any draft results that are not challenged, are recalculated, or are unsuccessfully challenged under the data correction process described above. These results become the final repayment rates for the program.

Debt-to-Earnings Ratios Evaluated Cohorts

The debt-to-earnings ratios will now be calculated based on program completers three to four years after completion. For example, if the most recently completed FY is 2012, the 2YP is FYs 2008 and 2009. For a program whose students are required to complete a medical or dental internship or residency, a two-year period is the sixth and seventh FYs (2YP-R) prior to the most recently completed FY for which the debt measures are calculated. For example, if the most recently completed FY is 2015, the 2YP-R is FYs 2008 and 2009.

Payment Amortization

Under the proposed regulations, a 10-year amortization schedule would be used to calculate the payment associated with the program's median debt. Under the final regulations, the amortization schedule will be 10 years for certificates and associate's degrees, 15 years for bachelor's and master's degrees, and 20 years for first-professional and doctoral degrees.

Mean or Median Earnings

Both measures will be obtained for programs' pools of completers and the higher figure will be used in evaluation of the program.

Debt Limited to Tuition and Fees

Institutions will have the option to submit the tuition and fees charged for each student in a gainful employment program. Student debt included in the calculation of the program's median debt will be limited to that used to pay tuition and fees.

Data Corrections and Challenges for Debt-to-Earnings Ratios

Before issuing the draft results of the debt-to-earnings ratios for a program, the Secretary provides a list to an institution of the students that will be included in the applicable two- or four-year period for calculating the ratios. No later than 30 days after the date the Secretary provides the list to the institution, in accordance with procedures established by the Secretary, the institution may provide evidence showing that a student should be included on or removed from the list, or correct or update the identity information provided for a student on the list, such as name, Social Security Number, or date of birth. After the 30-day correction period, the institution may no longer challenge the accuracy of the students included on the list or update the identity information of those students. If the Secretary accepts the updated information, it is used to create a final list of students that the Secretary submits to SSA. The Secretary calculates the draft debt-to-earnings ratios based on the mean and median earnings provided by SSA for the students on the final list.

No later than 45 days after the draft debt-to-earnings results have been issued, an institution may challenge the accuracy of the median-loan debt for the program that was used for the numerator of the draft debt-to-earnings ratios, by submitting evidence showing the program median-loan debt is inaccurate. An institution may not challenge the accuracy of the mean or median annual earnings the Secretary obtained from SSA to calculate the draft debt-to-earnings ratios for the program.

In general, the Secretary uses the corrected information obtained through the challenges to the draft results to recalculate the debt-to-earnings ratios for the program. For a failing program, if SSA is unable to include in its calculation of the mean and median earnings for the program one or more students on the list finalized under the 30-day data correction process, the Secretary adjusts the median loan debt by removing the highest loan debt associated with the corresponding number of students on the list. For example, if SSA is unable to include three students in its calculations, the Secretary removes the loan debt for the same number of students on the list that had the highest loan debt. The Secretary recalculates the debt-to-earnings ratios for the program based on the adjusted median loan debt.

The Secretary notifies an institution of any draft results that are not challenged, are recalculated, or are unsuccessfully challenged under the challenge process described above. These results become the final debt-to-earnings ratios for the program.

Proprietary Institutions under Common Ownership or Control

Loan debt does not include any loan debt incurred by the student for attendance in programs at other institutions, except if the current institution and the other institutions are share common ownership or control. For these final regulations, we clarify that the exception is limited to proprietary institutions, which have different ownership structures than either non-profit institutions or public institutions. We generally do not include educational loan debt from institutions students previously attended because those students made individual decisions to enroll at other institutions where they completed a program. Entities with ownership and control of Companies that own more than one institution offering similar programs might have an incentive under these regulations to shift students between those institutions to shield some portion of the educational loan debt from the debt included in the debt measures under these final regulations. This provision will negate that incentive by permitting the Department to include that debt in the analysis. These regulations provide that a determination of common ownership or control will be made using the definitions and concepts that the Department routinely uses to review changes of ownership, financial responsibility determinations, and identifying past performance liabilities at institutions.

Comparison of Results for the Proposed and Final Regulations

The changes made to the proposed regulations after the Department reviewed the comments and conducted further analysis of the relevant data resulted in different estimated effects of the regulations. Table 5 represents estimated changes to the number of ineligible programs and the number of students in ineligible programs. Under the NPRM, we estimated that approximately 5

percent of programs and 8 percent of students would be deemed ineligible for participation in the Title IV, HEA programs. Under the final regulations, we allow institutions an opportunity to improve after initially failing both measures. This change, combined with the small numbers provision, results in approximately 8% of programs initially failing both measures, but not losing Title IV, HEA eligibility. Ultimately, under the final regulations we estimate that approximately 2 percent of programs will be deemed ineligible and approximately 1.3 percent of students in ineligible programs. The information presented below for the final regulations represents the results at the end of a four-year period and the percent of students in ineligible programs described below reflects those who dropped or transferred the first two times the program failed the debt measures.

Table 5: Summary Comparison of Estimated Effects of the Proposed and Final Regulations

	NPRM	Final Regulations*
Estimated % of Programs		
Failing at least once	N/A	8%
Ineligible	5%	2%
Estimated % of Students**		
In Failing Programs	N/A	7%
In Ineligible Programs	8%	1.3%***

* Percentages calculated at end of four-year cycle. Program results are a percent of 21,049 regulated programs with more than 30 completers or borrowers.

** 12 Month FTE used for NPRM but 12 month headcount used for final regulations.

*** Does not include those who dropped out or transferred from programs after the first two failures.

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS and MDHE.

IV. Analysis of Final Regulations

Data and Methodological Changes

The Department developed a set of data analysis tools to assist in developing the debt measures used in these regulations to define compliance with the gainful employment requirements for covered postsecondary education and training programs. Briefly, the Department examined two internal data sets that it controls—the National Student Loan Data System (NSLDS), maintained by the Office of Federal Student Aid (FSA), and the Integrated Postsecondary Education Data System (IPEDS), maintained by the National Center for Education Statistics (NCES). Additionally, the Department entered into a data sharing agreement with the Missouri Department of Higher Education (MDHE) that provided us with critical information aggregated at the program level--including work income--for certain persons who participated in identified postsecondary education and training programs in public- and for-profit institutions in Missouri between 2006 and 2008.

The Department obtained from NSLDS the total number of borrowers who attended a particular institution and entered repayment in FY 2006 or 2007, and identified the borrowers in each group who had paid their loans in full or had made payments sufficient to reduce the outstanding balance on their loans through FY 2010.[7] We retrieved, for these borrowers, the school-level total loan balance upon entering repayment, and the school-level total balance of loans upon entering repayment for borrowers who paid their loans in full or made payments sufficient to reduce principal. We also retrieved information regarding borrowers who were repaying their loans under one of the income-sensitive repayment plans (e.g., income-contingent repayment (ICR), income-based repayment (IBR), and graduated plans). The Department conducted further analysis of the consolidation loans taken by those borrowers to attribute the loans that were consolidated to the respective institutions the borrower attended when the loans were made.

The Department extracted a series of data elements from IPEDS for use in the gainful employment analysis. Owing to the nature of IPEDS, all information was developed at the institutional level from data reported by the institutions themselves. The institution-specific information included enrollment, the number of Pell Grant recipients, identification of institutions that offered a single program of study ("mono-line institutions"), certain programmatic (based on CIP code) information, revenues, expenses, and graduation rates. The Department merged these two data sets to produce a single, institution-by-institution analysis file comprised of the data elements described in the preceding paragraph.

The MDHE provided information on individuals who exited education and training programs at public and for-profit postsecondary institutions in the State between 2006 and 2008. These data were aggregated by program of study within institutions and included education-related and wage data. Additional education-related data—provided by the Department from NSLDS—included the number of program exiters who had Federal student loan debt, were in repayment or default, and were Pell grant recipients. These data also included mean and median student loan debt and Pell grant amount for program exiters. Wage data included the number of exiters captured in the Missouri Department of Labor and Industrial Relations' Unemployment Insurance program (UI) database, and average annual wage and quartile distribution of annual wages for these exiters. In constructing this analysis file for the Department's use, MDHE employed a protocol that appropriately shielded personally identifiable information.

The characteristics of the individuals represented in the MDHE-developed database were generally comparable to the same characteristics of the U.S. population across several dimensions, including population demographics such as age; race/ethnicity; and enrollment in elementary, secondary, and postsecondary education; as well as income and race/ethnicity of persons attending public and for-profit postsecondary institutions. These comparisons can be found in Table F of the Regulatory Impact Analysis published with the NPRM. The comparisons, as well as other details

[7] For an explanation of the NSLDS repayment rate query, please see the repayment rate calculation file available on the Department's gainful employment website, http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html.

regarding the MDHE-provided data set, can also be found in the document entitled, "Gainful Employment Analysis - Missouri Methodological Notes" available on the Department's Web site.[8]

The primary data set used to analyze the regulations consists of 5,474 institutions defined by a six digit OPEID taken from the Department's IPEDS and available at the gainful employment Web site.[9] Key information available in this file includes enrollment, revenues, expenses, graduation rates, percentage of undergraduates with a Pell Grant, and other characteristics. Repayment rate information calculated from the Department's NSLDS was added to the IPEDS information through the OPEID and allowed institutions to be classified according to an initial year of repayment rate performance.

In matching the data sets, there were approximately 710 institutions for which no repayment rate was generated, of which a little over 30 percent came from the private, for-profit less-than-two year sector and another 29 percent came from public two-year institutions. Many of these institutions did not participate in the loan programs during the period covered for this repayment rate calculation, and others may represent newer institutions in the IPEDS data or branches whose information has been captured under an aggregated OPEID. For the analysis, institutions with no repayment rate have been treated as eligible as they will not fail under the regulations. A second set of approximately 1,115 institutions appeared in the repayment rate file but not in the IPEDS data set. After accounting for foreign institutions, closed schools, and schools with changes in affiliation, approximately 145 institutions remained, of which 78 percent would have a repayment rate borrower count too small to be evaluated and thus could not fail under the regulations. The matching of repayment rates and IPEDS data was necessary for this analysis, but will not be required when program-level data is available as the regulations are implemented.

Adjustments to Missouri Data

In response to comments and changes in the regulations, the Department made some adjustments to the Missouri data that was used to provide some information on the relationship between a program's debt-to-earnings performance and the school's repayment rate performance. Specific adjustments were made to the data to better represent the regulations and are included in the data file available at the gainful employment Web site.[10] The earnings amounts were adjusted to include 25 percent of exiters with zero earnings and to represent earnings three to four years into employment. The Federal debt in the data was adjusted to an estimated total debt for a program, including private loans, using sector-level information from NPSAS:08. Data from NPSAS:08 were also used to limit the debt to tuition and fees only. Finally, depending upon the award level associated with the program, a 10-, 15-, or 20-year amortization period was applied to calculate the payment to be evaluated. The relationship between repayment rates and debt performance in the Missouri data provides guidelines for the debt performance distribution described under the heading Summary of the Model of this RIA. The model, however, assigned a greater share of schools, programs, and

[8] http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html

[9] http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html

[10] http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/integrity-analysis.html

students to the failing debt categories to take into account the unavailability of data for some sectors and possible differences in performance between programs in Missouri and elsewhere.

Estimated Number of Affected Students

In the analysis for the NPRM, the number of students subject to the regulations was estimated using the applicable percentage for each sector, with the percentage of certificates awarded providing a guideline for the public and private, nonprofit sectors. For the NPRM analysis, the estimated number of students affected was based on the 12-month full-time equivalent (FTE) enrollment, and in this analysis those data have been updated to the 12-month headcount enrollment to better represent the number of students potentially subject to the regulations. In the base data set with IPEDS information for 2008-09, the total 12-month enrollment is approximately 27.4 million students, of whom 7.3 million are estimated to attend programs subject to the regulations. When inflated by the estimated enrollment growth specified in the RIA Appendix for each scenario (RIA Appendix A-1, RIA Appendix A-2, RIA Appendix A-3, and RIA Appendix A-4) to represent the first calculation in FY 2012, the number of students subject to the regulations is approximately 8.4 million. This number is derived from the percentage of credentials granted in regulated programs compared to the total credentials granted at an institution. If program information was not available for an institution, the average percentage for that sector was used.

Summary of the Model

Significant changes were made to the analysis done for the NPRM to estimate the effects of the requirement that a program fail three out of four FYs to be ineligible. These changes are described below. The assumptions and results related to each scenario are presented in the RIA Appendix A-1, RIA Appendix A-2, RIA Appendix A-3, and RIA Appendix A-4.

Data and Model Limitations

NSLDS has sufficient data to support the calculation of a repayment rate for each school participating in the Federal student loan programs. NSLDS does not currently collect enough data to allow this calculation by program at an institution. The model starts with school-level data, aggregates to the sector level, and tracks numbers of schools, programs, and students. The Department has estimated debt-to-earnings ratios for programs from the Missouri data set. The model combines the Missouri debt-to-earnings data with the national repayment rate data with assumptions about the relationship between the two measures grounded in data from Missouri, where available. Repayment rate data are available for a single year. The model calculates transitions from year to year based on rates specified by the user that are informed by the distribution of available repayment rate data. Detailed tables of the assumptions for each scenario are available in the Appendix for each scenario.

There are several aspects of the regulations that could not be incorporated into the analysis. In particular, while the model does allow students to transfer from failing programs and separately allows programs to shift between repayment categories, it does not model an interaction between those

transitions and does not attempt to predict the effect of the transferring students on the receiving programs' performance on the gainful employment measures in subsequent years. Other items that cannot be fully analyzed should only improve a program's performance and reduce the effects estimated in this RIA. One item is the option to calculate the repayment rate for FYs 2012, 2013, and 2014 using borrowers one to two years in repayment. This option would allow institutions to demonstrate program improvements more quickly. In general, our data suggest that the repayment rates calculated with borrowers three to four years into repayment are higher, but under this option, the Department would calculate the rate using both sets of borrowers and use the higher one, which could only help programs. The Department does not have any repayment rate data for borrowers in the first two years of repayment that reflects any potential improvements in performance as a result of the regulations and decided to describe this factor that may reduce the effects of the regulations instead of quantifying it. Additionally, the repayment rates used for modeling the effects of these regulations do not include in the numerator of the repayment rate the consolidation loans with a balance that remained the same in the most recent fiscal year of borrowers in a post-baccalaureate programs. The results presented below also do not take into account the 5 percent cap on ineligibility for the first year programs that could lose eligibility. The Secretary will cap the number of ineligible programs by first sorting institutions by category of institutions (public, private nonprofit, and proprietary), then by loan repayment rate within that category, and finally, starting with the lowest repayment rate, by determining ineligible programs accounting for a combined number of program completers during FY 2014 that does not exceed 5 percent of the total number of program completers in that category. Finally, the limited availability of data related to repayment plans did not allow us to determine the effect of the provision treating all borrowers eligible for Public Service Loan Forgiveness as successfully in repayment or the revised policy allowing the OOPB of up to 3 percent of borrowers in alternative repayment plans and not paying down principal to be included in the numerator of the repayment rate calculation. To account for the treatment of loans in interest-only and negative amortization repayment plans, graduate student consolidation loans with a balance that remains the same, the loans eligible for Public Service Loan Forgiveness, and the ability of schools to take action to increase their repayment rates before the first official calculation with fiscal year 2012 data, the model boosts the rates calculated from NSLDS by 5 percentage points. We believe this adjustment is conservative in light of the fact that up to 3 percent of OOPB will receive adjustments for interest-only or negative amortization status, the potentially large numbers of borrowers eligible for Public Service Loan Forgiveness, and a published estimate that improved debt counseling could boost repayment rates by 2 to 5 percentage points.[11]

Initial Model State

The model starts with data for schools that have programs subject to the gainful employment regulations. These data include the repayment rate calculated from NSLDS, the estimated number of programs subject to the regulations, and the number of students enrolled in these programs. The

[11] Paul Ginocchio and Adrienne Colby, Deutsche Bank, "Post 3Q Update on PE Drivers and Gainful Employment," November 12, 2010.

repayment rate is classified into three levels: Passing, Near Failing, and Failing based on the 35 percent and 45 percent thresholds used in the NPRM. School, program and student counts are then grouped by school sector and repayment rate category.

Year One School Assessment

The outcome for each year depends upon both repayment rate and debt-to-earnings ratios. The latter is imputed using a specified relationship between the two measures. This relationship is assumed to vary by sector, and to be static across years. The specification is informed by schools from the Missouri data for which both measures are available.

The imputation process returns the debt-to-earnings ratios classified into three levels, similar to the repayment rate. The relationship is specified by loading rates into a three dimensional array indexed by sector, repayment category, and debt category. These rates indicate the relative likelihood that a school in a given sector with a given repayment category will exhibit a debt ratio falling into each of the three categories. The model allocates schools, programs, and students to the debt categories according to the specified rates.

Schools for which both measures are in the third (Failing) category are classified as failing to provide gainful employment. The others are classified as passing.

Baseline Enrollment Growth Year One to Year Two

The user specifies baseline enrollment growth factors for each sector. These are stored in a one dimensional array indexed by sector. The model applies the appropriate factor to the student counts recorded for the end of Year One to yield projected enrollment by sector for Year Two. These projections do not consider behavioral changes associated with the students' reactions to the Year One outcomes.

Year Two Student Reaction to Year One Assessment

The user specifies transition rates for Year Two students who would have attended failing schools, but transfer to passing schools or forego enrollment in reaction to the Year One outcome. The rates are stored in a two dimensional array indexed by starting school sector and student choice. The students who would have attended a school with a history of failure are assumed to choose among 11 different options. The assumed choices consist of enrolling in a school with no prior failures in one of the nine sectors, foregoing enrollment, or ignoring the prior year outcomes and enrolling in a school in the same sector and with the same outcomes. The model re-allocates Year Two students to new sectors and Year One outcomes according to the specified rates.

School Transition and Year Two Assessment

The user specifies transition rates among repayment categories for Year Two schools. The rates are stored in a two dimensional array indexed by Year One repayment category and projected Year Two repayment category. The model re-allocates schools, programs, and students among new repayment categories according to the specified rates.

