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**Monday  
November 1, 1999**

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**Part IX**

**Department of  
Education**

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**34 CFR Part 668  
Student Assistance General Provisions;  
Final Rule**

## DEPARTMENT OF EDUCATION

## 34 CFR Part 668

RIN 1845-AA03

## Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** We amend the regulations governing the disclosure of institutional and financial assistance information under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). These regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998.

**DATES:** *Effective Date:* These regulations are effective July 1, 2000.

*Implementation Date:* The changes to certain sections, particularly §§ 668.41 (b) and (c) and 668.46(c) (1)–(4) and (f), reflect changes made by Public Law 105–244 that already are in effect. Sections 668.41 (b) and (c) concern the distribution of information through electronic media and the distribution to enrolled students of a list of the information to which they are entitled upon request. Sections 668.46(c) (1)–(4) and (f) concern the reporting of crime statistics and the maintenance of a crime log. You may use these regulations prior to July 1, 2000 as guidance in complying with the relevant statutory provisions. You can find the full text of Public Law 105–244 at <http://www.access.gpo.gov/nara/publaw/105publ.html>.

**FOR FURTHER INFORMATION CONTACT:**

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(Paula\_Husselmann@ed.gov) or Lloyd Horwich (Lloyd\_Horwich@ed.gov), U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, room 3045, Washington, DC 20202–5344. Telephone (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** On August 10, 1999, we published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions in the **Federal Register** (64 FR 43582). In the preamble to the NPRM, we discussed the following proposed changes:

- Amending § 668.41 to make the information disclosure process more understandable and less burdensome, to require institutions to provide enrolled students a list of the information to which the students are entitled upon request, and to provide for institutions' use of Internet and Intranet websites for the disclosure of information.

- Amending § 668.42 by incorporating it into § 668.41.

- Amending § 668.43 to require institutions to disclose their requirements and procedures for a student to officially withdraw from the institution.

- Amending § 668.45 regarding the disclosure of completion/graduation and transfer-out rate information by implementing changes made by the 1998 Amendments, providing for a July 1 annual disclosure date, limiting the required disclosure of transfer-out rates to certain institutions, achieving greater consistency between term and nonterm-based institutions in establishing a cohort, and adding optional disclosures.

- Amending § 668.46 regarding the disclosure of campus security information to define terms (including campus, noncampus buildings or property, and public property), by excluding pastoral or professional counselors from the definition of a campus security authority, by adding new categories of crimes to be reported and new policies to be disclosed, by clarifying how to compile and depict crime statistics, by changing the date for disclosure of the annual security report to October 1, by requiring certain institutions to maintain a publicly available crime log, and by requiring institutions annually to submit their crime statistics to the Department.

- Amending § 668.47 by providing for the disclosure of additional data about revenues and expenses attributable to an institution's intercollegiate athletic activities, by clarifying the meaning of various terms, and by requiring institutions annually to submit their Equity in Athletics Disclosure Act (EADA) report to the Department.

- Amending § 668.48 to correspond with § 668.45 concerning the disclosure of completion/graduation and transfer-out rates.

**Discussion of Student Financial Assistance Regulations Development Process**

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, we obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, we must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless we reopen that process or explain any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 10, 1999, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. We invited comments on the proposed regulations by September 15, 1999, and 132 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

These regulations reflect the following changes to the proposed regulations in response to public comment:

- In § 668.43(a)(3), we clarified that the requirement that institutions disclose when a student must officially withdraw from the institution includes the disclosure of the procedures for a student to officially withdraw.

- In § 668.46(a) we revised the definition of a professional counselor to no longer require that the counselor be an employee of the institution. In addition, we revised the definition by replacing the term "psychological counseling" with the term "mental health counseling."

- We moved the definition of "prospective employee" from § 668.46(a) to § 668.41(a).

We added § 668.46(c)(2) to require institutions to record a crime statistic in their annual security reports for the calendar year in which the crime was reported to a campus security authority. We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and

suggested changes the law does not authorize us to make.

