

LEGAL UPDATES

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ANNE D. CARTWRIGHT
KANSAS CITY:
816.983.8000
ANNE.CARTWRIGHT@
HUSCHBLACKWELL.COM

HAYLEY E. HANSON
KANSAS CITY:
816.983.8377
HAYLEY.HANSON@
HUSCHBLACKWELL.COM

JULIE MICELI
OMAHA:
402.964.5000
JULIE.MICELI@
HUSCHBLACKWELL.COM

LISA J. PARKER
CHICAGO:
312.526.1539
LISA.PARKER@

The Long and Winding Road to the New Financial Value Transparency and Gainful Employment Rules

IMPACTING PUBLIC, NON-PROFIT, AND PROPRIETARY INSTITUTIONS PARTICIPATING IN TITLE IV FEDERAL STUDENT AID PROGRAMS

Effective July 1, 2024, institutions of higher education participating in Title IV Federal Student Aid programs must comply with the U.S. Department of Education's (Department) Financial Value Transparency and Gainful Employment regulation (Final Rule).

The Final Rule has two significant components. First, the Final Rule advances a new Financial Value Transparency policy intended to provide prospective students with consumer-minded data about important financial outcomes for individuals who complete Title IV programs. Second, the Final Rule establishes an accountability framework that sets minimum thresholds for each Title IV Program around financial outcomes of program completers, along with consequences for institutions who fail to meet those minimum thresholds; for Gainful Employment Programs, those consequences include the loss of Title IV eligibility.

Because most institutions of higher education participate in Title IV, the burdensome requirements of the Final Rule will apply in some manner to nearly all public, non-profit, and proprietary colleges and universities. To assist you in understanding how your institution may be impacted—and what you need to do now to prepare for compliance—we provide a high-level overview of the Final Rule below, as well as specific steps your institution should consider down the long and winding road to prepare for these new requirements.

To which programs does the Final Rule apply?

The Financial Value Transparency and Gainful Employment Final Rule applies to all programs participating in Title IV, with a few exceptions. Programs are classified as either GE programs or eligible non-GE programs, which are broadly explained in the below chart.

Classification of educational programs under the Final Rule		
Type of institution	GE programs	Non-GE programs
Public	Title IV non-degree programs	Title IV degree programs
Private non-profit	Title IV non-degree programs	Title IV degree programs
Proprietary institutions	All Title IV programs	N/A

In other words, GE programs include all Title IV non-degree programs at public and private non-profit institutions (commonly known as certificate or similar types of programs), as well as all Title IV Programs (including degree and non-degree programs) at proprietary institutions. Non-GE programs include all degree programs at public and private non-profit institutions. Note that public and private non-profit institutions may have both GE programs and non-GE programs.

Based on these classifications, the Final Rule will impose on institutions: (a) burdensome data reporting requirements for all Title IV programs; (b) performance thresholds and consequences for failing to meet those thresholds, for most Title IV programs; and (c) a potential loss of Title IV eligibility for failing to meet performance thresholds over a period of time, for GE programs, exclusively. These requirements and impacts are explained more below.

Financial Value Transparency: metrics, thresholds, and consequences

To increase transparency regarding higher education cost, financial aid, and outcomes for prospective students considering Title IV programs, the Final Rules seek to provide new consumer-minded information about the financial outcomes of individuals who complete a Title IV program. In particular, the Department establishes new Debt-to-Earnings ratios (D/E rates), both annual and discretionary D/E rates, and an Earnings Premium measure (EP measure) as measures of financial outcomes that prospective students and their families should consider in evaluating whether to pursue a particular educational program. The Department will generally calculate these metrics for each Title IV program annually, based on information about eligible program completers obtained from the institution, matched against data reflecting the earnings of those program completers obtained from a yet-to-be-named agency. Notably, the Department has committed to publishing each

Title IV program's annual D/E rates and EP measure on a new Department website beginning July 1, 2026.