The model then invokes a user-specified debt imputation array to assign a debt category for Year Four according to the school's sector, repayment category, and prior year's performance on the debt-to-earnings ratios. The model allocates schools, programs, and students to the Year Two debt categories according to the specified rates. Schools for which both measures are in the third (Failing) category are classified as failing for Year Two, and the others are classified as passing for Year Two.

Baseline Enrollment Growth Year Two to Year Three

The user specifies baseline enrollment growth factors for each sector. These are stored in a one dimensional array indexed by sector. The model applies the appropriate factor to the student counts recorded for the end of Year Two to yield projected enrollment by sector for Year Three. These projections do not consider behavioral changes associated with the students' reactions to the prior year outcomes.

School Transition and Year Three Assessment

The user specifies transition rates among repayment categories for Year Three schools. The rates are stored in a three dimensional array indexed by Year One repayment category, imputed Year Two repayment category, and projected Year Three repayment category. The model re-allocates schools, programs and students among new repayment categories according to the specified rates.

The model then invokes a user-specified debt imputation array to assign a debt category for Year Four according to the school's sector, repayment category, and prior year's performance on the debt-to-earnings tests. The model allocates schools, programs and students to the Year Three debt categories according to the specified rates. Schools for which both measures are in the third (Failing) category are classified as failing for Year Three, and the others are classified as passing for Year Three. Schools that failed in each of the three years are classified as ineligible after Year Three.

Baseline Enrollment Growth Year Three to Year Four

The user specifies baseline enrollment growth factors for each sector. These are stored in a one dimensional array indexed by sector. The model applies the appropriate factor to the student counts recorded for the end of Year Three to yield projected enrollment by sector for Year Four. These

projections do not consider behavioral changes associated with the students' reactions to the prior year outcomes.

Year Four Student Reaction to Prior Years Assessments

The user specifies transition rates for Year Four students who would have attended failing schools, but transfer to better-performing schools or forego enrollment in reaction to the Year One, Year Two, and Year Three outcomes. The rates are stored in a three dimensional array indexed by the school's prior year outcomes (failed once, twice or three times), starting sector and student choice. The students who would have attended a school with a history of failure are assumed to choose among 20 different options. The assumed choices consist of enrolling in a school with no prior failures in one of the nine sectors, foregoing enrollment, enrolling in a school with one prior failure in one of the nine sectors, or ignoring the prior year outcomes and enrolling in a school in the same sector and with the same outcomes. The model re-allocates Year Four students to new sectors and prior year outcomes according to the specified rates.

School Transition and Year Four Assessment

The user specifies transition rates among repayment categories for Year Four schools. The rates are stored in a four dimensional array indexed by Year One repayment category, imputed Year Two repayment category, imputed Year Three repayment category and projected Year Three repayment category. The model re-allocates schools, programs and students among new repayment categories according to the specified rates.

The model then invokes a user-specified debt imputation array to assign a debt category for Year Four according to the school's sector, repayment category, and prior year's performance on the debt-to-earnings tests. The model allocates schools, programs and students to the Year Four debt categories according to the specified rates. Schools for which both measures are in the third (Failing) category are classified as failing for Year Four, and the others are classified as passing for Year Four. Schools that failed in Years One, Two and Four are classified as ineligible after Year Four.

Baseline Enrollment Growth Year Four to Year Five

The user specifies baseline enrollment growth factors for each sector. These are stored in a one dimensional array indexed by sector. The model applies the appropriate factor to the student counts recorded for the end of Year Four to yield projected enrollment by sector for Year Five. These projections do not consider behavioral changes associated with the students' reactions to the prior year outcomes.

Year Five Student Reaction to Prior Years Assessments

The user specifies transition rates for Year Five students who would have attended failing schools, but transfer to better-performing schools or forego enrollment in reaction to the Year One,

Year Two, and Year Three, and Year Four outcomes. The rates are stored in a three dimensional array indexed by the school's prior year outcomes (failed once, failed twice, ineligible after Year Three, and ineligible after Year Four), starting sector and student choice. The students who would have attended a school with a history of failure are assumed to choose among 20 different options. The assumed choices consist of enrolling in a school with no prior failures in one of the nine sectors, foregoing enrollment, enrolling in a school with one prior failure in one of the nine sectors, or ignoring the prior year outcomes and enrolling in a school in the same sector and with the same outcomes. The model re-allocates Year Five students to new sectors and prior year outcomes according to the specified rates.

Estimation of Effects on Students

In developing the gainful employment regulations, we established a model to estimate the number of programs and students that would be affected. As part of that analysis, we considered whether students enrolled at programs that were failing or lost eligibility would transfer to another institution, leave postsecondary education entirely, or (if the program was failing but remained eligible) remain enrolled.

Before we could estimate these responses, we first had to account for the high degree of turnover that already occurs within the various higher education sectors. For example, data from the latest Beginning Postsecondary Student (BPS) Longitudinal Survey show that over 36 percent of students who begin at two-year for-profit institutions leave without completing or transferring within one year. An additional 13.6 percent of students at those institutions transfer within one year. Applying our estimates of student behavior before accounting for this significant egress from institutions would overstate the effects of the regulations and obscure some of the very problems that they targets.

Therefore, our estimates of the effects of the regulations in terms of student transfer, retention, and drop out are applied after taking into account the movement that would have occurred anyway. In other words, we sought to ascertain what effect our regulations would have on students who would not have transferred out, already completed, or dropped out. Below we discuss some of the ways we modeled this initial student movement.

We used BPS data to estimate the number of students who would have transferred regardless of the regulations. BPS is the best data source for this purpose because it is student-based, allowing us to track individuals across multiple types of institutions. As a result, we can better see the movement of transfer students within and between sectors. By contrast, information reported in other databases like IPEDS come from institutions and provide selective information on the rate at which students transfer out, but contain no data on the type of institution at which they end up. The BPS survey also considers a more expansive set of students, including those who attend part time or enroll at times other than the fall semester, groups that are excluded from other national databases.

To create our estimate for transfer rates, we first looked at the percentage of students who first enrolled in 2003-04, stayed for at least four months, and had transferred by the 2004-05 academic

year, broken down by institution sector (control and level). This information gave us an estimate for what percentage of students would have transferred regardless of our regulations.

These data also provided guidance for our estimates of how students would transfer between and within sectors in response to the regulations. To do this, we selected only those students who had stayed for at least four months and had transferred by July 2004 to determine their first institution type and the type of institution they transferred in to. These results, which are depicted in Table 6, showed us the dispersion pattern of students who did transfer and demonstrated the importance of public institutions as receiving entities. However, we expect for-profit institutions to have the flexibility to respond to demand created by the closure of ineligible programs. Therefore, we assigned a higher share of transfers attributed to these regulations to stay within the for-profit sectors than is seen in the baseline data.

Table 6: Percentage Distribution of Students who Entered Higher Education in 2003-04 and Transferred by 2004-05, by Initial Institution Control and Receiving Institution Control

		Receiving Institution Control			
		Public	Private Nonprofit	Private For-profit	Total
First Institution Control	Public	81	8	11	100
	Private Nonprofit	79	19	2[a]	100
	Private For-profit	45[a]	3[b]	52	100

[a]Interpret data with caution. Estimate is unstable because the standard error represents more than 30 percent of the estimate.

[b] Interpret data with caution. Estimate is unstable because the standard error represents more than 50 percent of the estimate.

Source: BPS 04/09.

Estimates for the percentage of students that would have dropped out within their first year regardless of the regulations also came from BPS data. We looked at students' one-year retention and attainment rate at their initial institution, broken down by their first institution's sector. This information allowed us to see, for example, that 33 percent of students who enter a for-profit institution of two years or less had dropped out within one year. The results of this analysis for all sectors can be seen in Table 7.

This information on the dropout rate by sector also contributed to our estimates of the rate of students that would drop out due to the gainful employment regulations. The dropout rate assumptions in the high dropout and low dropout scenarios described in RIA Appendix A-1 and RIA Appendix A-2 are specified as the percentage of students who drop out or new students who do not enroll as a percentage of those remaining after the baseline level of dropouts found in the BPS data described above. The dropouts included in the model represent the potential response of students who would otherwise have continued or started their education to a program's performance on the debt measures. The Department does not have specific data on student responsiveness to disclosure

of program performance on the debt measures and the other information available under these regulations and those published on October 29, 2010 (75 FR 66832) (Program Integrity final regulations). Therefore, the high dropout and low dropout scenarios described in RIA Appendix A-1 and RIA Appendix A-2 established a range of outcomes based on the Department's expertise and review of comments received after the publication of the NPRM. The low dropout scenario started with a 5 percent dropout rate for a first failure of the debt measures to a 22 percent dropout rate of those remaining when a program becomes ineligible. This escalation is repeated in the high dropout scenario, which starts with a 15 percent dropout rate for a first failure and escalates up to 42 percent for ineligible programs in the for-profit less-than-two year sector. For each status (fail once, fail twice, ineligible), the for-profit sectors had a dropout rate 2 percentage points higher than the public sector and private nonprofit sectors, to reflect a potential increased emphasis on program performance in those sectors. While there was some variation by sector, a program's status was the key determinant of the dropout rate assigned to students.

Table 7: Cumulative Retention and Attainment at First Institution in 2004-05 for Students entering Postsecondary Education in 2003-04, by First Institution Sector, Control, and Level

	Attained Credential	Still Enrolled	Transferred	Not Enrolled or Left Without Return	Total
4-year Institutions					
Public	1	70	20	10	100%
Private Nonprofit	2[a]	70	20	8	100%
Private For-profit	5[b]	52	17	26	100%
2-year Institutions					
Public	6	43	21	29	100%
Private Nonprofit	15[a]	27	29	29	100%
Private For-profit	22	29	14	36	100%
Less-than-2-year Institutions					
Public	60	7[a]	8	25	100%
Private Nonprofit	33[a]	18[b]	11[b]	39	100%
Private For-profit	47	9	11	33	100%
Total	8	51	20	21	100%

[a] Interpret data with caution. Estimate is unstable because the standard error represents more than 30 percent of the estimate.

[b] Interpret data with caution. Estimate is unstable because the standard error represents more than 50 percent of the estimate.

Source: BPS 04/09.

Establishing the one-year rate of transfer and dropout within each sector allowed us to determine what percentage of students should be removed from the model before estimating the effects of our regulations. Running our estimates of the effect of the regulations after subtracting the students who would have left anyway contextualizes the outcome of our regulations and acknowledges the significant existing levels of student movement that already occur in many programs. For example, only 29 percent of students at two-year for-profit institutions who entered in 2003-04 were still enrolled in 2004-05. If we estimate that these final regulations would cause 35

percent of those remaining students to drop out, the high existing dropout and transfer rate means that just 10 percent of the student body would actually be affected. In this case, that result would mean the effect on students from the gainful employment regulations is less than one-third of the general dropout effect and has roughly one-fifth of the impact that general student exit does.

Summary of Results

While stepping through the events described above, the model records the state of the system at specific points in the process. These snapshots of data are combined, so that student shifts to different schools and to passing or failing programs can be displayed, across the modeled years. The model can be run under different scenarios by changing selected user-specified input and saving the results. The results of various scenarios may then be considered in the analysis of the effects of the gainful employment regulations on schools, programs, and students.

Tables 9 to 12 summarize the estimated results for programs, students, and revenues for the scenarios evaluated. As shown in Table 9, an estimated 1 percent of all programs and 3 percent of all programs at for-profit institutions will lose eligibility by 2015. The Department also estimates that 7 percent of programs at four-year for-profit institutions and 6 percent of programs at two-year for-profit institutions will lose eligibility.

As discussed above, the assumptions and detailed results for each scenario are available in the appendices to this RIA. In brief, the low dropout scenario has a maximum 22 percent drop-out rate in reaction to debt measure performance, and the high dropout scenario features a higher maximum 42 percent drop-out rate for ineligible programs. As noted earlier, BPS provides information regarding students' first-to-second-year persistence behaviors. We used these data to inform our "steady-state" estimate for the probability of dropping out. Using this baseline, we established the drop-out rate benchmarks for the various scenarios as noted above. The school and program assumptions for debt performance and repayment category transitions vary slightly as shown in RIA Appendix A-1 and RIA Appendix A-2. The estimated drop-outs related to the regulations over the five years ranged from 80,153 in the Low Dropout Scenario to 181,933 in the High Dropout Scenario. The percentage of programs subject to ineligibility ranges from 0.1 percent to 3.9 percent when the total number of regulated programs is used at the denominator. If the denominator excludes the small programs that are not subject to the measures, the percentage of programs that are ineligible ranges from 0.6 percent to 7.1 percent. The percentage of programs that have failed the measures at least once in a four-year cycle ranges from 1.1 percent for the public less-than-two-year sector to 24.5 percent for the for-profit four-year sector.

When students transfer out of a sector or drop out of education, revenues and expenses associated with those students shift among sectors or leave higher education. Table 8 contains per enrollee revenue and expense information used to estimate the costs per sector of the student transfers set out in Tables 10-A to 10-C and in the RIA Appendices. These estimated direct costs are set out in Tables 12-A to 12-C. Results for programs are set out in Tables 11-A to 11-C. We estimate the effects on revenue under a scenario in which the maximum drop-out rate is 22 percent and a scenario in which the maximum drop-out rate is 42 percent.

Table 8: Sector Average Revenues and Expenses per Enrollee

		4-year Institutions			2-year Institutions			Less-than-2-year Institutions		
		Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit
Institutions with Passing Repayment Rates	**Revenues**									
	Total	32,241	15,476	11,982	6,077	9,867	8,679	14,338	8,474	8,254
	Tuition and Fee	4,575	11,227	10,487	1,122	6,445	6,866	4,803	4,415	6,132
	Core*	23,381	9,637	11,605	5,801	9,378	8,570	14,338	8,261	8,253
	Expenses									
	Total	32,190	30,669	10,772	5,719	27,067	7,703	11,209	9,805	7,549
	Instructional	7,711	9,363	2,884	2,339	7,233	2,959	6,868	5,273	2,997
	Core**	23,368	25,548	10,385	5,395	26,601	7,568	11,209	9,804	7,546
Institutions with Failing Repayment Rates	**Revenues**									
	Total	21,981	20,234	9,001	5,293	9,146	8,004	7,286	5,305	6,594
	Tuition and Fee	3,582	8,150	7,734	717	4,991	6,428	3,567	2,456	4,980
	Core*	17,998	14,817	8,779	5,091	8,543	7,905	7,286	5,305	6,591
	Expenses									
	Total	20,807	23,847	7,833	4,915	9,792	7,221	5,915	5,654	5,529
	Instructional	6,832	5,580	2,080	1,871	2,592	2,497	4,345	3,290	2,283
	Core**	16,376	19,053	7,685	4,636	9,110	7,122	5,915	5,654	5,458

Note: Revenue and expense figures are not additive

*Total revenues for the essential education activities of the institution. Core revenues for public institutions (using the Governmental Accounting Standards Board (GASB) standards) include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private gifts, grants, and contracts; investment income; other operating and nonoperating sources; and other revenues and additions. Core revenues for private, not-for-profit and public institutions reporting under the Financial Accounting Standards Board (FASB) standards include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private gifts, grants, and contracts; investment return; sales and services of educational activities; and other sources. Core revenues for private, for-profit institutions reporting under FASB standards include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private grants and contracts; net investment income; sales and services of educational activities; and other sources. In general, core revenues exclude revenues from auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations.

**Total expenses for the essential education activities of the institution. Core expenses for public institutions reporting under GASB standards include expenses for instruction, research, public service, academic support, student services, institutional support, operation and maintenance of plant, depreciation, scholarships and fellowships, interest and other operating and nonoperating expenses. Core expenses for FASB (primarily private, not-for-profit and for-profit) institutions include expenses on instruction, research, public service, academic support, student services, institutional support, net grant aid to students, and other expenses. For both FASB and GASB institutions, core expenses exclude expenses for auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations.

Source: IPEDS: 2008-09.

Table 9: Summary of Impact of the Regulations From 2012 to 2015

Table 9-A: Impact of the Regulations on Programs

	Total	Public	Private Nonprofit	Private For-profit
Institutions with Regulated Programs	4,467	1,664	911	1,892
Regulated Programs Offered	55,405	37,218	5,072	13,155
High Drop Scenario				
Programs that Fail Once	1,040	173	72	795
Percent	2%	0%	1%	6%
Programs that Fail Twice	550	99	74	404
Percent	1%	0%	1%	3%
Programs that Lose Eligibility	479	78	50	390
Percent	1%	0%	1%	3%
Programs that Fail At Least Once	2,069	350	196	1,589
Percent	4%	1%	4%	12%
Programs that Never Fail	53,336	36,868	4,876	11,566
Percent	96%	99%	96%	88%
Low Drop Scenario				
Programs that Fail Once	785	155	29	601
Percent	1%	0%	1%	5%
Programs that Fail Twice	500	82	15	376
Percent	1%	0%	0%	3%
Programs that Lose Eligibility	467	66	11	351
Percent	1%	0%	0%	3%
Programs that Fail At Least Once	1,752	303	55	1,328
Percent	3%	1%	1%	10%
Programs that Never Fail	53,653	36,915	5,017	11,827
Percent	97%	99%	99%	90%

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS and MDHE.

Table 9-B: Impact of the Regulations on Students, High Drop Scenario

		Program Result				Percent in Programs that Fail Once or More	Percent in Ineligible Programs	Percent in Programs that Never Fail
	Enrolled	Fail Once	Fail Twice	Ineligible	Never Fail			
After Year 1								
Public	4,302,174	18,584			4,283,590	0%	0%	100%
Private Nonprofit	231,611	1,054			230,557	0%	0%	100%
Private For-profit	3,833,506	136,221			3,697,285	4%	0%	96%
Total	8,367,291	155,859			8,211,432	2%	0%	98%
After Year 2								
Public	4,425,666	37,320	11,939		4,376,407	1%	0%	99%
Private Nonprofit	241,978	3,458	1,112		237,408	2%	0%	98%
Private For-profit	4,064,595	218,608	83,277		3,762,710	7%	0%	93%
Total	8,732,239	259,386	96,328		8,376,525	4%	0%	96%
After Year 3								
Public	4,551,720	47,546	22,372	7,133	4,474,669	2%	0%	98%
Private Nonprofit	256,488	4,834	2,225	559	248,870	3%	0%	97%
Private For-profit	4,309,054	265,366	128,513	47,345	3,867,830	9%	1%	90%
Total	9,117,262	317,746	153,110	55,037	8,591,369	5%	1%	94%
After Year 4								
Public	4,678,687	60,907	27,646	17,610	4,572,524	2%	0%	98%
Private Nonprofit	275,995	6,769	3,195	1,375	264,656	4%	0%	96%
Private For-profit	4,549,312	295,701	155,116	101,823	3,996,672	10%	2%	88%
Total	9,503,994	363,377	185,957	120,808	8,833,852	6%	1%	93%

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS and MDHE.