### Analysis of Comments and Changes

#### Subpart D—Institutional and Financial Assistance Information for Students

These regulations (1) retitle Subpart D from “Student Consumer Information Services” to “Institutional and Financial Assistance Information for Students,” to conform the title to that of section 485 of the HEA, and (2) renumber the sections.

These regulations remove current § 668.42 and incorporate it into § 668.41. Therefore, these regulations renumber current §§ 668.43–49 as §§ 668.42–48; the preamble to these regulations refers to the new section numbers.

#### Questions and Recommendations:

Commenters requested guidance on implementation of the requirements of this subpart and made recommendations concerning how we should interpret these regulations or apply them to particular circumstances. As these comments did not request any changes in the proposed regulations, we will provide separate guidance at a later date.

#### General Comments

The Secretary should clarify the record retention requirements that apply to these regulations.

*Discussion:* Section 668.24 of the Student Assistance General Provisions outlines the record retention requirements for the student financial assistance programs. Generally, a record must be maintained for three years following the end of the award year for which the record was established. With respect to the disclosure of institutional and financial assistance information provided under Subpart D of the Student Assistance General Provisions, the purpose is for the disclosure of certain information to students and other parties. Therefore, the institution must retain any record related to the disclosure for three years following the date of disclosure.

Using the campus security records as an example, an institution’s annual security report to be disclosed on October 1, 2000 must include crime statistics for calendar years 1997, 1998, and 1999. The record retention regulations require the institution to retain records to substantiate the information in its 2000 report for three years from October 1, 2000. Therefore, calendar year 1997 records must be retained until October 1, 2003.

*Changes:* None.

#### Section 668.41 Reporting and Disclosure of Information

*Comments:* Section 668.41 should address any information institutions participating in Title IV, HEA programs are required to disclose by any Department of Education regulation, not just information institutions are required to disclose by these regulations (34 CFR Part 668, Subpart D).

*Discussion:* Section 668.41 only is intended to address information that institutions are required to disclose by section 485 of the HEA. We believe that including in § 668.41 all information that institutions must disclose under any Department regulation is impractical and would be confusing.

*Changes:* None.

*Comments:* The Department should provide a chart listing all information that institutions must disclose under these regulations and the persons to whom they must disclose the information.

*Discussion:* We believe that § 668.41 adequately provides the information sought by this comment. However, we will provide continuing technical assistance, including the requested chart, to institutions to help them understand and comply with these regulations.

*Changes:* None.

*Comments:* The Department should clarify the level of description of required information it expects institutions to provide in the various notices of the availability of information that are required by § 668.41.

*Discussion:* As stated in the preamble to the NPRM (64 FR 43583), the description should be sufficient to allow students and others to understand the nature of the information and to make informed decisions about whether to request the information. We do not believe there is a need to be more prescriptive in this area.

*Changes:* None.

*Comments:* Remove the word “freshman” from the definition “first-time, freshman student” in § 668.41(a), which identifies those students that institutions must include in their cohorts for calculating completion or graduation rates, and if applicable, transfer-out rates.

*Discussion:* As described in § 668.45, institutions must include in their cohorts first-time, certificate- or degree-seeking, full-time undergraduate students who never have attended any institution of higher education (including in the cohort those who enroll in the fall term having attended a postsecondary institution for the first time in the prior summer term or having

earned college credit in high school) regardless of their class standing. As some members of the cohort may have advanced standing, we agree that the use of the word “freshman” in the definition could cause confusion.

*Changes:* The term “first-time freshman student” is replaced by the term “first-time, undergraduate student” wherever it appears in these regulations (§§ 668.41(a), 668.45(a)(3)(iii), and 668.45(a)(4)(i)–(ii)).

*Comments:* The definition of “notice” in § 668.41(a) should not require institutions, in providing the various notices of the availability of information required by § 668.41, to provide the notices on a one-to-one basis to persons to whom the information need only be provided upon request.

*Discussion:* We do not believe that students and others entitled to the information will be adequately notified of its availability if the notification of its availability is made through means that do not ensure that each person who is entitled to the notification receives it. The regulation does not prescribe the method by which institutions must notify students and others of the information’s availability; the regulation simply prescribes that the method used must provide individualized notice.

