THE DEBT TO EARNINGS CALCULATIONS

A. The D/E Thresholds

***Proposal*: The Department Should Reinstate The 12% Debt To Earnings And 30% Discretionary Debt To Earnings Thresholds.**

The proposed passing standards for the D/E Rates in the draft Rule are markedly different than the thresholds the Department used in the Gainful Employment Rule as published in 2011. At that time, after evaluating hundreds of comments from economists, industry leaders, industry critics and others, the Department set a final standard of 12% for the Debt to Earnings Rate and 30% for the Debt to Discretionary Income Rate. The Department set out a number of reasons to move off of the earlier NPRM that proposed 8% and 20% standards. Now, in the new draft Rule, the Department has returned to the 8% and 20% standards.

The Department has not provided sufficient rationale for the change.

We are particularly puzzled that the Department has, apparently, returned to these standards based on the Baum and Schwartz academic survey of this subject in 2006 ("How Much Debt is Too Much? Defining Benchmarks for Manageable Student Debt"), even though the Department previously noted a number of persuasive critiques explaining that the Baum and Schwartz study did not, in fact, support such a conclusion. In 2011, the Department noted multiple reasons to reject the 8% and 20% standards, and adopt the 12% and 30% standards, in its Federal Register commentary (beginning at page 34394 of the June 13, 2011 Federal Register). These included the observations by Baum and Schwartz, in the cited study, that the 8% and 20% thresholds were not applicable to higher education loans. Baum and Schwartz were particularly specific about the "shortcomings" of the 8% standard because it was largely based on mortgage loan experience, did not account for changes in underwriting criteria and presumed that a single percentage should apply to all borrowers. In addition, the 8% and 20% standards do not account for the expectation that higher education loans are intended to help borrowers earn a higher income in the future, and therefore make all of their debt commitments more manageable.

The United States District Court approved the 12% and 30% thresholds.

We also note that the U.S. District Court that reviewed and largely vacated the prior GE Rule closely analyzed the basis for the passing and failing thresholds for the

relevant rates and upheld the 12% and 30% thresholds as based on reasoned decision-making. Accordingly, we suggest that the original 12% and 30% standards be reinstated.

The 8% and 20% thresholds are inappropriate because the rule looks at graduate income earlier than three years from graduation.

The GE Rule is often presented as if it measures earnings three years after graduation because the "two-year period" measures the third and fourth award year before the year D/E rates are calculated. However, in most cases, the Department measures earnings for cohorts of students for a period that is less than three years after students' graduation. For example, the D/E rates for the 2014-15 award year (the first set of rates contemplated under the Rule) would be based on students who completed Award Year 2010-11 and Award Year 2011-12,[1] and would likely be based on earnings data obtained from SSA for calendar year 2014.

18 months from completion is too soon to measure earnings.

For Monroe College and institutions on a traditional academic calendar, the majority of graduates completed in June 2011 and June 2012. For June 2012 graduates, since the earnings measurement begins January 2014, ***they are only afforded an 18-month period before their earnings are measured, far short of the expected three years***. That is not a realistic time for these new graduates to establish themselves.

Our suggested changes to the text of the Rule are presented in red, below.

Revised Section 668.403

(b) Passing program. A GE program for which the--

(1) Discretionary income rate is equal to or less than ~~20~~ 30 percent; or

(2) Annual earnings rate is equal to or less than ~~8~~ 12 percent.

(c) Failing program. A GE program for which the--

(1) Discretionary income rate is greater than 30 percent; and

(2) Annual earnings rate is greater than 12 percent.

(d) Zone program. A GE program that is not a passing program and for which the

[1] Award Year 2010-11 and 2011-12 runs from July 1, 2010 through June 30, 2012.

(1) Discretionary income rate is greater than ~~20~~ 30 percent but less than or equal to ~~30~~ 35 percent; or

(2) Annual earnings rate is greater than ~~8~~ 12 percent but less than or equal to ~~12~~ 15 percent.

B. The Department Should Measure Graduate Earnings At An Appropriate Point

***Proposal*: Define The Earnings Year To Ensure The Department Measures Earnings At Least Three Years After Graduation.**

Currently, Section 668.404(c) defines annual earnings as, "the most currently available mean and median annual earnings of the students who completed the program…." The annual earnings year is, therefore, not specifically identified.