Table 9-C: Impact of the Regulations on Students, Low Drop Scenario

		Program Result				Percent in Programs that Fail Once or More	Percent in Ineligible Programs	Percent in Programs that Never Fail
	Enrolled	Fail Once	Fail Twice	Ineligible	Never Fail			
After Year 1								
Public	4,302,174	18,584			4,283,590	0%	0%	100%
Private Nonprofit	232,398	1,841			230,557	1%	0%	99%
Private For-profit	3,833,506	136,221			3,697,285	4%	0%	96%
Total	8,368,078	156,646			8,211,432	2%	0%	98%
After Year 2								
Public	4,426,986	36,919	12,224		4,377,843	1%	0%	99%
Private Nonprofit	243,432	3,450	1,151		238,831	2%	0%	98%
Private For-profit	4,070,765	216,685	85,250		3,768,830	7%	0%	93%
Total	8,741,183	257,054	98,625		8,385,504	4%	0%	96%
After Year 3								
Public	4,555,832	46,068	22,644	7,617	4,479,503	2%	0%	98%
Private Nonprofit	261,277	4,869	2,362	624	253,422	3%	0%	97%
Private For-profit	4,316,036	258,692	129,663	50,492	3,877,189	9%	1%	90%
Total	9,133,145	309,629	154,669	58,733	8,610,114	5%	1%	94%
After Year 4								
Public	4,687,001	58,754	27,582	19,016	4,581,649	2%	0%	98%
Private Nonprofit	285,844	7,107	3,492	1,608	273,637	4%	1%	96%
Private For-profit	4,564,256	290,532	153,723	109,201	4,010,800	10%	2%	88%
Total	9,537,101	356,393	184,797	129,825	8,866,086	6%	1%	93%

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS and MDHE.

Tables 10: Student Distribution by Sector and Debt Measure Status

Table 10-A: 4-year Institutions

		Year 2	Year 3	Year 4	Year 5
Public 4-year	**High Drop Scenario**				
	No Fail	327,060	330,420	333,954	340,714
	Transfer Out of Sector	187	583	967	1,353
	Transfer Into Sector from Out	125	479	918	1,379
	Transfer within Sector	29	95	160	307
	Remain in Sector	1,151	3,964	5,012	6,698
	Drop Out	162	525	892	1,256
	Low Drop Scenario				
	No Fail	327,060	330,513	334,498	341,952
	Transfer Out of Sector	226	711	1,189	1,697
	Transfer Into Sector from Out	161	728	1,336	1,930
	Transfer within Sector	44	133	219	435
	Remain in Sector	1,204	4,234	5,327	7,192
	Drop Out	53	185	330	482
Private Nonprofit 4-year	**High Drop Scenario**				
	No Fail	171,637	330,420	182,377	190,347
	Transfer Out of Sector	164	442	829	1,133
	Transfer Into Sector from Out	1,433	3,808	6,018	8,074
	Transfer within Sector	30	73	131	179
	Remain in Sector	1,015	2,397	3,809	5,389
	Drop Out	145	398	707	1,051
	Low Drop Scenario				
	No Fail	171,637	330,513	182,350	190,671
	Transfer Out of Sector	217	574	1,078	1,520
	Transfer Into Sector from Out	1,293	3,809	6,340	8,783
	Transfer within Sector	24	66	127	182
	Remain in Sector	1,063	2,526	4,063	5,876
	Drop Out	49	143	268	415
Private For-profit 4-year	**High Drop Scenario**				
	No Fail	2,568,184	2,621,422	2,692,559	2,773,370
	Transfer Out of Sector	4,519	12,152	19,078	25,142
	Transfer Into Sector from Out	1,292	3,086	4,919	6,509
	Transfer within Sector	5,118	10,674	14,691	18,302
	Remain in Sector	67,466	163,182	238,471	302,278
	Drop Out	8,188	19,696	29,447	38,087
	Low Drop Scenario				
	No Fail	2,568,184	2,625,280	2,706,729	2,799,614
	Transfer Out of Sector	5,545	14,489	22,601	30,068
	Transfer Into Sector from Out	1,730	4,041	6,334	8,407
	Transfer within Sector	6,567	14,008	19,457	24,608
	Remain in Sector & Status	69,769	169,495	248,208	318,288
	Drop Out	3,412	8,362	12,722	16,802

Table 10-B: 2-year Institutions

		Year 2	Year 3	Year 4	Year 5
Public 2-year	**High Drop Scenario**				
	No Fail	3,964,029	4,053,618	4,146,656	4,279,736
	Transfer Out of Sector	1,351	3,183	5,850	6,893
	Transfer Into Sector from Out	1,298	3,248	4,583	5,600
	Transfer within Sector	386	908	1,367	1,911
	Remain in Sector	14,408	37,700	58,521	81,151
	Drop Out	1,385	3,672	5,947	8,488
	Low Drop Scenario				
	No Fail	3,964,029	4,054,896	4,151,204	4,288,503
	Transfer Out of Sector	1,685	3,903	7,099	8,407
	Transfer Into Sector from Out	1,877	4,377	5,990	7,275
	Transfer within Sector	491	1,141	1,710	2,403
	Remain in Sector	14,829	38,754	59,762	82,966
	Drop Out	526	1,431	2,366	3,428
Private Nonprofit 2-year	**High Drop Scenario**				
	No Fail	29,129	30,732	33,995	39,629
	Transfer Out of Sector	3,736	7,464	23,144	12,748
	Transfer Into Sector from Out	1,169	2,923	5,198	7,208
	Transfer within Sector	4	11	19	34
	Remain in Sector	255	617	1,076	1,304
	Drop Out	20	56	112	198
	Low Drop Scenario				
	No Fail	29,129	32,202	38,334	47,803
	Transfer Out of Sector	4,689	9,210	26,925	15,395
	Transfer Into Sector from Out	2,622	5,755	8,930	11,827
	Transfer within Sector	5	14	27	47
	Remain in Sector	261	664	1,231	1,581
	Drop Out	7	23	49	94
Private For-profit 2-year	**High Drop Scenario**				
	No Fail	696,362	700,059	704,303	721,865
	Transfer Out of Sector	3,326	6,698	10,304	12,735
	Transfer Into Sector from Out	2,256	3,460	5,500	6,156
	Transfer within Sector	1,230	2,297	3,699	4,644
	Remain in Sector	36,889	71,007	102,621	122,080
	Drop Out	4,099	8,257	13,007	16,268
	Low Drop Scenario				
	No Fail	696,362	695,333	697,946	713,706
	Transfer Out of Sector	4,188	8,281	12,662	15,721
	Transfer Into Sector from Out	2,281	3,455	5,848	6,593
	Transfer within Sector	1,548	2,876	4,557	5,730
	Remain in Sector	37,982	72,302	102,637	122,182
	Drop Out	1,822	3,688	5,797	7,306

Note: Figures are cumulative year to year

* Students stay at an institution that had the same result - either failing or passing- the gainful employment tests. It is assumed that students who transfer within a sector do not attend an institution that has failed these tests.

Table 10-C: Less-than-2-year Institutions

		Year 2	Year 3	Year 4	Year 5
Public Less-than-2-year	**High Drop Scenario**				
	No Fail	116,658	120,421	125,025	131,667
	Transfer Out of Sector	7	35	79	132
	Transfer Into Sector from Out	470	514	608	707
	Transfer within Sector	1	5	10	16
	Remain in Sector & Status	51	198	398	640
	Drop Out	9	39	90	152
	Low Drop Scenario				
	No Fail	116,658	120,529	124,907	131,141
	Transfer Out of Sector	10	41	89	155
	Transfer Into Sector from Out	575	436	648	754
	Transfer within Sector	1	5	11	18
	Remain in Sector & Status	54	212	399	642
	Drop Out	5	20	42	72
Private Nonprofit Less-than-2-year	**High Drop Scenario**				
	No Fail	36,707	38,132	40,352	43,000
	Transfer Out of Sector	21	63	115	175
	Transfer Into Sector from Out	401	1,232	2,138	2,891
	Transfer within Sector	3	8	15	24
	Remain in Sector & Status	194	522	873	1,274
	Drop Out	25	71	132	201
	Low Drop Scenario				
	No Fail	36,707	38,230	40,733	43,832
	Transfer Out of Sector	28	81	143	253
	Transfer Into Sector from Out	488	1,523	2,747	3,795
	Transfer within Sector	3	10	19	33
	Remain in Sector & Status	200	543	949	1,548
	Drop Out	12	36	70	118
Private For-profit Less-than-2-year	**High Drop Scenario**				
	No Fail	672,177	704,618	741,717	781,205
	Transfer Out of Sector	1,209	2,764	4,144	5,363
	Transfer Into Sector from Out	2,231	4,309	6,008	7,333
	Transfer within Sector	356	768	1,209	1,317
	Remain in Sector & Status	10,909	21,616	29,563	37,198
	Drop Out	1,749	3,902	5,874	7,629
	Low Drop Scenario				
	No Fail	672,177	698,883	730,442	764,292
	Transfer Out of Sector	1,578	3,509	5,195	6,697
	Transfer Into Sector from Out	2,326	4,440	6,267	7,797
	Transfer within Sector	412	980	1,533	1,655
	Remain in Sector & Status	11,278	21,928	29,581	36,936
	Drop Out	953	2,063	3,055	3,950

Note: Figures are cumulative year to year

* Students stay at an institution that had the same result - either failing or passing - the gainful employment tests. It is assumed that students who transfer within a sector do not attend an institution that has failed these tests.

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS and MDHE.

Tables 11: Program Distribution by Sector and Debt Measure Status

Table 11-A: 4-year Institutions

		Year 2	Year 3	Year 4
Public 4-year	**High Drop Scenario**			
	Pass	4,926	4,913	4,897
	Fail Once	13	19	25
	Fail Twice	4	9	12
	Ineligible Year 3	0	3	3
	Ineligible Year 4	0	0	6
	Low Drop Scenario			
	Pass	4,926	4,913	4,898
	Fail Once	13	18	24
	Fail Twice	4	9	12
	Ineligible Year 3	0	3	3
	Ineligible Year 4	0	0	6
Private Nonprofit 4-year	**High Drop Scenario**			
	Pass	4,384	4,371	4,358
	Fail Once	12	17	22
	Fail Twice	4	8	11
	Ineligible Year 3	0	3	3
	Ineligible Year 4	0	0	5
	Low Drop Scenario			
	Pass	4,384	4,372	4,359
	Fail Once	12	17	22
	Fail Twice	4	8	11
	Ineligible Year 3	0	3	3
	Ineligible Year 4	0	0	5
Private For-profit 4-year	**High Drop Scenario**			
	Pass	3,915	3,783	3,668
	Fail Once	209	227	239
	Fail Twice	118	153	168
	Ineligible Year 3	0	80	80
	Ineligible Year 4	0	0	87
	Low Drop Scenario			
	Pass	3,920	3,796	3,688
	Fail Once	205	219	233
	Fail Twice	118	147	158
	Ineligible Year 3	0	80	80
	Ineligible Year 4	0	0	84

Note: Figures are cumulative year to year

Table 11-B: 2-year Institutions

		Year 2	Year 3	Year 4
Public 2-year	**High Drop Scenario**			
	Pass	30,125	30,056	29,976
	Fail Once	77	100	130
	Fail Twice	30	55	69
	Ineligible Year 3	0	21	21
	Ineligible Year 4	0	0	35
	Low Drop Scenario			
	Pass	30,127	30,061	29,986
	Fail Once	76	96	124
	Fail Twice	29	54	67
	Ineligible Year 3	0	21	21
	Ineligible Year 4	0	0	35
Private Nonprofit 2-year	**High Drop Scenario**			
	Pass	391	389	386
	Fail Once	2	3	4
	Fail Twice	1	2	2
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
	Low Drop Scenario			
	Pass	391	389	386
	Fail Once	2	3	4
	Fail Twice	1	2	2
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
Private For-profit 2-year	**High Drop Scenario**			
	Pass	4,396	4,220	4,084
	Fail Once	225	279	284
	Fail Twice	133	165	204
	Ineligible Year 3	0	90	90
	Ineligible Year 4	0	0	91
	Low Drop Scenario			
	Pass	4,402	4,239	4,113
	Fail Once	220	266	272
	Fail Twice	133	159	191
	Ineligible Year 3	0	90	90
	Ineligible Year 4	0	0	88

Note: Figures are cumulative year to year

Table 11-C: Less-than-2-year Institutions

		Year 2	Year 3	Year 4
Public 2-Year	**High Drop Scenario**			
	Pass	2,039	2,035	2,031
	Fail Once	3	5	7
	Fail Twice	1	2	3
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
	Low Drop Scenario			
	Pass	2,039	2,035	2,031
	Fail Once	3	5	7
	Fail Twice	1	2	3
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
Private Nonprofit 2-Year	**High Drop Scenario**			
	Pass	275	273	271
	Fail Once	2	3	4
	Fail Twice	1	2	2
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
	Low Drop Scenario			
	Pass	275	274	271
	Fail Once	2	3	4
	Fail Twice	1	2	2
	Ineligible Year 3	0	1	1
	Ineligible Year 4	0	0	1
Private, For-profit 2-Year	**High Drop Scenario**			
	Pass	4,016	3,964	3,909
	Fail Once	68	83	101
	Fail Twice	34	48	58
	Ineligible Year 3	0	23	23
	Ineligible Year 4	0	0	26
	Low Drop Scenario			
	Pass	4,018	3,970	3,919
	Fail Once	68	80	97
	Fail Twice	32	46	54
	Ineligible Year 3	0	22	22
	Ineligible Year 4	0	0	26

Note: Figures are cumulative year to year

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS and MDHE.

Tables 12: Estimated Direct Revenue and Expense Effects (Dollars in Millions)

Table 12-A: 4-year Institutions

			Year 2	Year 3	Year 4	Year 5
Public 4-year	**High Drop Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.6	1.9	3.2	4.5
		Loss From Transfers Out	0.7	2.1	3.5	4.9
		Gain From Transfers In	0.6	2.2	4.2	6.3
	Expenses	Reduction from Drop Outs	2.7	8.7	14.9	20.9
		Reduction from Transfers Out	3.1	9.7	16.1	22.5
		Increase from Transfers In	1.0	3.7	7.1	10.6
	Net Revenues for Sector		4.2	13.0	21.4	29.8
	Low Drop Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.2	0.7	1.2	1.7
		Loss From Transfers Out	0.8	2.6	4.3	6.1
		Gain From Transfers In	0.7	3.3	6.1	8.8
	Expenses	Reduction from Drop Outs	0.9	3.1	5.5	8.0
		Reduction from Transfers Out	3.8	11.8	19.8	28.3
		Increase from Transfers In	1.2	5.6	10.3	14.9
	Net Revenues for Sector		3.1	9.4	15.7	22.4
Private Nonprofit 4-year	**High Drop Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	1.2	3.2	5.8	8.6
		Loss From Transfers Out	1.3	3.6	6.8	9.2
		Gain From Transfers In	16.1	42.8	67.6	90.7
	Expenses	Reduction from Drop Outs	2.8	7.6	13.5	20.1
		Reduction from Transfers Out	3.1	8.4	15.8	21.6
		Increase from Transfers In	13.4	35.7	56.4	75.6
	Net Change in Revenues for Sector		**5.3**	**14.9**	**26.5**	**37.5**
	Low Drop Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.4	1.2	2.2	3.4
		Loss From Transfers Out	1.8	4.7	8.8	12.4
		Gain From Transfers In	14.5	42.8	71.2	98.6
	Expenses	Reduction from Drop Outs	0.9	2.7	5.1	7.9
		Reduction from Transfers Out	4.1	11.0	20.6	29.0
		Increase from Transfers In	12.1	35.7	59.4	82.2
	Net Change in Revenues for Sector		**6.1**	**16.3**	**28.0**	**38.9**
Private For-profit 4-year	**High Drop Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	63.3	152.3	227.7	294.6
		Loss From Transfers Out	35.0	94.0	147.6	194.5
		Gain From Transfers In	13.6	32.4	51.6	68.3
	Expenses	Reduction from Drop Outs	51.3	123.4	184.5	238.7
		Reduction from Transfers Out	28.3	76.2	119.6	157.6
		Increase from Transfers In	3.7	8.9	14.2	18.8
	Net Change in Revenues for Sector		**-8.8**	**-23.3**	**-33.8**	**-43.3**
	Low Drop Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	26.4	64.7	98.4	130.0
		Loss From Transfers Out	42.9	112.1	174.8	232.6
		Gain From Transfers In	18.1	42.4	66.4	88.2
	Expenses	Reduction from Drop Outs	21.4	52.4	79.7	105.3
		Reduction from Transfers Out	34.8	90.8	141.6	188.4
		Increase from Transfers In	5.0	11.7	18.3	24.3
	Net Change in Revenues for Sector		**0.0**	**-2.8**	**-3.7**	**-4.9**

Table 12-B: 2-year Institutions

			Year 2	Year 3	Year 4	Year 5
Public 2-year	**High Drop Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	1.0	2.6	4.3	6.1
		Loss From Transfers Out	1.0	2.3	4.2	4.9
		Gain From Transfers In	1.5	3.6	5.1	6.3
	Expenses	Reduction from Drop Outs	5.5	14.4	23.4	33.4
		Reduction from Transfers Out	5.3	12.5	23.0	27.1
		Increase from Transfers In	3.0	7.6	10.7	13.1
	Net Change in Revenues for Sector		7.2	18.1	32.4	42.6
	Low Drop Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.4	1.0	1.7	2.5
		Loss From Transfers Out	1.2	2.8	5.1	6.0
		Gain From Transfers In	2.1	4.9	6.7	8.2
	Expenses	Reduction from Drop Outs	2.1	5.6	9.3	13.5
		Reduction from Transfers Out	6.6	15.4	27.9	33.1
		Increase from Transfers In	4.4	10.2	14.0	17.0
	Net Change in Revenues for Sector		4.8	11.8	23.1	29.2
Private Nonprofit 2-year	**High Drop Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.1	0.3	0.6	1.0
		Loss From Transfers Out	18.7	37.3	115.5	63.6
		Gain From Transfers In	7.5	18.8	33.5	46.5
	Expenses	Reduction from Drop Outs	0.2	0.4	0.9	1.6
		Reduction from Transfers Out	29.3	58.5	181.3	99.9
		Increase from Transfers In	8.5	21.1	37.6	52.1
	Net Change in Revenues for Sector		**9.8**	**19.1**	**62.0**	**31.1**
	Low Drop Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.2	0.5
		Loss From Transfers Out	23.4	46.0	134.4	76.8
		Gain From Transfers In	16.9	37.1	57.6	76.2
	Expenses	Reduction from Drop Outs	0.1	0.2	0.4	0.7
		Reduction from Transfers Out	36.7	72.2	210.9	120.6
		Increase from Transfers In	19.0	41.6	64.6	85.5
	Net Change in Revenues for Sector		**11.3**	**21.7**	**69.6**	**34.7**
Private For-profit 2-year	**High Drop Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	26.4	53.1	83.6	104.6
		Loss From Transfers Out	21.4	43.1	66.2	81.9
		Gain From Transfers In	15.5	23.8	37.8	42.3
	Expenses	Reduction from Drop Outs	23.7	47.7	75.1	94.0
		Reduction from Transfers Out	19.2	38.7	59.5	73.6
		Increase from Transfers In	6.7	10.2	16.3	18.2
	Net Change in Revenues for Sector		**4.0**	**3.8**	**6.3**	**5.2**
	Low Drop Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	11.7	23.7	37.3	47.0
		Loss From Transfers Out	26.9	53.2	81.4	101.1
		Gain From Transfers In	15.7	23.7	40.2	45.3
	Expenses	Reduction from Drop Outs	10.5	21.3	33.5	42.2
		Reduction from Transfers Out	24.2	47.8	73.2	90.8
		Increase from Transfers In	6.8	10.2	17.3	19.5
	Net Change in Revenues for Sector		**5.0**	**5.7**	**10.8**	**10.8**

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS and MDHE.