*Changes:* None.

*Comments:* Change §§ 668.41(c) and (d) to include completion and graduation rates, and if applicable, transfer-out rates, for athletes under § 668.48, among the required disclosures of information.

*Discussion:* Section 485(a)(1) of the HEA does not include completion and graduation rates of athletes in the list of information institutions must provide upon request to enrolled and prospective students. Although section 485(e) of the HEA only requires institutions to provide the report concerning athletes’ graduation rates to prospective student-athletes and their parents, high school coaches, and guidance counselors, we encourage institutions to provide the report to others who request it.

*Changes:* None.

*Comments:* Rather than requiring institutions under § 668.41(c) annually to provide all enrolled students a notice listing the information to which they are entitled upon request, allow institutions to tell students, at the time the institutions distribute the notice, how often they will publish the list and how students can obtain interim changes to the list.

*Discussion:* Section 485(a) of the HEA specifically requires that institutions provide the list annually to all enrolled students.

*Changes:* None.

*Comments:* The Department should clarify that § 99.7, which is referenced in § 668.41(c)(1), refers to the notification requirements under the Family Educational Rights and Privacy Act of 1974 (FERPA).

*Discussion:* We agree.

*Changes:* Section 668.41(c)(1) is amended to include a reference to FERPA.

*Comments:* The requirement for disclosure of information about the terms and conditions of deferral of loan repayments for service under the Peace Corps Act, the Domestic Volunteer Service Act of 1973, or for comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service should be moved from § 668.41(d)(4) to § 668.42 (Financial assistance information), which addresses, among other subjects, loan repayment.

*Discussion:* We agree with the commenters.

*Changes:* Section 668.41(d)(4) in the NPRM is moved to § 668.42(c)(7).

*Comments:* If the purpose of the revised § 668.41 is to put all of an institution's disclosure responsibilities under subpart D in a single section, the requirement that an institution must report its crime statistics to the Department should be moved from § 668.46(g) to § 668.41.

*Discussion:* We agree with the commenters.

*Changes:* Section 668.46(g) in the NPRM is moved to § 668.41(e)(5).

*Comments:* The Department should clarify that the prohibition on using the Internet to provide the information required by § 668.41(f)(1)(i) to prospective student-athletes and their parents does not prohibit a national collegiate athletic association from obtaining a waiver for its members under § 668.41(f)(1)(ii) for providing the information to prospective student-athletes' high school coaches and guidance counselors by distributing the information to all secondary schools in the United States through the Internet or other electronic means.

*Discussion:* We did not intend the prohibition referred to above to address the means by which a national collegiate athletic association must provide the information to secondary schools in order to obtain a waiver under § 668.41(f)(1)(ii). We would be pleased to work with any such association seeking a waiver for its members to determine whether the association's proposed method of providing the information to secondary

schools is sufficient to qualify for a waiver.

*Changes:* None.

#### *Section 668.43 Institutional and Financial Assistance Information*

*Comments:* The requirement in § 668.43(a)(2) and (4) that an institution disclose any refund policy with which the institution is required to comply should make clear that the requirement refers to any refund policy required by the institution's accrediting agency or State agency, not to the requirements for determining the amount of Title IV HEA program assistance that a student has earned upon withdrawal.

*Discussion:* Institutions are required to disclose any refund policy that requires the return of unearned funds to their source. This information includes the determination of amounts returned to the title IV programs and all other provisions of § 668.22, as well as any refund policy required by the State or the school's accrediting agency, or any institutional refund policy.

*Changes:* None.

*Comments:* In addition to an institution's disclosure of when a student must officially withdraw from the institution, the disclosure should include the institution's procedures for that withdrawal.

*Discussion:* Any disclosure of the requirements for withdrawal must necessarily include sufficient information for a student to know how to go about withdrawing from the institution.

*Changes:* We revised § 668.43(a)(3) to clarify that the requirement that an institution disclose its requirements for withdrawal includes a requirement that an institution disclose the procedures a student must follow to officially withdraw.