As stated above, the GE Rule is often presented as if it measures earnings three years after graduation since the "two-year period" that is measured is composed of the third and fourth award year before the year of measurement. However, in most cases, the Department would measure earnings for cohorts of students for a period that is less than three years after the students' graduation.

For example, the D/E rates for the 2014-2015 award year (the first set of rates contemplated under the rule) would be based on students who completed award years 2010-11 and 2011-12, and would likely be based on earnings data obtained from SSA for calendar year 2014. For Monroe College and institutions on a traditional academic calendar, the majority of those graduates completed in June 2011 and June 2012. For June 2012 graduates, if the earnings measurement begins January 2014, ***they are only afforded an 18-month period before their earnings are measured, far short of the expected three years***.

We therefore suggest an amendment to Section 668.404(c) to ensure that the Department allows a full three years between graduation and the earnings year in all cases.

Our suggested changes to the text of the Rule are presented in red, below.

Revised Section 668.404(c)

(c) No earlier than the third calendar year following the end of the applicable two-year period, (1) the Secretary obtains from the Social Security Administration (SSA) the most currently available mean and median annual earnings of the students who completed the program during the two-year period and who are not excluded under paragraph (e) of this section; and

C. The Annual Loan Payment Calculation Should More Accurately Reflect Student Debt.

On Thursday, September 25th, the Department announced that it would be contacting certain borrowers to inform them of the availability and advantages of utilizing extended student loan payment plans, consistent with the White House initiative on affordability.[2] However, the draft Rule proposes a number of changes that artificially increase the annual loan payment for many programs in a way that does not accurately reflect the debt created by the students' enrollment. These changes include a shortened one-size-fits-all amortization period, using a higher interest rate than the rate that actually applies to many federal student loans, counting debt for non-institutional costs, and eliminating the debt of non-Title IV program attendees from the calculation.

***Proposal*: The Department Should Restore The Graduated Amortization Schedule By Credential Level.**

The draft Rule abandons the graduated amortization period and proposes to calculate D/E rates based upon a standard, 10-year repayment plan. However, the 10-year amortization period significantly increases the annual loan payment that is necessary to pass the draft GE Rule. For example, for graduate loans at a 6.8% interest rate, going from a 20-year period to a 10-year period automatically increases the income required to pass the regulation by 50%. Moreover, Monroe College researched the experience of its borrowers in the 2011 cohort year. Of 2,456 borrowers in the cohort, ***28.5%*** of borrowers utilized Income Based Repayment Plans or Pay as you Earn. The percentage of borrowers is expected to increase as the White House and the Department endeavor to actively promote these plans. We therefore respectfully request that the Department reinstate the graduated amortization schedule by credential level to ensure the amortization period accurately reflects the experience of Gainful Employment programs and at-risk students.

***Proposal:* The Interest Rate Used To Calculate The Annual Loan Payment Should Reflect The Actual Interest Rate On The Loans.**

Proposed Section 668.404(b)(2) states that to calculate the annual loan payment, the Secretary will utilize the annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students in effect on the day the Secretary calculates the D/E rates. However, the Department used 6.8% for the most recent draft informational rates,

[2] *See* Tamar Levin, *U.S. to Contact Borrowers With New Options for Repaying Student Loans*, N.Y. TIMES, Sept. 24, 2013.

which is much higher than the current rate. The rate the Department will utilize to calculate the annual loan payment is thus still unclear. Nonetheless, the proposed regulation should be amended to use the actual interest rate the student is paying on his or her loans, or a rate that fairly represents the experience of borrowers in a program.

***Proposal*: The Department Should Reinstate The Tuition-Fee Cap.**

The Department has not provided any explanation for its proposal to remove the provision to cap student debt at the amount the institution charged for tuition and fees. This is particularly troubling because one of the basic critiques and fundamental challenges of complying with the GE Rule is that it holds institutions accountable for student debt that institutions cannot control.