Table 12-C: Less-than-2-year Institutions

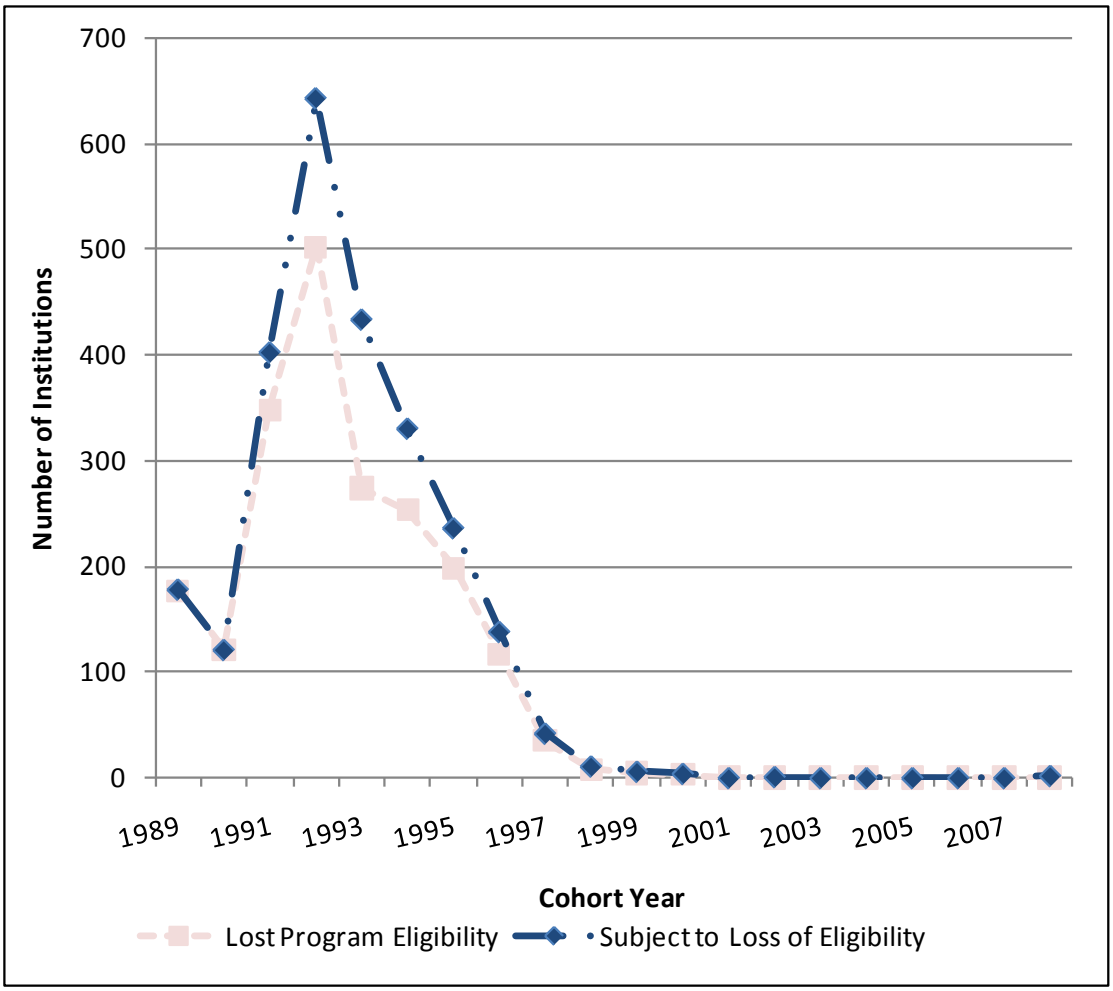
			Year 2	Year 3	Year 4	Year 5
Public Less-than-2-year	**High Drop Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.3	0.5
		Loss From Transfers Out	0.0	0.1	0.3	0.5
		Gain From Transfers In	2.3	2.5	2.9	3.4
	Expenses	Reduction from Drop Outs	0.0	0.2	0.4	0.7
		Reduction from Transfers Out	0.0	0.2	0.4	0.6
		Increase from Transfers In	3.2	3.5	4.2	4.9
	Net Revenues for Sector		-1.0	-1.0	-1.1	-1.1
	Low Drop Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.2	0.3
		Loss From Transfers Out	0.0	0.2	0.3	0.6
		Gain From Transfers In	2.8	2.1	3.1	3.6
	Expenses	Reduction from Drop Outs	0.0	0.1	0.2	0.3
		Reduction from Transfers Out	0.1	0.2	0.4	0.7
		Increase from Transfers In	4.0	3.0	4.5	5.2
	Net Revenues for Sector		-1.2	-0.8	-1.2	-1.3
Private Nonprofit Less-than-2-year	**High Drop Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	0.1	0.2	0.3	0.5
		Loss From Transfers Out	0.1	0.2	0.3	0.4
		Gain From Transfers In	1.8	5.4	9.4	12.8
	Expenses	Reduction from Drop Outs	0.1	0.3	0.6	0.9
		Reduction from Transfers Out	0.1	0.3	0.5	0.8
		Increase from Transfers In	2.1	6.5	11.3	15.2
	Net Change in Revenues for Sector		**-0.3**	**-0.8**	**-1.3**	**-1.7**
	Low Drop Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	0.0	0.1	0.2	0.3
		Loss From Transfers Out	0.1	0.2	0.4	0.6
		Gain From Transfers In	2.2	6.7	12.1	16.8
	Expenses	Reduction from Drop Outs	0.1	0.2	0.3	0.5
		Reduction from Transfers Out	0.1	0.4	0.7	1.1
		Increase from Transfers In	2.6	8.0	14.5	20.0
	Net Change in Revenues for Sector		**-0.3**	**-1.1**	**-1.9**	**-2.5**
Private For-profit Less-than-2-year	**High Drop Scenario**					
	Tuition and Fee Revenue	Loss From Drop Outs	8.7	19.4	29.3	38.0
		Loss From Transfers Out	6.0	13.8	20.6	26.7
		Gain From Transfers In	13.7	26.4	36.8	45.0
	Expenses	Reduction from Drop Outs	7.7	17.3	26.0	33.7
		Reduction from Transfers Out	5.4	12.2	18.3	23.7
		Increase from Transfers In	6.7	12.9	18.0	22.0
	Net Change in Revenues for Sector		**5.4**	**9.8**	**13.3**	**15.8**
	Low Drop Scenario					
	Tuition and Fee Revenue	Loss From Drop Outs	4.8	10.3	15.2	19.7
		Loss From Transfers Out	7.9	17.5	25.9	33.4
		Gain From Transfers In	14.3	27.2	38.4	47.8
	Expenses	Reduction from Drop Outs	4.2	9.1	13.5	17.5
		Reduction from Transfers Out	7.0	15.5	23.0	29.6
		Increase from Transfers In	7.0	13.3	18.8	23.4
	Net Change in Revenues for Sector		**5.9**	**10.8**	**15.1**	**18.5**

Source: NSLDS, IPEDS, BPS: 04/09, NPSAS and MDHE.

The data used in this model are limited by the fact that we are using data that was not collected for this purpose. There is also uncertainty in our assumptions because predicting student behavior and employment trends is well beyond what we are able to model. Given the data limitations, the Department also ran a maximum effects scenario, detailed in RIA Appendix A-3. This scenario assigned the debt-to-earnings performance based on the percentage of schools within a sector that had more than half its undergraduates borrowing Federal loans. Two-thirds of that percentage was assigned to the worst debt category and one-third to the near-failing category to maximize the percentage of programs that could become ineligible. The repayment category transitions and debt test failure rates were set to make it difficult for programs to improve out of the worst debt category and to increase the possibility of falling into it. The student transition assumptions were set to maximize drop-outs, with 566,135 estimated over a five year period. Even with these worst-case assumptions, the percentage of regulated programs subject to evaluation that become ineligible ranges from 1.1 percent of programs in the public 2-year sector to 22.3 percent in for-profit 2-year sector. The for-profit 4-year sector had ineligibility rates of 20.6 percent of programs subject to evaluation and the for-profit-less-than-two-year at 12 percent, with other sectors at or below the 5 percent cap in the initial year of ineligibility. Under this worst case scenario, the percentage of programs in any failure status at the end of a four-year cycle ranges from 4.6 percent in the public 2-year sector to 45.7 percent in the for-profit 2-year sector and 44.7 percent in the for-profit four year sector.

The effects described above represent the estimated effects of the regulations during the first four-year cycle leading to ineligibility, an initial transition period as the regulations come into effect. While the debt measures will remain in place, we would expect the effect to decline over time as programs that could not comply are eliminated and institutions have more data about program performance and are familiar with complying with the gainful employment debt measures. We expect the pattern of program failure to that which occurred when cohort default rates were introduced in 1989 with an initial elimination of the worst-performing programs followed by a new equilibrium in which programs comply with the minimum standards set out in the regulations.

Chart E: Loss of Eligibility after Introduction of Cohort Default Rates



Source: **Federal Student Aid.**

V. Discussion of Costs and Benefits

The Department has analyzed the impact of these regulations on students, businesses, the Federal Government, and State and local governments. The analysis rests on the projected impact of the regulations. More information on the model used to estimate those impacts is provided below.

Students and Borrowers

The regulations are primarily intended to provide opportunities for better employment and loan affordability outcomes for students, particularly for those participating in the Federal student aid programs. The final regulations provide significant opportunities for institutions to improve failing programs against the debt measures.

One improvement will result from strengthening the connection between the training programs and the labor market. It is a general feature of markets with individual sellers and buyers that independent individual decisions will lead to supply and demand imbalances. However, when excess supply leads directly to lower prices or sales to individual producers in well-functioning markets, producers respond by reducing their output which leads to an adjustment to the level of demand. In the case of educational markets with buyers with incomplete information, this mechanism may not operate properly. The direct demand by buyers (students) may be based on a misapprehension of the final demand by employers. Moreover, the suppliers are effectively insulated from the effects of an excess supply of graduates, because they are paid by students, not employers.

By tying the state of the labor market to the ability of for-profit institutions to generate revenue, the final regulations compensate for this disconnect between student demand and employer demand. First, earnings and repayment information will provide a clear indication to institutions about whether or not their students are successful in securing stable and well-paying positions. This information will help institutions determine when it would be prudent to expand some programs or pare back others. Second, meeting the debt-to-earnings ratio and repayment rate thresholds will encourage institutions to prepare students for jobs in well-paying and in-demand fields. This effect creates an incentive to move programs up-market so that they prepare students for jobs with better salaries and employment prospects.

The health care industry is an example of how the gainful employment regulations could encourage institutions, particularly those in the for-profit sectors, to adjust their offerings to provide better opportunities to students and to eliminate oversupply in the job market. A report by the Center for American Progress released in January found that for-profit institutions currently supply a significant percentage of health care credentials annually.[12] But many of these programs prepare students for low-paying entry-level jobs in support occupations, such as medical assistants, massage therapists, and medical insurance coders. Though most of those jobs have some labor market demand, projections of future openings indicate there is an oversupply of graduates for these positions, while more highly compensated occupations, such as registered nurses, are facing significant shortages. Not only are programs preparing students for these lower-paying occupations creating an oversupply of graduates, but this oversupply is almost entirely produced by the for-profit sector. The Center for American Progress report found that of the 10 most popular health care programs offered at for-profit institutions, eight of them are in programs for which the for-profit sector accounted for four-fifths or more of the completions each year. In other words, the for-profit sector was providing the vast majority of the oversupply in these health care fields with lesser earnings and growth potential.

[12] Julie Margetta Morgan and Ellen-Marie Whelan, "Profiting from Health Care: The Role of For-Profit Schools in Training the Health Care Workforce," Center for American Progress, January 2011, http://www.americanprogress.org/issues/2011/01/profiting_from_health_care.html

An analysis of national completion data shows that the health care industry is not the only area in which for-profit institutions are providing a significant supply of completions in areas where earnings and growth are low. Table 13 shows the 15 most popular instructional programs at for-profit institutions, as measured by the number of completions at any level. In nine of these program types, for-profit institutions accounted for over 60 percent of the annual completions. In all but one of these programs--registered nursing--for-profit institutions represented a disproportionately large share of the completions. As Table 13 demonstrates, the programs in which for-profit institutions are providing the vast majority of completions tend to have lower median wages, as measured by BLS data, than the programs in which they have a lower share of completions. This information suggests that increasing programs in these better paying areas—such as graduating more registered nurses instead of medical assistants—would help students obtain better jobs, while also allowing programs to perform better on the debt measures.

Table 13: Number of Completions and Median Salary for the 15 Most Popular Programs at For-Profit Institutions

Instructional Program	Number of Completions	Percent of National Completions	Weighted Median Salary for Associated Occupations*
Medical/Clinical Assistant.	77,350	88%	$28,678
Business Administration and Management, General	67,789	22%	$90,831
Cosmetology/Cosmetologist, General	53,357	84%	$23,265
Massage Therapy/Therapeutic Massage	25,380	90%	$35,230
Automobile/Automotive Mechanics Technology/Technician	15,791	47%	$35,450
Dental Assisting/Assistant	13,903	71%	$35,230
Culinary Arts/Chef Training	12,277	64%	$23,853
Licensed Practical/Vocational Nurse Training	11,695	20%	$39,820
Pharmacy Technician/Assistant	11,661	76%	$27,081
Medical Insurance Coding Specialist/Coder	11,045	80%	$29,326
Nursing/Registered Nurse	10,797	7%	$63,750
Aesthetician/Esthetician and Skin Care Specialist	10,069	94%	N/A
Criminal Justice/Law Enforcement Administration	8,974	36%	$76,500
Allied Health and Medical Assisting Services	8,598	86%	$31,148
Business Administration, Management and Operations, Other	7,872	41%	$92,600

*Excludes postsecondary educators

Source: IPEDS and BLS data.

Institutions can also improve their performance on the debt measures by improving their institutional retention and graduation rates. Data on institutional performance clearly shows that improvements in these areas are possible because we see institutions that have significantly higher retention and graduation rates even as they serve low-income students.

Critical to a student's progress through any educational institution or program is retention. Data from the Beginning Postsecondary Student study suggest that retention early in a program of study is particularly critical. Failure to return for the second year accounts for 23 percent of all

unsuccessful departures from postsecondary education. Another 21 percent fail to return for the third year. For students who began in a bachelor's degree program, 13 percent left before the second year and an additional 15 percent left before the third year.[13]

Programs that are currently failing the repayment rate threshold established under the final regulations have retention rates that are 27 percent lower than the rate for institutions that have repayment rates that pass the repayment rate measure (56 percent vs. 71 percent).

Table 14: Percent of Leavers Who Have Left By a Given Year, by Degree Program in 2003-04

Program Type	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Bachelor's Degree	13	28	50	68	90	100%
Associate Degree	24	43	65	78	92	100%
Certificate	25	76	83	88	96	100%
Total	**23**	**44**	**64**	**77**	**92**	**100%**

Source: BPS: 04/09.

Table 15: Comparison of Retention Rates for Institutions Passing and Failing the Repayment Rate Measure Overall

Repayment Rate Status	Retention Rate
Failing programs	56%
Passing programs	71%
All programs	**68%**

Source: NSLDS and IPEDS.

If institutions were successful in reforming the failing programs, we would expect institutions to bring their retention rates within the range observed for programs that pass the repayment rate measure. If currently failing institutions were able to raise their retention rate, for example, to the average for institutions passing the repayment measure, nearly 60,000 more students per year would be retained for a second year.

While differences in the demographic characteristics of students play a role in retention--the retention rate at institutions with the lowest percentage of students receiving Pell Grants is 75 percent compared to 62 percent at institutions with the highest percentage of students receiving Pell Grants--it is clear that improvements can be made through investments in retention efforts. While both institutional and student demographic characteristics affect the retention rate, it is important to note

[13] *Source*: U.S. Department of Education, National Center for Education Statistics, 2003-04 Beginning Postsecondary Students Longitudinal Study, Second Follow-up (BPS:04/09)

that institutions that pass the repayment rate measure had retention rates that were 15 percent higher than for those that failed the repayment rate measure.