#### *Section 668.45 Information on Completion or Graduation Rates*

*Comments:* Term-based institutions whose students enroll before September 1 of a given year should continue to include these students in their fall cohort for that year.

*Discussion:* These regulations do not change how a term-based institution establishes its fall cohort. A term-based institution may include in its fall cohort students who enroll for the fall term before September 1 of a given year, and continue to include students who attended the institution for the first time during the summer preceding the fall term.

*Changes:* We revised § 668.45(a)(3)(i) to clarify that an institution's fall cohort must include all students who enter a term-based institution during the fall

term, regardless of whether they enter before or after September 1.

*Comments:* Institutions should be allowed to disclose graduation or completion and, if applicable, transfer-out rates for their 1996 and 1997 cohorts based on a September 1 through August 31 year.

*Discussion:* We agree. The 1998 Amendments changed the year during which institutions must determine whether students for whom 150% of normal time for completion of their programs has elapsed have completed or graduated from the program from July 1 through June 30 to September 1 through August 31. These regulations reflect the statutory change.

*Changes:* None.

*Comments:* In determining its fall cohort, a term-based institution should be able to consider who is enrolled on another official fall reporting date other than October 15 or the end of the drop-add period to make the reporting date consistent with the Department's Integrated Postsecondary Education Data System's (IPEDS) Fall Enrollment (EF) report.

*Discussion:* We agree that a term-based institution's establishment of its fall cohort under this regulation should be consistent with the IPEDS data on fall enrollment.

*Changes:* We revised § 668.45(a)(4) to include as an entering student a first-time, full-time, certificate or degree-seeking undergraduate who is enrolled on another official fall reporting date. Also, we added to § 668.41(a) the definition of "official fall reporting date" used by the IPEDS EF report.

*Comments:* Transfer-out rates should be optional for all institutions for a number of reasons, including the greater regulatory burden placed on institutions that consider "substantial preparation" as part of their mission—for example, community colleges.

*Discussion:* The HEA requires institutions to report the rate at which students who receive substantial preparation transfer out of the institution. Therefore, the transfer-out rate cannot be made optional in all cases. These regulations limit the requirement to institutions that determine that their missions include providing substantial preparation for their students to enroll in other eligible institutions. Institutions with substantial numbers of transfers-out may have a lower graduation and completion rate than other institutions and thus may find it desirable to report a transfer-out rate. We anticipate that the required transfer-out rate will not apply to most four-year institutions. Consistent with the treatment of

transfer-out students by IPEDS Graduation Rate Survey (GRS), an institution only is required to report on students whom the institution knows transferred to another institution.

*Changes:* None.

*Comments:* The Secretary should clarify that a student who leaves an undergraduate institution for study at a graduate institution is not a transfer-out under these regulations.

*Discussion:* For purposes of these regulations, a student who leaves an undergraduate program for study in a graduate program is not considered a transfer-out. Normally, such a student would have completed his or her program and be included in the institution's completion/graduation rate.

*Changes:* None.

*Comments:* A term-based institution should be defined as an institution at which more than fifty percent of the programs are term-based.

*Discussion:* Section 668.45(a)(3)(i) defines a term-based institution as an institution at which a predominant number of the programs are based on semesters, trimesters, or quarters.

*Changes:* None.

*Comments:* The Secretary should indicate that an institution's compliance with the IPEDS GRS ensures compliance with the methodological requirements of § 668.45.

*Discussion:* We agree. An institution's compliance with the GRS constitutes compliance with the methodological provisions of §§ 668.45 and 668.48.

*Changes:* None.

#### **Section 668.46 Institutional Security Policies and Crime Statistics**

*Comments:* Numerous commenters requested that we specifically exclude certain types of employees from the definition of a campus security authority—for example, lay counselors, dormitory rectors, physicians, access monitors, rape crisis counselors, doctoral counselor trainees, campus ombudsmen, and teaching faculty. Other commenters requested clarification about whether student security personnel organized by student governments and concert security employees who work for the institution are campus security authorities. Still other commenters asked us to define who is an "official" of the institution, and what "significant responsibility" for student and campus activities means.