In addition to establishing these new metrics and a website to house this information for the public, the Final Rule establishes “passing” thresholds. Also beginning July 1, 2026, all graduate level non-GE programs and all GE programs that do not meet the performance thresholds will be required to have prospective students acknowledge viewing the program's D/E rates and EP measure on the website established and maintained by the Department before signing an enrollment agreement.

The Department provided an outline of Final Rule D/E rate and EP measure calculations and thresholds at its 2023 Federal Student Aid conference—Session BO6 Gainful Employment; slides are available [here](#).

Gainful employment: additional consequences for failing thresholds

The Final Rule seeks to measure whether GE programs are preparing students “*for gainful employment in a recognized occupation*” by testing whether each GE program passes the D/E and EP measure thresholds. Pursuant to the Final Rule, a GE program meets this standard if the program:

Satisfies the applicable Title IV certification requirements;

Is not a failing program under the D/E rates measure in two out of any three consecutive award years for which the program's D/E rates are calculated; and

Is not a failing program under the EP measure in two out of any three consecutive award years for which the program's EP measure is calculated.

If a GE program does not meet the D/E rate thresholds or EP measure thresholds in any two out of three consecutive years for which they are calculated, the program will no longer be eligible to participate in Title IV. Beginning on July 1, 2026, an institution must provide a warning to students and prospective students if the GE program could become ineligible for the next award year based on its next calculated D/E rate or EP measure.

Data reporting requirements

To advance the Department's Financial Value Transparency policy and facilitate the data “match” between eligible program completers and their earnings from the yet-to-be-named agency, the Final Rule establishes a data reporting framework. Notably, the data reporting requirements apply to each substantially similar program (defined as all programs in the same four-digit CIP code) with 30 or more completers in total over the four most recent award years. This framework requires public, nonprofit, and proprietary institutions to report the below data elements:

Financial Value Transparency reporting metrics		
For each Title IV program:	For each student:	If the student completed/withdrew from the program during the award year:
<p>The name, CIP code, credential level, and length of program;</p> <p>Whether the program is programmatically accredited and, if so, the name of the accrediting agency(ies);</p> <p>Whether the program meets licensure requirements or prepares students to sit for a licensure examination in a particular occupation for each state in the institution's metropolitan statistical area;</p> <p>The total number of students enrolled in the program during the most recently completed award year, including both recipients and non-recipients of Title IV, HEA funds; and</p> <p>Whether the program is a</p>	<p>Information needed to identify the student and the institution;</p> <p>The date the student initially enrolled in the program;</p> <p>The student's attendance dates and attendance status (i.e., enrolled, withdrawn, or completed) in the program during the award year;</p> <p>The student's enrollment status (e.g., full time, three-quarter time, half time, less than half time) as of the first day of the student's enrollment in the program;</p> <p>The student's total annual cost of attendance (COA);</p> <p>The total tuition and fees assessed to the student for the award year;</p> <p>The student's residency tuition status by state or district;</p>	<p>The date the student completed or withdrew from the program;</p> <p>The total amount the student received from private education loans, as described in § 668.403(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;</p> <p>The total amount of institutional debt, as described in § 668.403(d)(1)(iii), the student owes any party after completing or withdrawing from the program;</p> <p>The total amount of tuition and fees assessed the student for the student's entire enrollment in the program;</p> <p>The total amount of the allowances for books, supplies, and equipment included in the</p>

Financial Value Transparency reporting metrics		
For each Title IV program:	For each student:	If the student completed/withdrew from the program during the award year:
qualifying graduate program whose students are required to complete postgraduate training programs, as described in the definition under 34 C.F.R. § 668.2.	<p>The student's total annual allowance for books, supplies, and equipment from their COA;</p> <p>The student's total annual allowance for housing and food from their COA;</p> <p>The amount of institutional grants and scholarships disbursed to the student;</p> <p>The amount of other state, tribal, or private grants disbursed to the student; and</p> <p>The amount of any private education loans disbursed to the student for enrollment in the program that the institution is, or should reasonably be, aware of, including private education loans made by the institution.</p>	<p>student's COA for each award year in which the student was enrolled in the program, or a higher amount if assessed by the institution; and</p> <p>The total amount of institutional grants and scholarships provided for the student's entire enrollment in the program.</p>

Data reporting deadlines

With some nuance, noted below, initial Financial Value Transparency reporting is due **July 31, 2024**. There are two reporting options that will impact the scope of the reporting requirements.