Table 16: Retention Rate of Failing and Passing Programs, By Pell Concentration Quintile

	Lowest	Second Lowest	Middle	Second Highest	Highest
Failing Programs	44%	55%	57%	60%	58%
Passing Programs	79%	70%	56%	68%	67%
All Programs	76%	69%	56%	62%	62%

Source: NSLDS, IPEDS and Common Origination and Disbursement (COD) system.

As important as retention rates are, the ultimate goal is the completion of a degree or certificate. President Obama has called for the United States to have the highest proportion of young adults with college degrees and certifies in the world by 2020. The President's 2020 goal is not simply a restatement of the longstanding national policy of promoting access to higher education but a reflection of the fact that the United States needs more working adults with degrees and certificates.

Degrees and certificates are only attained through diligent effort by students enrolled at institutions that place their success at the center of the institution's efforts. There are many types of institutions – public; private, nonprofit; and private, for-profit – that are succeeding in achieving high graduation rates. Programs that are currently failing the repayment rate threshold established under these final regulations have retention rates that are 35 percent lower than the rate for institutions that have repayment rates that pass the repayment rate measure (37 percent compared to 47 percent) and the bachelor's degree graduation rate was 62 percent lower for institutions that fail the repayment rate measure than for institutions that pass the repayment rate measure (33 percent compared to 51 percent).

Like retention rates, if institutions were successful in reforming programs, they could expect to bring their graduation rates within the range that is observed for programs that pass the repayment rate measure. If currently failing institutions were able to raise their graduation rate to that of the institutions that are passing the repayment measure, nearly 70,000 more students per year would receive a degree or certificate.

Table 17: Comparison of Graduation Rates for Institutions Passing and Failing the Repayment Rate Measure by Percentage of Students Receiving Pell Grants

		Lowest	Second Lowest	Second Highest	Highest	Total
Public 4-year	**Overall Graduation Rate**					
	Failing Programs	5%	25%	33%	31%	30%
	Passing Programs	66%	57%	47%	37%	54%
	All Programs	66%	56%	47%	34%	53%
	Bachelor's Degree Graduation Rate					
	Failing Programs			36%	31%	32%
	Passing Programs	67%	57%	48%	38%	55%
	All Programs	67%	57%	48%	35%	54%
Private Nonprofit 4-year	**Overall Graduation Rate**					
	Failing Programs	11%		62%	32%	34%
	Passing Programs	77%	60%	48%	41%	62%
	All Programs	77%	60%	49%	38%	61%
	Bachelor's Degree Graduation Rate					
	Failing Programs	81%		86%	34%	37%
	Passing Programs	78%	60%	49%	43%	63%
	All Programs	78%	60%	50%	40%	62%
Private For-profit 4-year	**Overall Graduation Rate**					
	Failing Programs	37%	6%	23%	44%	36%
	Passing Programs	42%	49%	44%	20%*	23%
	All Programs	38%	22%	34%	25%	27%
	Bachelor's Degree Graduation Rate					
	Failing Programs	42%	6%	30%	43%	36%
	Passing Programs	57%	57%	39%	19%	22%
	All Programs	47%	24%	35%	23%	25%

*A small number of institutions have a significant impact on the graduation rate in this sector

Source: NSLDS, IPEDS and COD.

While differences in the demographic characteristics of students play a role in graduation, the effects are much less than they were for retention rates. The graduation rate at institutions with the lowest percentage of students receiving Pell Grants is 52 percent compared to 57 percent at institutions with the highest percentage of students receiving Pell Grants.

Table 18: Mean Graduation Rates at Two-Year and Less-than-Two-Year Institutions by Percentage of Students Receiving Pell Grants by Whether the Institution's Overall Repayment Rate Passes or Fails the Repayment Rate Metric

	Lowest	Second Lowest	Second Highest	Highest	Total
Public 2-year					
Failing Programs	20%	18%	15%	16%	17%
Passing Programs	23%	24%	24%	21%	23%
All Programs	22%	23%	20%	18%	21%
Private Nonprofit 2-year					
Failing Programs		49%	23%	38%	38%
Passing Programs	53%	66%	53%	48%	52%
All Programs	53%	65%	52%	45%	50%
Private For-profit 2-year					
Failing Programs	43%		42%	49%	49%
Passing Programs	48%	75%	65%	63%	63%
All Programs	44%	75%	61%	56%	55%
Public Less-than-2-year					
Failing Programs	79%	76%	80%	74%	74%
Passing Programs	78%	85%	81%	80%	81%
All Programs	78%	85%	81%	80%	80%
Private Nonprofit Less-than-2-year					
Failing Programs				76%	76%
Passing Programs	85%	67%	85%	77%	75%
All Programs	85%	67%	85%	77%	76%
Private For-profit Less-than-2-year					
Failing Programs	81%	86%	73%	62%	62%
Passing Programs	74%	78%	76%	69%	69%
All Programs	76%	78%	76%	65%	66%

Source: NSLDS, IPEDS, and Common Origination and Disbursement (COD) system.

Given the nature of the repayment rate, it is not surprising that significantly lower default rates are observed at institutions that pass the repayment rate. But it is also important to consider the cost of defaults on former students who cannot afford to repay their loans. These borrowers face very serious problems if they cannot pay their loans.

Once a loan is assigned to a guaranty agency or the Department for collection, credit bureaus are notified, and the borrower's credit rating will suffer. In 2010, 6.4 million students had a Federal student loan reported to one or more credit bureaus as being in default. These circumstances increase the cost of borrowing for the defaulter and are likely to affect whether the borrower can obtain a loan

at all. Borrowers who default on their loans often struggle to rent or buy a home, or buy a car. Often a poor credit rating adversely affects the borrower's ability to obtain a job. The borrower is subject to administrative wage garnishment, whereby the Department will require the defaulted borrower's employer to forward 15 percent of his or her disposable pay toward repayment of the loan. Some borrowers have lost their jobs because their employer did not want to be responsible for the wage garnishment or because the need to garnish the employee's wages called into question the employee's reliability. If the borrower is a Federal employee, he or she faces the possibility of having 15 percent of disposable pay offset by the Department toward repayment of the loan through Federal salary offset. A borrower could also be limited in terms of obtaining a security clearance or a job at some agencies including, for example, the Department of Education. Further, the Treasury Department offsets Federal tax refunds and any other payments, as authorized by law, to repay a defaulted loan. In 2010, approximately 1 million students had nearly $1.5 billion applied to their defaulted Federal student loans from withheld tax refunds, Social Security benefits, and other Federal payments.

The borrower must pay additional collection costs when a loan is assigned to a private collection agency. The largest of these costs is contingent fees that are incurred to collect the loan. While the Department gives the borrower repeated warnings before referring a debt to a collection contractor, if the borrower does not heed those warnings and reach an agreement with the lender on repayment terms, the Department refers the loan to collection contractors. These contractors earn a commission, or contingent fee, for any payments then made on the loans referred. The Department charges each borrower the cost of the commission earned by the contractor, and applies payments from the borrower, first to defray the contingent fee earned for that payment, and second, to the interest and principal owed on the debt. As a result, the amount needed to satisfy a student loan debt collected by the Department's collection contractors can be up to 25 percent more than the principal and interest repaid by the borrower. In 2010, more than 1.5 million borrowers paid approximately $380 million in contingent fees to private collection agencies. Finally, if these collection efforts are unsuccessful, the Department may take additional legal action to force a borrower to repay the loan.

Once a loan is declared in default, the borrower is no longer entitled to any deferments or forbearances. In addition, the borrower cannot receive any additional title IV, HEA student aid until he or she has made payments of an approved amount for at least six consecutive months. Each year, we deny aid to nearly 350,000 students who have defaulted on their loans until those obligations are resolved. Discharging Federal student loans in bankruptcy is very rare.

These consequences of default are severe and often go unacknowledged by those who argue that the public costs of supporting public higher education outweigh the costs of default. These critics further ignore the community and generational effects these consequences have on postsecondary access that are very significant but difficult to quantify.

While the anticipated benefits in terms of improved retention and graduation rates are somewhat speculative, the impact on default rates – with all the negative consequences that accrue to borrowers, their families, and the broader community – are more direct. If institutions are successful in reforming programs, cohort default rates will decline dramatically. If these final regulations have a

positive impact by reducing the number of borrowers defaulting on loans, it is likely that the number of borrowers entering default within two years would decline by over 800,000.

Table 19: Comparison of Two- and Three-Year Default Rates for Institutions Passing and Failing the Repayment Rate Measure

Repayment Rate Status	Two-Year Default Rate	Three-Year Default Rate
Failing programs	12.7%	22.3%
Passing programs	5.4%	10.9%
All programs	**6.7%**	**13.2%**

Source: NSLDS.

Table 20: Comparison of Two- and Three-Year Default Rates for Institutions Passing and Failing the Repayment Rate Measure by Percentage of Students Receiving Pell Grants

Two-Year Default Rate

	Lowest	Second Lowest	Middle	Second Highest	Highest
Failing Programs	11.8%	10.9%	11.6%	15.0%	14.4%
Passing Programs	3.3%	5.0%	9.8%	10.8%	12.1%
All Programs	4.0%	5.5%	10.3%	13.8%	13.5%

Three-Year Default Rate

	Lowest	Second Lowest	Middle	Second Highest	Highest
Failing Programs	19.1%	18.1%	20.6%	25.7%	27.9%
Passing Programs	7.8%	9.9%	15.2%	18.2%	19.8%
All Programs	8.9%	10.7%	16.6%	21.8%	24.3%

Source: NSLDS, IPEDS, and COD.

Institutions

Under our two scenarios, we estimate that the for-profit education sector would see a cumulative drop in revenue of up to $1.85 billion over four years, an average decrease of $463 million. The projected decrease in revenue represents less than 2 percent of the sector's estimated $26 billion in revenue in 2009, the most recent year for which data are available. By contrast, data reported by for-profit institutions to IPEDS show that schools in the for-profit sector had an average revenue growth of 13 percent per year over the five-year period from 2004-05 to 2008-09 (not including investment revenue).

We estimate that the effects of these regulations on net revenue for the for-profit education industry will be less--about $46 million over four years, or $11.5 million on average. The effects on net revenue are smaller because schools will either reduce expenses due to a lessened need for instructors or take in new revenue as students transfer into successful programs.

While the regulations will have the effect of reducing the revenue of the for-profit postsecondary education industry as a whole, they also may have the effect of increasing revenue for companies whose programs pass the debt measures. The Department estimates that the regulations will lead between 115,000 and 141,000 students to transfer between one for-profit institution and another by 2015.

Finally, the better and clearer information that will be available about programs leading to gainful employment will also benefit institutions with high-performing programs, which can use their performance on the measures to differentiate themselves from competitors and lessen the need for complex and expensive marketing efforts. Currently, institutions must devote a significant amount of revenues to marketing and recruiting costs because available data do not allow them to easily indicate quality.[14] Graduation rates are not broken down to the programmatic level and fail to capture many students. Placement rates are not comparable across institutions because they are calculated in different ways.[15] Licensure rates provide little indication of quality because the vast majority of students pass their licensing examinations.[16] In place of these types of marketing efforts, the gainful employment regulations would allow an institution to demonstrate to prospective students that its programs provide better wages, lower debt burdens, and a higher likelihood of repayment than competitor offerings—easily understandable data that tell a clear story about student success.

Additional analysis of the regulations' impact on small businesses is presented in the Regulatory Flexibility Analysis section of this RIA.

Federal, State, and Local Governments

Several commenters argued that the cost estimates of the effects of the proposed regulations were incomplete because they did not take into account the full cost of other sectors of higher education including other government subsidies provided to public or private, nonprofit institutions. In particular, the commenters noted that public institutions receive direct funding from States and private, nonprofit institutions are exempt from taxes. The commenters also indicated that the Department had misinterpreted a study by the Florida Office of Program Policy and Government

[14] For a discussion of the amounts spent on marketing by for-profit colleges see interviews from PBS Frontline with Mark DeFusco, a former director at the University of Phoenix or Jeffrey Silber, a senior analyst at BMO Capital Markets. The interviews are available at http://www.pbs.org/wgbh/pages/frontline/collegeinc/interviews/defusco.html and http://www.pbs.org/wgbh/pages/frontline/collegeinc/interviews/silber.html.

[15] Andrea Sykes, Laurium Evaluation Group, "Background Group: Calculating Job Placement Rates under Gainful Employment Regulations," February 2011.

[16] For example, passage rates on barbering and cosmetology examination results reported by the State of California show that nearly 100 percent of test takers pass their licensure exams. See http://www.barbercosmo.ca.gov/applicants/schls_rslts.shtml. Similarly, data from the National Council of State Boards of Nursing show that 87 percent of first-time U.S. educated students pass the national licensing test for licensed practical/vocational nurses. See https://www.ncsbn.org/Table_of_Pass_Rates_2010.pdf.

Accountability about the costs of for-profit and public sector institutions. Some commenters provided estimates that suggested including these subsidies in the effects calculations would result in increased costs to taxpayers if students shift from institutions in the for-profit sectors to public or private, nonprofit institutions. The largest cost estimate came from the Parthenon Group, which estimated that between 465,000 to 660,000 students would shift from the for-profit institutions to community colleges each year, resulting in a cost of an additional $2 billion annually for community colleges to serve these students.

The cost implications for the Federal Government result largely from changes to tax revenues and changes to expenditures on student aid. Federal tax revenues would fall to the extent that for-profit education companies pay less in corporate taxes, institutions lay off employees, or fewer students earn credentials that could increase their earnings. On the other hand, Federal tax revenue would increase to the extent that institutions improve the performance of their programs and students transfer to better performing programs, which could lead to higher completion rates and credentials that carry greater economic benefits. There are also likely to be fewer students claiming education tax benefits to attend failing programs. The net effect is difficult to estimate reliably but is likely to be small.

The impact of the regulations on State income tax revenue will be similar to the impact on Federal revenue, and it is also likely to be small. There may also be an impact on State and local expenditures on higher education. We do not dictate to State or local governments how they should choose to spend their funds on higher education. Nor do we interfere with their own independent decisions to expand enrollment, determinations that are typically made as part of a long-term planning process. Given that States possess full control over whether or not to expand enrollment, it is incorrect to attribute any costs associated with these independent decisions to these regulations.

The higher cost estimate suggested by some commenters assumes States expanding enrollment face marginal costs that are similar to their average cost or that they will only choose to expand through traditional brick-and-mortar institutions. In fact, many States across the country are experimenting with innovative models that use different methods of instruction and content delivery that allow students to complete courses faster and at a lower cost. Rather than adding additional buildings or campuses, States may instead opt to expand distance education offerings or try innovative practices like those used by the Western Governors University, which awards credit when students demonstrate they have mastered a competency. Forecasting the extent to which future growth would occur in traditional settings versus distance education or some other model is outside the scope of this analysis.

Finally, a crucial assumption in estimating the increase in cost is that the expense per completion in the for-profit sector is lower than it is in the public sector. Such assumptions, however, fail to account for concerns about the quality of a degree. Producing large numbers of certificates or degrees that leave students with unmanageable debt burdens and poor employment prospects is not preferable to students earning credentials that, while more expensive to obtain, result in students earning higher and more stable incomes. Reducing such discussions about cost solely to monetary

elements fails to recognize the important dimension around quality that these regulations also seek to capture.

As detailed in the section of this RIA titled Net Budget Impacts, we anticipate some small savings in Federal student aid programs as students who would have attended programs that fail the debt measures elect not to pursue postsecondary education and do not take out Federal loans or receive Pell Grants. As we estimate that many students who transfer out of failing programs will stay within their sector, the estimates for the effects on the Federal student aid programs are based on the number of students expected to drop out under the High Dropout and Low Dropout Scenarios described in this RIA. The estimated savings of $94 to $209 million between FY 2012 and FY 2016 represent our best estimate of the effect on Federal student aid programs. It is difficult to predict student response to a program's performance on the debt measures, the ability of programs to improve their performance, the methods they will use to do so, and the extent to which new programs or expanded programs expand capacity.

As a result of the elimination of the Federal Family Education Loan (FFEL) program on July 1, 2010, the Federal taxpayer now owns the Federal student loan programs. These programs must be operated in a manner that protects the taxpayer's investment. These investments, however, can only be sustained to the extent that the Federal government acts prudently to manage the loan programs to ensure timely repayment.

The current state of student loan repayment, as evidenced by the minimum rates established in these final regulations, is not sustainable and places taxpayer investments at risk. However, whether institutions respond by improving programs or not, the regulations will ensure that loan repayment rates increase. An increased emphasis on program improvement will result in increases in repayment rates. Too often, borrowers are counseled to enter a deferment or forbearance upon leaving school whether they need such relief or not. These final regulations will encourage institutions to counsel borrowers to enter into a repayment plan such as the Income-Based Repayment plan that provides added benefits to borrowers without the negative consequences.

Perhaps as significantly, students at institutions with repayment rates above the threshold also have higher average debts. Institutions with low repayment rates are likely to also have higher dropout rates, producing many former students with relatively low debts but a limited capacity to repay them.

Table 21: Comparison of Repayment Rates and Amounts Borrowed for Institutions Passing and Failing the Repayment Rate Measure

Repayment Rate Status	Repayment Rate	Average Debt
Failing programs	27%	$7,662
Passing programs	58%	$12,090
All programs	**52%**	**$11,296**

Source: NSLDS.

If repayment rates only reach the average level that are observed in the repayment rates developed for these regulations, the number of borrowers repaying their student loans in an acceptable manner would increase by 1.2 million.

Table 22: Comparison of Repayment Rates and Amounts Borrowed for Institutions Passing and Failing the Repayment Rate Measure by Percentage of Students Receiving Pell Grants

Repayment Rate

	Lowest	Second Lowest	Middle	Second Highest	Highest
Failing Programs	31%	30%	28%	24%	25%
Passing Programs	66%	56%	47%	44%	44%
All Programs	63%	54%	42%	29%	33%

Average Debt

	Lowest	Second Lowest	Middle	Second Highest	Highest
Failing Programs	$6,876	$7,078	$8,279	$7,584	$6,390
Passing Programs	$13,385	$11,438	$11,411	$6,442	$6,491
All Programs	$12,860	$11,051	$10,552	$7,276	$6,432

Source: NSLDS, IPEDS, and COD.