*Discussion:* To determine if an institution must collect crime statistics from a particular employee or official, or provide a timely warning report based on crimes reported or known to the employee or official, an institution must first determine if that official is a

campus security authority. In addition to campus law enforcement staff, a campus security authority is someone with "significant responsibility for student and campus activities." Absent this responsibility, an employee is not a campus security authority.

For example, a dean of students who oversees student housing, a student center, or student extra-curricular activities, has significant responsibility for student and campus activities. Similarly, a director of athletics, team coach, and faculty advisor to a student group also have significant responsibility for student and campus activities.

A single teaching faculty member is unlikely to have significant responsibility for student and campus activities, except when serving as an advisor to a student group. A physician in a campus health center or a counselor in a counseling center whose only responsibility is to provide care to students are unlikely to have significant responsibility for student and campus activities. Also, clerical staff are unlikely to have significant responsibility for student and campus activities.

Since official responsibilities and job titles vary significantly from campus to campus, we believe that including a list of specific titles in the regulation is not practical. However, as stated above, we will provide additional guidance at a later date concerning interpretation of these regulations.

*Changes:* None.

*Comments:* The definition of campus security authority should include only individuals working for the institution's campus security office or expressly performing a campus security function at the institution's request.

*Discussion:* We believe that the new definition and guidance reflect the reality that on colleges campuses, officials who are not police officials or acting as event security at student or campus events nevertheless are responsible for students' or campus security. We also believe the new definition and guidance will better enable institutions to determine who is a campus security authority and thereby to comply with these regulations.

*Changes:* None.

*Comments:* Commenters asked a number of questions regarding our interpretation of the definitions of campus, noncampus building or property, and public property, such as what it means for an institution to "control" property, what "adjacent to and accessible from the campus" means, and whether remote classrooms or remote research stations are included in

the definition of campus. Commenters also asked how different institutions that occupy the same general geographic area and different campuses of an institution should report crimes.

*Discussion:* We will respond to commenters' questions concerning implementation of the proposed regulations, and will post our answers on our Information for Financial Assistance Professionals (IFAP) website: <http://ifap.ed.gov>

*Changes:* None.

*Comments:* Generally, the commenters expressed much satisfaction with the compromises made during negotiated rulemaking regarding the definitions in § 668.46(a). In particular, many commenters agreed with the negotiators' decision to exclude professional and pastoral counselors from being required to report crimes discussed with them in their role as counselor. Some commenters disagreed with this exclusion, on the belief that reporting a statistic cannot identify the victim. Other commenters believed that the process of reporting statistics and avoiding double-counting can lead to identification of the victim. Many commenters stressed the importance of ensuring that students' ability to obtain confidential counseling not be compromised.

*Discussion:* We agree with the commenters about the importance of victims' being able to obtain confidential counseling. We also agree that although reporting a statistic is not likely, of itself, to identify the victim, the need to verify the occurrence of the crime and the need for additional information about the crime to avoid double-counting can lead to identification of the victim.

Representatives of psychological counselors informed us that counselors would, as a matter of professional obligation, be required to inform a patient at the beginning of any session that detailed information may be disclosed to other parties for statistical reporting purposes. In their experience, this disclosure has a chilling effect on access to professional counseling by causing a victim to decline or be wary of professional assistance. Given the importance of access to counseling, the availability of statistics from other sources on campus, and the provisions we included in this regulation concerning confidential reporting, we believe this regulation strikes the appropriate balance between individuals' need for counseling and the community's need for complete statistics.

*Changes:* None.

*Comments:* The definition of professional counselor should refer to mental health counseling instead of psychological counseling because the job description of a professional counselor other than a psychologist or psychiatrist might refer to mental health counseling or crisis counseling, but would be unlikely to refer to psychological counseling. This definition also should refer to independent contractors who perform professional counseling for institutions.

*Discussion:* We agree with the commenters that changing the definition to refer to mental health counseling rather than psychological counseling provides a clearer, more precise definition, but emphasize that the change does not expand the definition to include non-professional or informal counselors.

We believe that changing the definition by eliminating the reference to employee would clarify that the definition refers to the nature of the counselor, not the counselor's employment relationship with the institution.