Standard reporting option. First, institutions may opt to participate in the standard reporting option, which generally requires that an institution report data for award years 2017-2018 through 2022-2023 for programs other than qualifying graduate programs—specified healthcare/counseling programs where postgraduation training is required, where the Department will use a longer cohort period to measure the earnings of graduates—or data for award years 2016-2017 through 2022-2023 for qualifying graduate programs. The initial deadline for the standard report is July 31, 2024.

Transition reporting option. Alternatively, institutions may participate in transition reporting option for the first six years for which D/E rates and EP measures are calculated. The transition reporting option requires institutions to report data for the two most recently completed award years. If an institution opts to provide transition reporting, the Department will calculate the D/E rates and EP measures using the median debt for the period reported and the earnings for six years. While there is some ambiguity as to whether the data for both award years would be due by July 31, 2024 (or whether data for the 2023-2024 award year would be due October 1), we encourage institutions to start preparing the data ahead of time to ensure they meet the reporting deadline.

As part of our upcoming webinar, we will discuss several factors to consider when deciding whether to pursue the standard or transitional report option.

GE certification requirements

The Final Rule requires institutions to certify that each of eligible GE programs included on their Eligibility and Certification Approval Reports (ECAR) is included in the institution's accreditation by its recognized agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized state agency.

Initially, institutions will be required to provide a Transitional Certification demonstrating this for existing GE programs. There are two options for complying with the Transitional Certification requirement – (1) making the certification in the institution's Program Participation Agreement (PPA) between July 1 and December 31, 2024; or (2) providing a certification (signed by the most senior executive officer) as an addendum to the institution's PPA by December 31, 2024.

As a matter of ongoing compliance, institutions must then continue to certify these requirements in their PPAs on an ongoing basis and maintain currency as to the list of eligible programs. An

institution must update any certification within 10 days if there are any changes in approval for a program, or other changes that render an existing certification no longer accurate. For Title IV funds to disburse for a GE program, the program must be included on the list of the institution’s eligible programs.

Compliance roadmap

We recommend that institutions take the following steps, starting as soon as possible, in order to comply with the new requirements starting July 1, 2024.

- 1. **Program categorization:** Determine whether each Title IV program is a GE program or a non-GE program. Note for public and non-profit institutions, you may have both.
- 2. **Reporting strategy:** Determine whether there are advantages for your institution to participating in transitional reporting for 2024.
- 3. **GE certification:** For each GE program, determine whether it is approved by an accrediting agency (programmatic accreditation) or is otherwise included in the institution’s accreditation by its recognized agency (institutional accreditation), or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized state agency.
- 4. **Reporting data:** Gather the Financial Value Transparency data for relevant award years for each relevant program. This data will include program and student level data.
- 5. **Valentine’s Day:** Grab a pile of Valentine’s Day candy along with your legal, compliance, and financial aid teams for our Financial Value Transparency and Gainful Employment webinar (information below).

What are the key dates for Final Rule implementation?

Timeline for Implementation	
July 1, 2024	Effective date of Financial Value Transparency and Gainful Employment Final Rule
July 31, 2024	Initial data reporting deadline
October 1, 2024	Data reporting deadline for most recently completed award year
December 31,	Deadline for initial certification of GE programs

2024	
October 1, 2025	Data reporting deadline for most recently completed award year
July 1, 2026	Student acknowledgement and warning requirements begin

Contact us

If you have questions about FVT and GE compliance, please reach out to Annie Cartwright, Hayley Hanson, Lisa Parker, Julie Miceli, Abby Felter, Ryan Spraker, or your Husch Blackwell attorney.

Webinar: February 14

If you are interested in learning more about this topic, we invite you to spend your Valentine’s Day lunch with members of our Title IV compliance team to learn about practical ways to prepare for the new Financial Value Transparency and Gainful Employment regulations.