VI. Paperwork Burden Costs

In assessing the potential impact of these regulations, the Department recognizes that certain provisions are likely to increase workload for some program participants. This additional workload is discussed in more detail under the Paperwork Reduction Act of 1995 section of the preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these regulations are estimated to increase burden on institutions participating in the title IV, HEA student assistance programs by 763,142 hours per year. The monetized cost of this additional burden on institutions, using wage data developed using Bureau of Labor Statistics data, available at http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf, is $16,880,701, as shown in Table 23. This cost was based on an hourly rate of $22.12 that was used to reflect increased management time to establish new data collection procedures associated with the gainful employment provisions. The final regulations will also increase the paperwork burden on students by an estimated 5,264,543 hours as they read the disclosures and debt warnings from institutions. The monetized cost of this additional burden on students, using wage data developed using Bureau of Labor Statistics data, available at http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf, is $88,023,159.

Table 23: Estimated Annual Paperwork Burden for Institutions by Requirement

Provision	Reg. Section	OMB Control #	Hours	Costs
Reporting information about students in gainful employment programs, disclosure of programs' performance on the debt measures, and providing debt warnings to prospective students	**668.6**	**OMB 1845-0107**	**735,169**	**$16,261,938**
Data challenge process for draft debt measures and provision of alternative earnings by failing programs, and notification of voluntary withdrawal of a gainful employment program	**668.7**	**OMB 1845-NEW4**	**27,973**	**$618,763**

Table 23 relates the estimated burden for institutions of each paperwork requirement to the hours and costs estimated in the Paperwork Reduction Act of 1995 section of this preamble. The largest burden comes from reporting and disclosure requirements related to students enrolled in gainful employment programs and includes information required to be submitted under the Program Integrity final regulations published October 29, 2010 including identifying information about each student who completed a program that prepares a student for gainful employment, the CIP code for that program, the date the student completed the program, and the amounts the student received from private educational loans and institutional financing programs. The burden reported in these final regulations reflects an increased estimate in the number of students enrolled in gainful employment programs subject to the existing reporting requirements and the addition of new required reporting elements including the credential level, medical or dental internship or residency requirement, initial date of attendance, and dates of attendance in the award year. The estimated burden of reporting information about students is 407,699 hours and $9,018,302. This amount is in addition to the estimated burden of 667,160 hours in reporting information about students described in the Program Integrity final regulations published on October 29, 2010.

Additional items Included in the burden estimate under OMB 1845-0107, are the 233,595 estimated hours associated with institutions that submit tuition and fee data for individual students to limit the debt included in the debt-to-earnings calculation, the 86,511 hours estimated for the reporting of student withdrawal dates during the year, and 7,364 hours estimated for disclosure of final debt measures and debt warnings to prospective students. Collectively, these provisions are estimated to cost $7,243,636.

Prior to the issuance of the draft debt-to-earnings ratios, the Secretary will provide a list to institutions, of students that will be included in the applicable two- or four-year period used to calculate the debt-to-earnings ratios beginning in FY 2012. Institutions will have 30 days after the date

the list is sent to the institution to provide corrections such as evidence that a student should be included or excluded from the list or to submit corrected or updated student identity information. The estimated burden from these pre-draft data challenges is 2,772 hours and $61,317. After the issuance of draft debt measures, institutions will have the ability to challenge the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate , the list of borrowers used to calculate the loan repayment rate, or the median loan debt for the program that was used in the numerator of the draft debt-to-earnings ratio. The burden associated with challenges to the draft debt measures is 4,620 hours annually at a cost of $102,194. Programs that fail the debt measures may demonstrate that a failing program would meet a debt-to-earnings standard by recalculating the debt-to-earnings ratios using the median loan debt for the program and using alternative earnings data from: a State-sponsored data system, an institutional survey conducted in accordance with NCES standards, or, for fiscal years 2012, 2013, and 2014, BLS data. The estimated burden of supplying the alternative earnings information is 4,423 hours and $97,837. An institution must notify the Secretary if it intends to supply alternative earnings data and the estimate for this information collection is 232 hours and $5,132.

Additional items included in the burden on institutions reported under OMB 1845-NEW4 include an estimated burden of 15,311 hours for notifying students when an institution voluntarily withdraws a failing program from title IV, HEA participation and the date when title IV, HEA aid will no longer be available for the program and an estimated 462 hours in issuing debt warnings to current students. As described in the Paperwork Reduction Act of 1995 section of the preamble, institutions must comply with §668.7 in applying to reestablish an ineligible gainful employment program or a program that is substantially similar to a failing program or to a previously failing program the institutions voluntarily-discontinued. Under these final regulations, institutions will have to provide notice of a voluntary withdrawal of a failing program from title IV, HEA program eligibility, and the annual burden associated with this provision is estimated to be 153 hours and $3,384. The burden for applying to reestablish programs and submitting a response to the denial of an application have not been estimated in this package because of the extended period of time before these conditions will occur. Together, these provisions have an estimated cost to institutions of $352,283. A total of 22,516 hours and $376,468 of burden on students for reading the notice of voluntarily withdrawal is recorded under OMB 1845-NEW4.

VII. Net Budget Impacts

The regulations are estimated to have a net budget impact ranging between $94 million in the Low Dropout Scenario to $209 million in the High Dropout Scenario in savings over FYs 2012-2016. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. (A cohort reflects all loans originated in a given fiscal year.)

These estimates were developed using the Office of Management and Budget's (OMB) Credit Subsidy Calculator. The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a "basket of zeros" methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to use in developing estimates for these regulations. That said, in developing the following Accounting Statement, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence of the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data sets and longitudinal surveys listed under Assumptions, Limitations, and Data Sources. Program cost estimates were generated by running projected cash flows related to each provision through the Department's student loan cost estimation model. Student loan cost estimates are developed across five risk categories: proprietary institutions (less than two-year), two-year institutions, freshmen/sophomores at four-year institutions, juniors/seniors at four-year institutions, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior--for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits--of borrowers in each category.

These final regulations are not expected to affect Federal costs, as students are typically assumed to resume their education at another program in the event the program they are attending loses eligibility to participate in the title IV, HEA programs. The scenarios presented in these final regulations, however, anticipate that some students would not pursue education if their program loses eligibility, so we have estimated potential Federal costs under those scenarios. The estimated savings come from Federal loans and Pell Grants not taken by students who do not pursue an education in each scenario. In some years, costs from students not taking Federal loans offset savings from Pell Grants. The estimated net impact on the Federal budget between FY 2012 and FY 2016 are savings of $209 million in the high dropout scenario and $94 million in the low dropout scenario. Of these estimated savings, approximately $242 million in the High Dropout Scenario and $107 million in the Low Dropout Scenario would be from reductions in Pell Grants. These potential savings represent our best estimate of the effect of the regulations on the Federal student aid programs, but student

responsiveness to program performance, programs' efforts to improve performance, and potential increases in retention rates could offset the estimated savings.

Assumptions, Limitations, and Data Sources

The impact estimates provided in the preceding section reflect a baseline in which the changes implemented in these regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources were used, including data from the NSLDS; operational and financial data from Department of Education systems; and data from a range of surveys conducted by NCES such as the 2007-2008 NPSAS, the 2008-09 IPEDS and the 2009 follow-up to the 2004 BPS. Data from other sources, such as the U.S. Census Bureau and the Missouri Department of Higher Education, were also used. Data on administrative burden at participating institutions are extremely limited; accordingly, in the NPRM, the Department expressed interest in receiving comments in this area.

We identify and explain burdens specifically associated with information collection requirements in the Paperwork Reduction Act of 1995 section of the preamble.

Accounting Statement

As required by OMB Circular A-4 (available at www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf), in Table 24, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. Expenditures are classified as transfers from the Federal Government to student loan borrowers and from low-performing programs to performing programs.

Table 24: Accounting Statement: Classification of Estimated Expenditures (in millions)	
Category	Benefits
	Costs
Revenues associated with students who leave system	$93.7 to 213.8
Cost of paperwork burden	$105.0
Category	Transfers
Annualized Monetized Transfers	$23 to 51
From Whom To Whom?	Federal student aid programs to students
Annualized Monetized Transfers	$205.6 to 248.9
From Whom To Whom?	Higher education institutions, primarily for-profit with low-performing programs to higher education institutions, primarily for-profit, with performing programs.

VIII. Alternatives Considered

A number of commenter suggested fundamentally different approaches for defining "gainful employment." Some of these approaches, including graduation and placement rates, a higher repayment rate threshold, an index, alternative debt measures, and default rates, were alternatives discussed by the Department in the negotiated rulemaking process, the NPRM, or both. The alternatives suggested by commenters are discussed below.

Return on Investment and Net Present Value

Some commenters argued that the proposed gainful employment debt measures evaluate only one aspect of the quality of programs - whether a student's initial debt burden was reasonable - but fail to account for other long-standing measures of program quality or a student's long-term return on his or her educational investment. The commenters believed that structuring regulations in this manner may discourage institutions from offering training in jobs with the potential for long-term salary growth for fear of losing program eligibility. For example, based on BLS data, entry-level salaries for graduates from programs for auto technicians range from $19,840 to $25,970. According to the commenters, salaries for auto technicians may have long-term growth potential because it can take a technician two to five years after graduation to become fully qualified. Mastering additional complex specialties also requires the technician to have years of experience and advanced training. According to the commenters, applying the proposed gainful employment measures to these programs may prevent students from pursuing training in these necessary fields.

Some commenters offered that a more reasonable measure of the quality of an educational program would be the student's return on investment (ROI), not a first-year debt service calculation. The commenters argued that a student's initial capacity to service debt should be one consideration in judging educational program quality, but not the essential metric. Instead, the analysis of a program should take into account the potential long term benefits and earnings.

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

While we appreciate the suggestion to incorporate a return on investment calculation into these final regulations, we believe there are significant theoretical and practical reasons for not doing so. To be sure, an ROI or NPV approach helps to distinguish among competing investment opportunities. However, inherent in an ROI or NPV calculation is a specified discount rate so that all future cash flows (income as well as expenses) can be described in terms of present-day values. Thus

the selection of an appropriate discount rate is key to this calculation. If the Department were to implement an ROI or NPV calculation in the proposed metrics, it would have no basis for establishing a discount rate for borrowers who make personal investment decisions with respect to pursuing postsecondary education programs.

The Department agrees that there are long-term benefits, in particular with respect to increased lifetime earnings, for those with formal education or training beyond high school. We do know from The National Longitudinal Survey of Youth conducted by the Bureau of Labor Statistics that the length of time an employee remains with the same employer tends to be shorter for younger workers and that the average worker will have about eleven different jobs in the first twenty-five years or so of his or her working lifetime.[17] However, we are unaware of any on-going, longitudinal tracking of work-life earnings by specific occupation. Thus we lack a means for measuring actual long-term benefits and earnings by occupation.

Retention, Completion, and Placement Rates

Some commenters suggested a variety of alternative measures for determining whether a program leads to gainful employment including retention rates, employment rates, job placement rates adjusted for local economic conditions, and completion rates. Other commenters believed there was no need to further define gainful employment because (1) national accrediting agencies require that the majority of students graduate and find jobs in the field in which they were trained, or (2) students who pass State licensing examinations are gainfully employable.

We likewise appreciate the suggestions to use retention rates, employment rates, job placement rates, and completion rates as alternative measures. During the negotiation sessions, some non-Federal negotiators objected to a proposal for using graduation rates on the ground that the proposed standard was too demanding, but they did not propose an alternative. Some negotiators also raised concerns about the ability of institutions to obtain valid placement information from graduates and employers. In the Program Integrity final regulations published on October 29, 2010, the Department required disclosure of program-level graduation and placement rates. Based on the information we have available, using them as a measure of whether a program leads to gainful employment would be premature.

Default Rates

Some commenters suggested the use of default rates to measure program performance. The application of default rates to institutional eligibility is one tool that Congress has used that is related to debt burdens. Under current law, prospective students are not allowed to use their Federal aid at

[17] Bureau of Labor Statistics, National Longitudinal Survey of Youth, available at http://www.bls.gov/news.release/pdf/nlsoy.pdf

an institution where its former students had a high default rate. However, the cohort default rate only includes borrowers who defaulted by going 360 days without making a payment within two years of entering repayment. These borrowers are only a portion of borrowers who are struggling with their loans. The default measurement does not include borrowers who are in late stages of delinquency, even if they default after two years. The metric also does not include those who are delinquent on their payments or borrowers who cease making payments without defaulting by receiving a forbearance or deferment. A significant number of borrowers fall into these categories. According to a recent study of students in the 2005 cohort by the Institute for Higher Education Policy, 26 percent of borrowers became delinquent on their loans at some point. [18] In contrast, the repayment rate better captures the experience of all these individuals who are struggling to repay their loans.

Gainful Employment Index

Other commenters suggested that the Department use a composite score based on default, graduation, and placement rates. The commenters argued that institutions with exceptional, industry-determined rates have proven their success in providing quality education and therefore should be allowed to continue serving their students without impediments. The commenters noted that Representative Robert Andrews pioneered a composite index in the 1990s and suggested using default, graduation, and placement rates along with the number of Pell Grant recipients to determine an overall score for an institution. According to the commenters, factoring in Pell Grant information would acknowledge the unhappy truth that low-income students are less likely to complete higher education programs. To avoid punishing schools for accepting these students into their programs, the commenters suggested the Department use a formula that would acknowledge the extra difficulties faced by lower socioeconomic students. Some commenters supporting the composite index approach suggested weighting the placement rate at 50 percent, the cohort default rate at 30 percent, and the graduation rate at 20 percent.

The commenters argued that a composite index approach is superior to the proposed debt measures in the following ways. First, the composite index would not rely on one characteristic (debt load) or a complex loan repayment rate, but on a number of outcomes, most importantly the employment of graduates. Second, the index could be implemented readily since cohort default and graduation rates are already tracked by the Department, and the great majority of for-profit colleges already track student placement. Third, this approach is analogous to the currently used financial responsibility composite score that integrates a basket of three financial measures into one index. Finally, it measures outcomes at the institutional level, rather than the program level, reducing complexity and difficulty in implementing a gainful employment standard. The commenters stated that the index approach could be implemented relatively rapidly without disrupting the market and risking unintended consequences. If the metrics need refinement, the commenters offered that the Department could implement the index, and over the next 36 months redefine how default rates are measured (potentially moving to measuring the repayment of principal in dollars) and how graduation

[18] Alisa F. Cunningham and Gregory S. Kienzl, "Delinquency: The Untold Story of Student Loan Borrowing," March 2011, available at http://www.ihep.org/assets/files/publications/a-f/Delinquency-The_Untold_Story_FINAL_March_2011.pdf.

rates are measured (potentially moving to track all students). Alternatively, it could apply the index at the program level after the relevant information is gathered and analyzed.

Although the concept of a composite index is appealing, the suggested index uses some of the same indicators, which in our view fall short of directly evaluating a program's performance. The specific indicators suffer from important shortcomings: default rates measure only a portion of the borrowers who have had difficulty repaying their loans, the statutory definition of graduation rate excludes transfer and part-time students, and placement rates are defined differently by accrediting agencies and States. Applying the composite index at the institutional level would mask poorly performing programs because only the overall performance of the institution, not each program, would be evaluated. Moreover, if the institution's overall performance was subpar, the composite index would jeopardize the eligibility of the entire institution. By using purpose-built measures applied at the program level, these regulations effectively target poor-performing programs without necessarily placing the entire institution at risk because only those programs become ineligible for title IV, HEA funds. Finally, the Department does not believe that programs enrolling lower-income students cannot help those students achieve success and would be concerned about the consequences for writing into law lower expectations for the future employment and debt repayment of those students.

Earnings Comparison

Commenters also suggested that the Department use, particularly for short-term programs, a comparison of pre-program and post-program earnings to capture the near-term effect of the program. This approach has some merit conceptually. However, earnings immediately before enrollment may not be an accurate measure of an individual's baseline earning potential without the program. Pre-enrollment earnings are particularly unlikely to reflect earnings potential for dependent students, workers returning to school after becoming unemployed, or those using their training to switch fields. Moreover, such a measurement would not identify programs where large numbers of students are taking out debts they cannot afford to repay.

Disclosure

A number of commenters recommended that the Department require additional disclosures so that consumers can make better-informed decisions. The final regulations do create a number of additional disclosures to help students make informed choices among institutions and programs. However, disclosures alone cannot serve as a standard for determining whether a program complies with the gainful employment requirement in the statute. For example, with a disclosure approach an institution might report that one of its programs did not place a single graduate into a job, yet the program would remain eligible as "preparing students for gainful employment in a recognized occupation" because it disclosed the fact that it had failed to do so.

Delay for Further Study and Data Collection

Some commenters recommended that the Department delay the issuance of final regulations to allow further study of the issues around gainful employment programs. Some commenters mentioned that the Government Accountability Office is currently studying related issues. Other commenters expressed the view that the Department should establish procedures to calculate each program's repayment rate and debt-to-earnings ratios before using those measures to set program eligibility to reduce the uncertainty around the impact of the regulations and give institutions more time to improve their programs.

The Department believes that action is urgently needed to address the problem of poorly performing gainful employment programs. Each year of delay would likely mean hundreds of thousands of additional students enrolling in programs that are likely to leave them with unaffordable debts and poor employment prospects. The process of developing these regulations has taken nearly two years and involved unprecedented levels of public engagement, including three public hearings in the spring of 2009, three negotiated rulemaking sessions in the winter of 2009-10, and the postponement of the final regulations by six months to allow the careful consideration of over 90,000 comments, two additional public hearings in October 2010, and dozens of additional meetings with individuals and organizations who commented on the NPRM. In addition, the Department has carefully analyzed the information and data available to it from public sources, its research activities, and the Federal financial aid program.

Finally, the Department has revised the regulations to provide programs with an opportunity to improve their performance before losing eligibility. In 2011, the Department will release data to institutions on an informational basis, helping them identify and improve their failing programs. No programs will lose eligibility until they have failed the debt measures for three out of four FYs. When the first eligibility losses occur in 2014, they will be limited to the lowest-performing 5 percent of programs. To help institutions anticipate the impact of the regulations, the Department is prepared to accept BLS earnings information during a transition period of three years, and the repayment rate measure has been designed to recognize programs demonstrating rapid improvement.