*Changes:* We changed the definition of professional counselor in § 668.46(a) to refer to mental health counseling and to exclude the requirement that a professional counselor be an employee of the institution.

*Comments:* The requirement that institutions provide notice of the availability of the annual security report to each prospective employee is overly burdensome as that term is defined (an individual who has contacted an eligible institution requesting information concerning employment with the institution). The definition should be limited to individuals who apply for employment. Also, the definition should be moved from § 668.46 to § 668.41, because it applies to both sections, and the definitions in § 668.41 apply to the entire subpart, while those in § 668.46 only apply to that section.

*Discussion:* We do not believe that the definition is unduly burdensome, especially given the importance of prospective employees being able to make fully informed choices. The requirement applies only when an individual requests information from an institution and the institution, presumably, either will mail the individual the information or tell the individual where to obtain the information. The institution simply can include in whatever information it provides the individual a brief notice of the availability of the annual security report.

We agree that the definition should be moved to § 668.41.

*Changes:* The definition of prospective employee is moved from § 668.46(a) to § 668.41(a).

*Comments:* Some commenters objected to the requirement in § 668.46(b)(2)(ii) that institutions disclose their policies for preparing the annual disclosure of crime statistics and requested clarification of what this disclosure entails.

*Discussion:* This disclosure serves two important purposes. It informs the students about how and from what sources the report is prepared. Many students may not be aware that a formal police report or investigation is not needed in order for a crime report to be included in the statistics. This disclosure also requires an institution to consider what officials or offices must be canvassed in order to prepare a complete report. Incorrectly, some institutions believe that only formal police reports need be included; the disclosure allows the reader to conclude that all of the proper offices have been canvassed. The disclosure need only provide a general description of the process for preparing the report, including the offices surveyed. There is no requirement to disclose every detailed step in the report's preparation.

*Changes:* None.

*Comments:* The endorsement of anonymous crime reporting procedures is a valuable addition to the regulations. Although incomplete anonymous reports raise a number of statistical reporting questions, it is a valuable alternative for some crime victims. In some States confidential reporting of crime is illegal.

*Discussion:* Institutions should note that the regulations refer to confidential reporting, not anonymous reporting. The regulations do not require institutions to allow confidential reporting. Rather, § 668.46(b)(2)(iii) and (4)(iii) require institutions to state whether they allow confidential reporting, and if so, to describe their procedures for that reporting, including whether the institution encourages pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of those procedures. An institution prohibited by State law from allowing confidential reporting simply would be required to state that in its annual security report.

*Changes:* None.

*Comments:* Campus judicial processes do not determine whether a crime occurred, but rather determine only whether the accused person committed an act that violates the institution's

rules, policies, or code of conduct. Therefore, the Secretary should clarify that referrals for alcohol, drug, and weapons law violations are limited to a breach of institutional policy, not law.

*Discussion:* The requirement that institutions report statistics for referrals for campus disciplinary action for alcohol, drug and weapons possession refers to violations of law only. For example, if a student of legal drinking age in the State in which an institution is located violates the institution's "dry-campus" policy and is referred for campus disciplinary action, that statistic should not be included in the institution's crime statistics. We believe that campus judicial officials and campus police are capable of determining whether a particular alcohol, drug, or weapons violation is a violation of law.

*Changes:* None.

*Comment:* Most commenters responded to our question regarding whether a crime should be recorded for the calendar year in which the crime was reported to the institution or the calendar year in which the crime occurred. The commenters were largely in favor of recording the crime on the date the crime was reported to the institution. The commenters indicated that for statistical purposes the FBI collects crime data based on when crimes are reported to the police, not on the date crimes occur. One reason for this standard is that crimes generally are discovered after they occur, making the date of occurrence unknown or uncertain. The commenters explained that using the date of occurrence creates additional burden for institutions.

*Discussion:* We appreciate the responses to our solicitation for comment on this issue. We previously have required institutions to report crime statistics according to the year in which the crimes occurred. However, we are convinced by the weight of the comments that we would eliminate a considerable burden on institutions by making this reporting requirement consistent with FBI reporting practices, and that no crime statistics will go unreported as a result of this change.