During the last round of rulemaking, the Department recognized that without a tuition-fee cap, institutions may become responsible for students' excess debt, even though it may result from student choice and not the cost of completing a program.[3] We therefore propose reinstating 34 C.F.R. 668.7(c)(2)(i)(A)(2) as originally promulgated in June 2011. As previously proposed, the regulation allows the Secretary to calculate the median loan debt utilizing the lesser of: (i) the amount of loan debt the student incurred; or (ii) the total amount of tuition and fees the institution charged the students, when provided by the institution.

To incorporate these three proposals, our suggested changes to the text of the Rule are presented in red, below.

Revised Section 668.404(b)

(b) <u>Annual loan payment</u>. The secretary determines the annual loan payment for a program by –

(1) Determining the medial loan debt of the students who completed the program during the two-year period, based on the lesser of ~~loan debt incurred by each student as determined under paragraph (d) of this section; and~~–

[3] *See* 76 Fed. Reg. 34116 (June 13, 2011)("Nevertheless, for the purpose of calculating medial loan debt, the Department agrees to limit the total amount of loans a student incurs in completing a program to the total amount the institution charged the student for tuition and fees if the institution reports those amounts to the Department. Using the actual amount charged, instead of a derived or estimated amount, allows the Department to more accurately limit loan debt for the ratio calculations.").

(i) The loan debt incurred by each student as determined under paragraph (d) of this section; or

(ii) If tuition and fee information is provided by the institution, the total amount of tuition and fees the institution charged the student for enrollment in all programs at the institution; and

(2) ~~*Amortizing the median loan debt over a 10-year repayment period using the annual interest rate on Federal Direct Unsubsidized Loans for undergraduate students in effect on the day the Secretary Calculates the D/E rates.*~~ *Using the median loan debt for the program and (i) the interest rate in place when students initiated their Title IV, HEA loans and (ii) an interest rate of* ***[XX]*** *for private and institutional loans to calculate the annual loan payment based on—*

(i) A 10-year repayment schedule for a program that leads to an undergraduate or post-baccalaureate certificate or to an associate's degree;

(ii) A 15-year repayment schedule for a program that leads to a bachelor's or master's degree; or

(iii) A 20-year repayment schedule for a program that leads to a doctoral or first-professional degree.

Proposal**: The Annual Loan Payment Should More Accurately Reflect The Experience Of All Graduates, Not Just Title IV Students.**

The Department's primary goal for the GE Rule is to "[D]efine what it means for a program to prepare a student for gainful employment in a recognized occupation." However, the proposed Rule does not measure the entirety of the program since it omits a major group of students.[4] In line with the District Court's decision, the Department has chosen not to collect data on non-Title IV students. As a result, the proposed rates would not reflect the earnings of non-Title IV students as well as their debt or lack thereof.

We believe the Department may not have recognized the extent to which removing non-Title IV students may artificially increase the median debt of a program by removing a group of students who, by definition, did not borrow under the federal loan programs. This impacts all sectors of higher education – public, non-profit, and proprietary. Many public institutions and community colleges engage in corporate training and grant-funded training. Many institutions in all sectors provide merit

[4] For example, for the 2012-2013 year, ***44%*** of Monroe College's MBA graduates did not receive Title IV funds and would be excluded from the D/E calculations under the proposed Rule.

scholarships, tuition waivers, and institutional grants that allow students to avoid loans. This revision to the GE Rule would penalize rather than encourage this laudable behavior. In addition, it ensures that the D/E rates would not provide an accurate picture of the program as a whole. When this issue is considered in addition to the proposed Rule's standard 10-year amortization period, the elimination of the debt cap, and a single interest rate for all loans, the effect seems quite unfair.

In order to address these issues, we suggest amending section 668.405 "Issuing and Challenging GE Rates," to permit institutions the option to include the private and institutional educational debt incurred by students who did not receive Title IV funding in the list of debts used to calculate the median debt. This change will address the fundamental unfairness and unintended consequences that are would result from excluding these students from the metric. We believe that the Department can develop a method to obtain and verify this information without violating the HEA or the District Court's admonishment that the Department not collect personal data on any non-Title IV students.

Our suggested changes to the text of the Rule are presented in red, below.

NEW Section 668.405(c)(iii)

(*iii) Add to the list the debt of all non-Title IV students who completed the program during the applicable two year period for the purposes of calculating the median debt of the program.*

(a)The Secretary, in its discretion, may require the institution to submit documentation verifying the student's completion.