IX. Final Regulatory Flexibility Analysis

These gainful employment regulations will affect institutions that participate in the title IV, HEA programs, and individual students and loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define for-profit institutions as "small businesses" if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. The SBA Size Standards define nonprofit institutions as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The revenues involved in the sector affected by these regulations, and the concentration of ownership of institutions

by private owners or public systems means that the number of title IV, HEA eligible institutions that are small entities would be limited but for the fact that the non-profit entities fit within the definition of a small organization regardless of revenue. Additionally, the concentration of small entities in the sectors directly affected by these provisions and the potential for some of the programs offered by those entities to lose eligibility to participate in the title IV, HEA programs led to the preparation of this Final Regulatory Flexibility Analysis.

Description of the Reasons that Action by the Agency Is Being Considered

The Secretary is establishing through these regulations a definition of gainful employment in a recognized occupation by establishing what we consider, for purposes of meeting the requirements of section 102 of the HEA, to be a reasonable relationship between the loan debt incurred by students in a training program and income earned from employment after the student completes the training. The regulations clarify, for purposes of establishing a student's eligibility to receive title IV, HEA funds, a program's eligibility based on providing training that leads to gainful employment in a recognized occupation. Under these regulations, the Secretary will require institutions that wish to offer new programs to submit an application explaining how they differ from failing or ineligible programs, while those that wish to continue offering existing programs will have to meet outcome requirements based on the loan repayment rates of former students, and debt–to-earnings thresholds comparing educational debt to the average incomes of students who complete the program. An institution must provide a warning to students and prospective students if a program does not pass any of the debt measures.

Student debt is more prevalent and individual borrowers are incurring more debt than ever before. Twenty years ago, only one in six full-time freshmen at four-year public colleges and universities took out a Federal student loan; now more than half do. Today, nearly two-thirds of all graduating college seniors carry student loan debt, up from less than one-half a generation ago. All other things being equal, any former students would be better off leaving college without debt. The less debt, the more funds they are able to devote to buying a home, saving for retirement or for their children's education, or serving the community. Student loan debt is worth having if it makes it possible to gain the education and training that enhances productivity as a citizen, civic leader, worker, or entrepreneur. To the extent that the student loan debt brings little or no benefit to the students (or to society), it is a cost that public policy should attempt to minimize or eliminate. It is in this context that the requirement that a program of study must lead to "gainful employment" can best be understood. The "cost" of excess student debt manifests in three significant ways: payment burdens on the borrower; subsidies from taxpayers; and the negative consequences of default (which fall on the borrower and taxpayers).

The concept of training leading to gainful employment was intended to ensure that this connection between debt and earnings would not be lost. The Department, however, has historically applied the barest minimum enforcement: when applying to access Federal funds, the institution must check a box that says its programs "prepare students for gainful employment in a recognized

occupation."[19] While the Department does audit and review other aspects of program eligibility (such as the length of the program), there is no standard for determining whether a program in fact meets the gainful employment requirement.

As described in this Regulatory Impact Analysis, the trends in graduates' earnings, student loan debt, defaults, and repayment underscore the need for the Department to act. The gainful employment standard takes into consideration repayment rates on Federal student loans, the relationship between total student loan debt and earnings after completion of a postsecondary program, and in some cases of new or additional programs, the institution's application to the Department, to target the worst-performing programs and to encourage institutions to improve their programs.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

As discussed under the heading Legal Authority in the Analysis of Comments and Changes section of the preamble, the gainful employment regulations are intended to address growing concerns about high levels of loan debt for students enrolled in postsecondary programs that presumptively provide training that leads to gainful employment in a recognized occupation. The HEA applies different criteria for determining the eligibility of programs and institutions for title IV, HEA program funds. For public and nonprofit institutions, degree programs of greater than one year in length are generally eligible for title IV, HEA aid regardless of the subject or purpose of the program so long as they meet other requirements. In the case of shorter programs and programs of any length at for-profit institutions, eligibility is restricted to programs that "prepare students for gainful employment in a recognized occupation." This difference in eligibility is longstanding and has been retained through many amendments to the HEA. As recently as the HEOA, Congress again adopted this distinct treatment of for-profit institutions while adding an exception for certain liberal arts baccalaureate programs at some for-profit institutions.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to which the Regulations Will Apply

These final regulations apply to programs eligible for title IV, HEA funding because they prepare students for gainful employment. At this time, the Department does not have an accurate count of the number of programs offered by institutions. However, we estimate that as many as 13,728 programs offered by small entities could be subject to these regulations. The proxy used for the number of "programs" is IPEDS Completions data. It counts each instance of a six-digit CIP code (area of study) by award level. So, for example, if an institution awards a certificate in business as well as a bachelor's degree and a master's degree, the programs are counted as three separate programs. The programs are aggregated to the six-digit ID level so that they can be looked at with the repayment data, and the number of programs is unduplicated as a program offered at multiple locations represented by the six-

[19] The application form is available at http://www.eligcert.ed.gov/ows-doc/eapp.pdf. Most institutions complete an electronic version of the form.

digit OPEID is considered one program. Given that the category of small entities includes some nonprofit institutions regardless of revenues, a wide range of small entities is covered by the regulations. The entities may include institutions with multiple programs, a few of which are covered by the regulations, to single-program institutions with well established ties to a local employer base. Many of the programs subject to the regulations are offered by for-profit institutions and public and nonprofit institutions with programs less than two years in length. As demonstrated in Table 25, these sectors have a greater concentration of small entities. Across all sectors, the average total revenue for entities with revenue below $7 million is $2,439,483 based on IPEDS 2008-2009 data.

Table 25: Institutional Characteristics of Small Entities by Sector

	Number of Institutions	Share of Sector Tuition and Fee Revenue	Total Programs	Number of Regulated Programs	Number of Large Regulated Programs	Share of Programs that Are Large Regulated	Share of Enrollment in Large Regulated Programs
4-year Institutions							
Public	4	0%	21	7	1	5%	0%
Private Nonprofit	356	2%	2,585	346	68	3%	0%
Private For-profit	52	1%	342	342	116	34%	1%
2-year Institutions							
Public	88	1%	1,669	1,382	568	34%	0%
Private Nonprofit	142	43%	549	280	170	31%	29%
Private For-profit	405	17%	2,191	2,187	1,152	53%	20%
Less-than-2-year Institutions							
Public	202	68%	1,483	1,482	669	45%	38%
Private nonprofit	61	62%	218	213	127	58%	52%
Private For-profit	983	40%	3,264	3,255	2,027	62%	45%

Source: IPEDS.

The structure of the regulations and the small numbers provisions in the final regulations reduce the effect of the regulations on small entities but complicates the analysis. The regulations provide for the evaluation of individual gainful employment programs offered by postsecondary institutions, but these programs are administered by the institution, either at the branch level or on a system-wide basis. Many institutions have programs that would be considered small, but the classification for this analysis is at the institutional level since a program that is determined ineligible under the regulations would affect the institution's ability to operate. Of the 1,440 for-profit institutions with less than $7 million in revenues, approximately 76 percent have fewer than five programs and the loss of title IV, HEA eligibility for any program would be more likely to cause the institution to shut down than would be the case for larger entities with multiple programs.

The small numbers provision finalized in these regulations requires 30 completers for the debt-to-earnings ratios and 30 borrowers entering repayment in the applicable 2YP, 2YP-A, 2YP-R, 4YP, or 4YP-R for calculation of the debt measures in order for a program to fail the debt measures and potentially be found ineligible. To develop the data necessary to calculate the debt measures, the Department will be entering into a data matching agreement with another Federal agency that has

income data, most likely the Social Security Administration (SSA). The data matching agreement will not permit us to be able to identify an individual program completer's income. Therefore, we will need to assure that data for particular individuals will not be identifiable. To ensure individual data are not identifiable, we will need to suppress small cell sizes based on the requirements of the other Federal agency, which currently requires more than ten individuals.

Under the NPRM, the treatment of programs with small number of completers was not fully determined. The Department requested comments about small programs in the NPRM, and many commenters did request clarification on how programs with a small number of completers would be treated. While the possibility of rolling up data first from six- to four-digit CIP codes, then from four- to two-digit CIP code families, then to the entire institution was considered in the NPRM, this approach was rejected.

Under these final regulations, programs that do not have a minimum of 30 completers or borrowers in the 2YP, 2YP-A, or 2YP-R will be evaluated for a four-year period consisting of years three to six in repayment (4Y-P) or years six to nine in repayment (4YP-R). Programs that do not have a minimum of 30 completers or borrowers in the 4YP or 4YP-R will not be evaluated for ineligibility. If the list of completers the Department sends to SSA has more than thirty individuals, the mean or median earnings calculated by SSA will be used to evaluate the program's debt-to-earnings ratios, even if the number of completers used in the calculation is less than thirty after SSA removes any identity mismatches from the list of completers. Programs with fewer than 10 completers in the relevant calculation period cannot be evaluated with data from SSA and the debt-to-earnings ratios will not be produced for those programs. Ultimately, if there are insufficient observations, we will not be able to assess an institution's performance against the debt measures and, in this circumstance, the program is considered to satisfy the debt measures.

The small numbers provision brings the estimated number of programs that could become ineligible under the regulations down from 55,405 to 21,049 programs at all institutions and from 13,566 to 5,728 programs at small entities. Table 26 demonstrates the effect of the small numbers provision on small entities by sector and revenue category. Across all sectors and revenue categories, approximately 62 percent of regulated programs would not have enough completers to be determined ineligible based on existing completions data. While the 30 completer or borrower minimum means that a significant percentage of programs from will not be ineligible, it does reduce the chance that the performance of one or two borrowers could result in large variability in a program's performance on the debt measures from year to year. Additionally, while the percentage of programs to which the small numbers provision applies is high, especially for the four-year institutions, the regulated programs with at least 31 completers still represent approximately 92 percent of enrollment in regulated programs at small entities.

Table 26: Effect of Small Numbers Provision on Regulated Programs by Sector and Revenue Category

			Institutional Revenue Under $7 Million		Institutional Revenue Over $7 Million	
		Regulated Program Share	Number of Programs	Share of Programs	Number of Programs	Share of Programs
4-year	Public Regulated Programs		6	100%	0	0%
	Small data programs	100%	6	100%	0	0%
	Other regulated programs	0%	0	0%	0	0%
	Private Nonprofit Regulated Programs		242	6%	3,836	94%
	Small data programs	81%	192	79%	3,103	81%
	Other regulated programs	19%	50	21%	733	19%
	Private For-profit Regulated Programs		334	100%	0	0%
	Small data programs	66%	222	66%	0	0%
	Other regulated programs	34%	112	34%	0	0%
2-Year	Public Regulated Programs		317	100%	0	0%
	Small data programs	54%	170	54%	0	0%
	Other regulated programs	46%	147	46%	0	0%
	Private Nonprofit Regulated Programs		156	71%	64	29%
	Small data programs	48%	61	39%	45	70%
	Other regulated programs	52%	95	61%	19	30%
	Private For-profit Regulated Programs		1,938	100%	0	0%
	Small data programs	47%	901	47%	0	0%
	Other regulated programs	53%	1,036	53%	0	0%
Less-than 2-Year	Public Regulated Programs		621	100%	0	0%
	Small data programs	52%	323	52%	0	0%
	Other regulated programs	48%	298	48%	0	0%
	Private Nonprofit Regulated Programs		80	63%	46	37%
	Small data programs	27%	24	30%	10	22%
	Other regulated programs	73%	56	70%	36	78%
	Private For-profit Regulated Programs		2,006	100%	0	0%
	Small data programs	34%	679	34%	0	0%
	Other regulated programs	66%	1,327	66%	0	0%
Total	**Regulated Programs**		**3,994**	29%	**9,646**	71%
	Small data programs	**60%**	**3,197**	**80%**	**5,737**	**59%**
	Other regulated programs	**40%**	**797**	**20%**	**3,910**	**41%**

Source: IPEDS.

The combination of the small numbers provision and the estimated performance of these programs on the debt measures limit the number of programs at small entities as defined by the Small Business Administration that can be found ineligible under the debt measures. While private non-profit institutions are classified as small entities, our estimates indicate that no more than 4.9 percent of programs at those institutions are likely to fail the debt measures, with an even smaller percentage likely to be found ineligible. It is unlikely that the number of ineligible programs would reach the 5 percent ineligibility cap available based on FY 2014 data. The governmental entities controlling public sector institutions are not expected to fall below the 50,000 threshold for small status under the SBA's Size Standards, but even if they do, programs at public sector institutions are highly unlikely to fail the debt measures. Therefore, our analysis of the effects on small entities focuses on the for-profit

sectors. From the estimates described in the Analysis of the Regulations section above, the percentage of programs subject to evaluation in the for-profit sectors likely to be found ineligible is 7.1 percent for 4-year institutions, 6.4 percent for two-year institutions, and 1.8 percent for less-than-two year institutions. When modeled using the small entities only, those percentages were 6.3 percent, 4.5 percent, and 1.4 percent respectively. Tables 27 A-C and 28 A-C present the results for programs when the model runs are limited to small entities. As indicated above, these results are slightly better than the performance of the full set of institutions. Among programs that are not subject to the small numbers provision, small entities have a higher percentage of programs with initial repayment rates above 35 percent.

Table 27: Estimated Results for Programs at Small Entities under the Low Dropout Scenario

Table 27-A: 4-year Institutions

		Number of Regulated Programs			Percentage of Other Regulated Programs		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	7	7	7	100%	99%	98%
	Fail Once	0	0	0	1%	1%	1%
	Fail Twice	0	0	0	0%	0%	1%
	Ineligible Year 3	0	0	0	0%	0%	0%
	Ineligible Year 4	0	0	0	0%	0%	0%
Private Nonprofit	Pass	4,384	4,372	4,359	98%	97%	95%
	Fail Once	12	17	22	1%	2%	3%
	Fail Twice	4	8	11	1%	1%	1%
	Ineligible Year 3	0	3	3	0%	0%	0%
	Ineligible Year 4	0	0	5	0%	0%	1%
Private For-profit	Pass	328	323	318	88%	84%	80%
	Fail Once	9	9	10	7%	8%	8%
	Fail Twice	5	6	7	5%	5%	6%
	Ineligible Year 3	0	4	4	0%	3%	3%
	Ineligible Year 4	0	0	3	0%	0%	3%

Table 27-B: 2-year Institutions

		Number of Regulated Programs			Percentage of Other Regulated Programs		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	1,381	1,381	1,379	100%	100%	100%
	Fail Once	1	1	2	0%	0%	0%
	Fail Twice	0	0	1	0%	0%	0%
	Ineligible Year 3	0	0	0	0%	0%	0%
	Ineligible Year 4	0	0	0	0%	0%	0%
Private Nonprofit	Pass	391	389	386	99%	98%	96%
	Fail Once	2	3	4	1%	2%	2%
	Fail Twice	1	2	2	0%	1%	1%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	0	1	0%	0%	1%
Private For-profit	Pass	2,086	2,035	1,993	91%	87%	83%
	Fail Once	65	82	86	6%	7%	8%
	Fail Twice	36	46	58	3%	4%	5%
	Ineligible Year 3	0	24	24	0%	2%	2%
	Ineligible Year 4	0	0	26	0%	0%	2%

Table 27-C: Less-than-2-year Institutions

		Number of Regulated Programs			Percentage of Other Regulated Programs		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	1,478	1,475	1,471	99%	99%	98%
	Fail Once	3	4	6	1%	1%	1%
	Fail Twice	1	2	3	0%	0%	0%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	0	1	0%	0%	0%
Private Nonprofit	Pass	276	273	271	98%	97%	96%
	Fail Once	2	3	4	1%	2%	2%
	Fail Twice	1	2	2	1%	1%	1%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	**0**	0	1	0%	0%	1%
Private For-profit	Pass	3,198	3,169	3,138	97%	96%	94%
	Fail Once	39	48	58	2%	2%	3%
	Fail Twice	18	26	32	1%	1%	2%
	Ineligible Year 3	0	12	12	0%	1%	1%
	Ineligible Year 4	0	0	15	0%	0%	1%

Source: NSLDS, IPEDS, BPS, NPSAS and MDHE.

Table 28: Estimated Results for Programs at Small Entities under the High Dropout Scenario

Table 28-A: 4-year Institutions

		Number of Regulated Programs			Percentage of Other Regulated Programs		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	7	7	7	100%	99%	98%
	Fail Once	0	0	0	1%	1%	1%
	Fail Twice	0	0	0	0%	0%	1%
	Ineligible Year 3	0	0	0	0%	0%	0%
	Ineligible Year 4	0	0	0	0%	0%	0%
Private Nonprofit	Pass	4,384	4,372	4,359	98%	97%	95%
	Fail Once	12	17	22	1%	2%	3%
	Fail Twice	4	8	11	1%	1%	1%
	Ineligible Year 3	0	3	3	0%	0%	0%
	Ineligible Year 4	0	0	5	0%	0%	1%
Private For-Profit	Pass	328	322	317	88%	83%	79%
	Fail Once	9	10	10	8%	8%	9%
	Fail Twice	5	6	7	5%	6%	6%
	Ineligible Year 3	0	4	4	0%	3%	3%
	Ineligible Year 4	0	0	4	0%	0%	3%

Table 28-B: 2-year Institutions

		Number of Regulated Programs			Percentage of Other Regulated Programs		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	1,381	1,381	1,379	100%	100%	100%
	Fail Once	1	1	2	0%	0%	0%
	Fail Twice	0	**0**	1	0%	0%	0%
	Ineligible Year 3	0	**0**	0	0%	0%	0%
	Ineligible Year 4	0	**0**	0	0%	0%	0%
Private Nonprofit	Pass	391	388	386	99%	97%	96%
	Fail Once	2	3	4	1%	2%	2%
	Fail Twice	1	2	2	0%	1%	1%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	0	1	0%	0%	1%
Private For-Profit	Pass	2,084	2,029	1,985	91%	86%	82%
	Fail Once	67	86	90	6%	7%	8%
	Fail Twice	36	48	61	3%	4%	5%
	Ineligible Year 3	0	24	24	0%	2%	2%
	Ineligible Year 4	0	0	27	0%	0%	2%

Table 28-C: Less-than-2-year Institutions

		Number of Regulated Programs			Percentage of Large Regulated Programs		
		Year 2	Year 3	Year 4	Year 2	Year 3	Year 4
Public	Pass	1,478	1,475	1,471	99%	99%	98%
	Fail Once	3	4	6	1%	1%	1%
	Fail Twice	1	2	3	0%	0%	0%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	0	**0**	1	0%	0%	0%
Private Nonprofit	Pass	276	273	271	98%	97%	96%
	Fail Once	2	3	4	1%	2%	2%
	Fail Twice	1	2	2	1%	1%	1%
	Ineligible Year 3	0	1	1	0%	0%	0%
	Ineligible Year 4	**0**	0	1	0%	0%	1%
Private For-Profit	Pass	3,197	3,166	3,134	97%	96%	94%
	Fail Once	40	49	60	2%	2%	3%
	Fail Twice	19	28	34	1%	1%	2%
	Ineligible Year 3	0	13	13	0%	1%	1%
	Ineligible Year 4	0	0	15	0%	0%	1%

Source: NSLDS, IPEDS, BPS, NPSAS and MDHE.