*Changes:* Section 668.46(c)(2) is revised to require an institution to record crime data based on when the crime was reported to a campus security authority.

*Comments:* The problem with reporting which crimes are hate crimes is an institution's reliance on municipal police departments to provide this information. Hate crimes are often a political issue in municipalities, which may be reluctant to release information concerning hate crimes to an institution.

*Discussion:* We recognize that some institutions must rely on data, including hate crime data, from outside agencies. In complying with the statistical reporting requirements, an institution must make a reasonable, good-faith effort to obtain statistics from outside agencies. An institution that makes such an effort is not responsible for the agencies' failure to provide the statistics or for verifying the accuracy of statistics the agencies provide.

*Changes:* None.

*Comments:* The requirement that institutions report hate crimes related to "any crime involving bodily injury" is inconsistent with other statistical reporting requirements. To require an institution to search for every crime that may have involved personal injury is overly burdensome.

*Discussion:* The requirement that institutions report hate crimes related to any crime involving bodily injury is mandated by the HEA.

*Changes:* None.

*Comments:* The Secretary should clarify that institutions are not required to report statistics for public property that surrounds noncampus buildings or property.

*Discussion:* These regulations do not require an institution to report crime statistics for public property surrounding noncampus buildings or property.

*Changes:* None.

*Comments:* The commenters asked that the preamble make clear that an institution must use both the UCR definitions and standards when reporting crime.

*Discussion:* We reiterate the language of § 668.46(c)(7) that requires an institution to use UCR guidance when defining and classifying crimes.

*Changes:* None.

*Comments:* The commenters strongly supported the use of a map to aid in the disclosure of crime statistics, and believe that a map would be very effective in indicating the areas to be considered in compiling these statistics. Some commenters believe that the Department will receive complaints or queries from the campus community that a map disclosed by an institution does not accurately depict the reporting area of a campus and recommended that the Department establish a uniform review process for the review of maps so that questions can be handled in a timely and efficient manner.

*Discussion:* We agree with the commenters that using a map in disclosing crime statistics can be very helpful; students and others will be able to visualize the areas covered by an institution's annual security report. We

will not establish a uniform process to review institutions' maps. Anyone who believes that an institution is not in compliance with the campus security regulations may contact the Office of Student Financial Assistance regional office for the State in which the institution is located. The addresses and telephone numbers for the regional Case Team Managers are at the following Internet address: <http://ed.gov/about.html>.

*Changes:* None.

*Comments:* The regulations should define what is meant, for purposes of crime log entries, by the nature, date, time and general location of each crime. The Department should emphasize that institutions may withhold this information only when it is absolutely necessary to prevent a breach of victim's confidentiality.

*Discussion:* We believe these terms are straightforward and there is no need for more prescriptive regulation. However, we emphasize that an institution may only withhold this information when it is sufficiently clear that the victim's confidentiality is in jeopardy.

*Changes:* None.

#### *Section 668.47 Report on Athletic Program Participation Rates and Financial Support Data*

*Comments:* Section 668.47 should include a separate audit requirement for the data it requires institutions to report.

*Discussion:* As discussed in the preamble to the NPRM (64 FR 43588-89), the primary change to the EADA made by the 1998 Amendments was the relocation of informational requirements concerning revenues and expenses attributable to institutions' intercollegiate athletic activities from section 487(a) of the HEA (Program Participation Agreements) to section 485(g). In relocating those requirements, Congress repealed the audit requirement under section 487(a). We believe Congress' intent is clear that there should not be a separate audit requirement for the data required by § 668.47.

*Changes:* None.

*Comments:* Institutions annually submit an audited financial statement to the Department. The requirement in § 668.47 to report intercollegiate athletics financial data separately requires reformatting the data, causes the data to appear differently than in the financial statement, and is administratively burdensome. The Department should consider whether the benefit to students, parents, and others from this report outweighs the cost to institutions.

*Discussion:* The requirements in § 668.47 concerning the disclosure of intercollegiate athletics financial data are statutory requirements.