The revenue profile and cost structure of small entities vary from that of the overall set of institutions. Table 29 provides per-enrollee average revenue and expense amounts by sector for small entities.

Table 29: Sector Average Revenues and Expenses per Enrollee at Small Entities

		4-year Institutions			2-year Institutions			Less-than-2-year Institutions		
		Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit	Public	Private Nonprofit	Private For-profit
Institutions with Passing Repayment Rates	**Revenues**									
	Total	11,805	20,616	11,114	8,818	10,478	8,024	12,408	8,474	7,990
	Tuition and Fee	6,764	11,109	9,405	2,805	6,467	6,318	4,784	4,415	5,814
	Core*	11,086	14,798	10,870	8,614	10,063	7,989	12,408	8,261	7,989
	Expenses									
	Total	10,530	26,465	10,936	9,893	27,040	7,104	10,581	9,805	7,337
	Instructional	4,731	8,243	3,143	6,522	7,132	2,951	6,572	5,273	2,954
	Core**	10,530	21,463	10,780	9,598	26,670	7,051	10,581	9,804	7,337
Institutions with Failing Repayment Rates	**Revenues**									
	Total	20,979	10,028	7,078	9,146	7,565	7,286	5,305	6,086	10,248
	Tuition and Fee	8,242	8,142	2,253	4,991	5,884	3,567	2,456	4,462	5,747
	Core*	15,480	9,787	6,871	8,543	7,532	7,286	5,305	6,086	8,894
	Expenses									
	Total	23,844	10,026	5,207	9,792	7,209	5,915	5,654	5,155	10,442
	Instructional	5,469	2,772	2,159	2,592	2,593	4,345	3,290	2,226	3,187
	Core**	18,977	9,898	4,899	9,110	7,170	5,915	5,654	5,139	9,231

*Total revenues for the essential education activities of the institution. Core revenues for public institutions (using the Governmental Accounting Standards Board (GASB) standards) include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private gifts, grants, and contracts; investment income; other operating and nonoperating sources; and other revenues and additions. Core revenues for private, not-for-profit and public institutions reporting under the Financial Accounting Standards Board (FASB) standards include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private gifts, grants, and contracts; investment return; sales and services of educational activities; and other sources. Core revenues for private, for-profit institutions reporting under FASB standards include tuition and fees; government appropriations (federal, state, and local); government grants and contracts; private grants and contracts; net investment income; sales and services of educational activities; and other sources. In general, core revenues exclude revenues from auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations.

**Total expenses for the essential education activities of the institution. Core expenses for public institutions reporting under GASB standards include expenses for instruction, research, public service, academic support, student services, institutional support, operation and maintenance of plant, depreciation, scholarships and fellowships, interest and other operating and nonoperating expenses. Core expenses for FASB (primarily private, not-for-profit and for-profit) institutions include expenses on instruction, research, public service, academic support, student services, institutional support, net grant aid to students, and other expenses. For both FASB and GASB institutions, core expenses exclude expenses for auxiliary enterprises (e.g., bookstores, dormitories), hospitals, and independent operations.

Source: IPEDS.

The number of students from small entities estimated to drop out of education or transfer out of programs at small entities as a result of those programs failing the gainful employment debt measures or becoming ineligible and the accompanying revenue effects are shown in Table 30. The effects of incoming transfers are estimated by applying the share of small entities in a sector to the estimated number of students transferring into the sector in the results generated by the model runs for the full set of institutions described in this Regulatory Impact Analysis. Small entities that fail the debt measures and eventually become ineligible are more likely to close than larger institutions with multiple programs. As a result, the sector revenue losses presented in Table 30 assume that small entities lose 85 percent of total revenues per enrollee in failing and ineligible programs, while all institutions lose 80 percent of instructional revenues per enrollee in failing and ineligible programs. The estimated cumulative drop in revenue from small entities resulting from students transferring or dropping out of programs that fail the gainful employment debt measures is $169.5 million from programs at for-profit institutions in a four-year period, an average of $42.4 million annually. When offset by the potential revenue gains or expense reductions, the estimated net effects are a $13.7 million gain for programs at for-profit institutions, an average annual gain of $3.4 million.

Table 30: Estimated Direct Revenue and Expense Effects

Table 30-A: For-profit 4-year

			Year 2	Year 3	Year 4	Year 5
Private For-profit 4-year	**Low Drop Scenario**					
	Student Movement	Number Dropping Out	50	94	134	287
		Number Transferring Out	160	165	213	205
		Number Transferring In	17	40	63	84
	Tuition and Fee Revenue	Loss From Drops	300.8	565.5	806.2	1,726.6
		Loss From Transfers Out	962.6	992.7	1,281.4	1,233.3
		Gain From Transfers In	162.7	380.0	595.7	790.6
	Expenses	Reduction from Drops	410.1	771.0	1,099.0	2,353.9
		Reduction from Transfers Out	1,312.3	1,353.3	1,747.0	1,681.4
		Increase from Transfers In	54.4	127.0	199.1	264.2
	Net Revenues for Sector		567.3	819.1	1,155.0	1,601.7
	High Drop Scenario					
	Student Movement	Number Dropping Out	119	220	308	379
		Number Transferring Out	66	141	201	255
		Number Transferring In	13	31	49	65
	Tuition and Fee Revenue	Loss From Drops	715.9	1,323.5	1,853.0	2,280.1
		Loss From Transfers Out	397.1	848.3	1,209.2	1,534.1
		Gain From Transfers In	121.5	290.2	462.6	612.1
	Expenses	Reduction from Drops	976.0	1,804.4	2,526.1	3,108.4
		Reduction from Transfers Out	541.3	1,156.4	1,648.5	2,091.4
		Increase from Transfers In	40.6	97.0	154.6	204.6
	Net Revenues for Sector		485.2	982.2	1,420.5	1,793.2

Table 30-B: For-profit 2-year

			Year 2	Year 3	Year 4	Year 5
Private For-profit 2-year	**Low Drop Scenario**					
	Student Movement	Number Dropping Out	271	571	915	1,170
		Number Transferring Out	622	1,284	2,004	2,526
		Number Transferring In	479	726	1,228	1,385
	Tuition and Fee Revenue	Loss From Drops	1,678.3	3,536.2	5,666.6	7,245.8
		Loss From Transfers Out	3,852.0	7,951.8	12,410.7	15,643.5
		Gain From Transfers In	3,026.4	4,584.1	7,759.1	8,747.5
	Expenses	Reduction from Drops	1,202.2	2,533.1	4,059.2	5,190.5
		Reduction from Transfers Out	2,759.4	5,696.2	8,890.4	11,206.1
		Increase from Transfers In	1,413.7	2,141.3	3,624.4	4,086.1
	Net Revenues for Sector		440.1	-8,158.7	-9,930.6	-18,312.6
	High Drop Scenario					
	Student Movement	Number Dropping Out	609	1,279	2,055	2,607
		Number Transferring Out	493	1,037	1,630	2,042
		Number Transferring In	474	727	1,155	1,293
	Tuition and Fee Revenue	Loss From Drops	3,771.5	7,920.8	12,726.6	16,145.1
		Loss From Transfers Out	3,053.1	6,422.1	10,094.6	12,646.1
		Gain From Transfers In	2,993.2	4,590.7	7,297.4	8,167.7
	Expenses	Reduction from Drops	2,701.7	5,674.0	9,116.6	11,565.5
		Reduction from Transfers Out	2,187.1	4,600.5	7,231.2	9,059.0
		Increase from Transfers In	1,398.2	2,144.4	3,408.7	3,815.3
	Net Revenues for Sector		-340.8	-1,622.2	-2,584.7	-3,814.3

Table 30-C: For-profit less-than-2-year

			Year 2	Year 3	Year 4	Year 5
Private For-profit Less-than-2-year	**Low Drop Scenario**					
	Student Movement	Number Dropping Out	267	615	937	1,237
		Number Transferring Out	442	1,044	1,592	2,095
		Number Transferring In	1,070	2,042	2,883	3,587
	Tuition and Fee Revenue	Loss From Drops	2,325.7	5,357.0	8,161.7	10,774.9
		Loss From Transfers Out	3,850.0	9,093.8	13,867.1	18,248.5
		Gain From Transfers In	6,220.5	11,874.1	16,760.1	20,851.9
	Expenses	Reduction from Drops	2,091.0	4,816.4	7,338.1	9,687.6
		Reduction from Transfers Out	3,461.5	8,176.1	12,467.7	16,407.0
		Increase from Transfers In	3,160.6	6,033.2	8,515.7	10,594.7
	Net Revenues for Sector		2,436.7	4,382.7	6,021.5	7,328.4
	High Drop Scenario					
	Student Movement	Number Dropping Out	490	1,162	1,797	2,383
		Number Transferring Out	338	822	1,268	1,677
		Number Transferring In	1,026	1,982	2,764	3,373
	Tuition and Fee Revenue	Loss From Drops	4,268.1	10,121.6	15,652.8	20,757.1
		Loss From Transfers Out	2,944.1	7,160.0	11,044.9	14,607.5
		Gain From Transfers In	5,966.5	11,523.8	16,067.5	19,611.0
	Expenses	Reduction from Drops	3,837.4	9,100.2	14,073.2	18,662.5
		Reduction from Transfers Out	2,647.0	6,437.5	9,930.3	13,133.4
		Increase from Transfers In	3,031.5	5,855.1	8,163.8	9,964.2
	Net Revenues for Sector		2,207.1	3,924.7	5,209.6	6,078.1

Source: NSLDS, IPEDS, BPS, NPSAS and MDHE.

While many programs at small entities would not be determined ineligible under the small numbers provisions and their performance on the debt measures, it is still important for the Department to have data on all of these programs for several reasons. As for all programs, they would be required to disclose their performance. The Department believes that students considering or attending programs with small numbers of borrowers or completers will find the debt measures useful in their decision-making process, even as the Department believes that a larger sample is needed to make reliable eligibility determinations. These data will also be useful to institutions seeking to improve the performance of their programs or considering expanding enrollment in their programs. Finally, examining these programs' data over time will help the Department evaluate the performance of all gainful employment programs. The estimated costs associated with complying with the data collection and reporting requirements are summarized below.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Table 31 relates the estimated burden of each information collection requirement to the hours and costs estimated in the Paperwork Reduction Act of 1995 section of the preamble . This additional workload is discussed in more detail under the Paperwork Reduction Act of 1995 section of the preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on small entities participating in the title IV, HEA programs by 457,885 hours per year. The monetized cost of this additional burden on institutions, using wage data developed using Bureau of Labor Statistics data available at http://www.bls.gov/ncs/ect/sp/ecsuphst.pdf, is $10,128,421. This cost was based on an hourly rate of $22.12 that was used to reflect increased management time to establish new data collection procedures associated with the gainful employment provisions.

Table 31: Estimated Paperwork Burden for Small Entities

Provision	Reg. Section	OMB Control #	Hours	Costs
Reporting information about students in gainful employment programs, disclosure of programs' performance on the debt measures, and providing debt warnings to prospective students	668.6	OMB 1845-0107	441,101	$9,757,163
Data challenge process for draft debt measures, provision of alternative earnings by failing programs, and notification of voluntary withdrawal of a gainful employment program	668.7	OMB 1845-NEW4	16,784	$371,258

Table 31 relates the estimated burden for small entities of each paperwork requirement to the hours and costs estimated in the Paperwork Reduction Act of 1995 section of this preamble. The largest burden comes from reporting and disclosure requirements related to students enrolled in gainful employment programs and includes information required to be submitted under the Program Integrity final regulations published October 29, 2010 including identifying information about each student who completed a program that prepares a student for gainful employment, the CIP code for that program, the date the student completed the program, and the amounts the student received from private educational loans and institutional financing programs. The burden reported in these final regulations reflects an increased estimate in the number of students enrolled in gainful

employment programs and subject to the existing reporting requirements and the addition of new required reporting elements including the credential level, medical or dental internship or residency requirement, initial date of attendance, and dates of attendance in the award year. The estimated burden for small entities of reporting information about students is 244,619 hours and $5,410,981. This amount is in addition to the estimated burden of 400,296 hours for small entities in reporting information about students described in the Program Integrity final regulations published on October 29, 2010.

Additional items Included in the burden estimate under OMB 1845-0107, are the 140,157 estimated hours associated with institutions that submit tuition and fee data for individual students to limit the debt included in the debt-to-earnings calculation, the 51,907 hours estimated for the reporting of student withdrawal dates during the year, and 4,418 hours estimated for disclosure of final debt measures and debt warnings to prospective students. Collectively, these provisions are estimated to cost $ 4,346,182.

Prior to the issuance of the draft debt-to-earnings ratios, the Secretary will provide a list to institutions of students that will be included in the applicable two- or four-year period used to calculate the debt-to-earnings ratios beginning in FY2012. Institutions will have 30 days after the date the list is sent to the institution, to provide corrections such as, evidence that a student should be included or excluded from the list or to submit corrected or updated student identity information. The estimated burden from these pre-draft data challenges is 1,663 hours and $36,790. After the issuance of draft debt measures, institutions will have the ability to challenge the accuracy of the loan data for a borrower that was used to calculate the draft loan repayment rate, the list of borrowers used to calculate the loan repayment rate, or the median loan debt for the program that was used in the numerator of the draft debt-to-earnings ratio. The burden associated with challenges to the draft debt measures is 2,772 hours annually at a cost of $61,317. Programs that fail the debt measures may demonstrate that a failing program would meet a debt-to-earnings standard by recalculating the debt-to-earnings ratios using the median loan debt for the program and using alternative earnings data from: a State-sponsored data system, or an institutional survey conducted in accordance with NCES standards, or, for fiscal years 2012, 2013, and 2014, BLS data. The estimated burden of supplying the alternative earnings information is 2,654 hours and $58,702. An institution must notify the Secretary if it intends to supply alternative earnings data and the estimate for this information collection is 139 hours and $3,079.

Additional items included in the burden estimate for institutions reported under OMB 1845-NEW4 include and estimated burden of 9,187 hours for notifying students when an institution voluntarily withdraws a failing program from title IV, HEA participation and the date when title IV, HEA aid will no longer be available for the program and an estimated 277 hours in issuing debt warnings to current students. As described in the Paperwork Reduction Act of 1995 section of this preamble, institutions must comply with §668.7 in applying for approval to reestablish an ineligible gainful employment program or a program that is substantially similar to a failing program or to a previously failing program the institutions voluntarily-discontinued. Under these final regulations, institutions will have to provide notice of a voluntary withdrawal of a failing program from title IV, HEA program eligibility, and the annual burden associated with this provision is estimated to be 92 hours and $2,031.

The burden for applying to reestablish programs and submitting a response to the denial of an application have not been estimated in this package because of the extended period of time before these conditions will occur. Together, these provisions have an estimated cost of $371,258 for institutions.

Identification, to the Extent Practicable, of All Relevant Federal Regulations that May Duplicate, Overlap, or Conflict with the Regulations

The regulations are unlikely to conflict with or duplicate existing Federal regulations. Under existing law and regulations administered by the Department, institutions are required to disclose data in a number of complementary areas related to the regulations. For example, among the information that institutions must disclose under the HEA is price information including a "net price" calculator and a pricing summary page. The additional information required by these final regulations will help students make informed decisions about the affordability of their student loan debts and the performance of the covered programs.

Alternatives Considered

As described above, the Department evaluated the regulations for their effect on different types of institutions, including the small entities that comprise approximately 60 percent of title IV, HEA eligible institutions subject to these regulations. As discussed in this Regulatory Impact Analysis, several alternatives were considered, including the use of graduation and placement rates, disclosure alone, a NPV return on investment analysis, an index of factors, default rates, and higher thresholds for the repayment rate. Default rates are not used because a low default rate is not synonymous with a low debt burden. As noted earlier, forbearance, deferments for economic hardship and unemployment, and income-contingent and income-based repayment are important consumer protections that help keep former students out of default; however cohort default rates, alone, are not an adequate standard for assessment of whether a program prepares students for gainful employment. Nor can disclosure serve as a standard for determining whether a program complies with the gainful employment requirement in the statute. For example, with a disclosure approach an institution might report that one of its programs did not place a single graduate into a job, yet the program would remain eligible as "preparing students for gainful employment in a recognized occupation" because it disclosed the fact that it had failed to do so. For graduation and placement rates, non-Federal negotiators raised concerns about the ability of institutions to obtain valid placement information from graduates and employers. Based on the information we have available, using them as a measure of gainful employment would be premature. No specific proposal was considered for an index, nor is it clear how such an index would logically measure gainful employment. Furthermore, one should be cautious about assuming that an institution enrolling lower-income students should necessarily have lower expectations for the future employment or earnings of graduates. An index could be a good approach to provide incentives, perhaps as a method of distributing funds in a program. While we find the concept appealing, we are not convinced that it is appropriate for accomplishing the goals of these regulations.

As the analysis and comments from outside parties shaped the proposal, alternatives were developed that reduced the proposal's negative effects. These alternatives include a delayed effective date for the gainful employment standard, an ability of institutions to request that a program's repayment rate be evaluated for those three years further along in their careers, a cap limiting the number of programs that could lose eligibility in the first year after the regulations take effect to the lowest-performing programs producing no more than 5 percent of completers during the prior award year, increased debt-to-earnings limits, and a decreased repayment rate threshold. These alternatives are not specifically targeted at small entities, but the delayed effective date and initial cap on the regulations' effect will provide time for small entities to adapt to the regulations. Clarification of the treatment of programs with a small number of completers or borrowers is particularly relevant for small entities and, along with the changes to the calculation of the debt measures and the requirement that a program is not ineligible until it fails the debt measures for three of four FYs, reduces the effect of the regulations on small entities and opens opportunities for programs that serve students well.