*Changes:* None.

*Comments:* When and to which office of the Department should institutions submit their EADA reports?

*Discussion:* We are developing a process for receiving the reports. When the process is complete, we will inform institutions on the Department's IFAP website: <http://ifap.ed.gov>. Institutions should have made the reports available to students and others by October 15, 1999.

*Changes:* None

#### *Section 668.48 Report on Completion or Graduation Rates for Student-Athletes*

*Comments:* Allow term-based institutions, in determining their athletic cohorts under § 668.48(a), to include athletes who receive athletically related student aid at any time during the academic year in which their cohorts are established, rather than only allowing those institutions to include athletes who receive aid by the end of the institution's drop-add period or by October 15.

*Discussion:* We stated in the preamble to the NPRM (64 FR 43589) that institutions should include in their athletic cohorts students who receive athletically related student aid by the end of the institution's drop-add period or by October 15 because we believed that would lessen institutions' burden. However, based on the weight of the comments, and because the Department's Integrated Postsecondary Education Data System's (IPEDS) Graduation Rate Survey allows term-based institutions to use the entire academic year to determine their athletic cohorts, we now change the guidance we gave in the preamble to the NPRM and allow term-based institutions to use the entire academic year to determine their athletic cohorts.

Further, we clarify that "drop-add period," in this context, refers to institutions' fall drop-add periods.

*Changes:* None.

#### **Executive Order 12866**

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these final regulations are those resulting from statutory requirements and those we have determined to be

necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (64 FR 43589–43590).

#### *Paperwork Reduction Act of 1995*

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

#### *Assessment of Educational Impact*

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

#### *Electronic Access to This Document*

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<http://ocfo.ed.gov/fedreg.htm>

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[http://ifap.ed.gov/csb\\_html/fedlreg.htm](http://ifap.ed.gov/csb_html/fedlreg.htm)

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area, at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

#### **List of Subjects in 34 CFR Part 668**

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

**Richard W. Riley,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

#### **PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS**

1. The authority citation for part 668 is revised to read as follows:

**Authority:** 20 U.S.C. 1085, 1088, 1091, 1094, 1099c and 1141, unless otherwise noted.

2. The title of subpart D is revised to read as follows:

#### **Subpart D—Institutional and Financial Assistance Information for Students**

3. Section 668.41 is revised to read as follows:

##### **§ 668.41 Reporting and disclosure of information.**

(a) *Definitions.* The following definitions apply to this subpart:

*Athletically related student aid* means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student-athlete simply happens to be the recipient, is not athletically related student aid.

*Certificate or degree-seeking student* means a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

*First-time undergraduate student* means an entering undergraduate who has never attended any institution of higher education. It includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced

standing (college credit earned before graduation from high school).

*Normal time* is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

*Notice* means a notification of the availability of information an institution is required by this subpart to disclose, provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet website or an Intranet website does not constitute a notice.

*Official fall reporting date* means that date (in the fall) on which an institution must report fall enrollment data to either the State, its board of trustees or governing board, or some other external governing body.

*Prospective employee* means an individual who has contacted an eligible institution for the purpose of requesting information concerning employment with that institution.

*Prospective student* means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

*Undergraduate students*, for purposes of §§ 668.45 and 668.48 only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate.

(b) *Disclosure through Internet or Intranet websites.* Subject to paragraphs (c)(2), (e)(2) through (4), or (g)(1)(ii) of this section, as appropriate, an institution may satisfy any requirement to disclose information under paragraph (d), (e), or (g) of this section for—

(1) Enrolled students or current employees by posting the information on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the information must be disclosed; and

(2) Prospective students or prospective employees by posting the information on an Internet website.

(c) *Notice to enrolled students.* (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to 34 CFR 99.7 (§ 99.7 sets forth the notification requirements of

the Family Educational Rights and Privacy Act of 1974). The notice must list and briefly describe the information and tell the student how to obtain the information.

(2) An institution that discloses information to enrolled students as required under paragraph (d), (e), or (g) of this section by posting the information on an Internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

(i) The exact electronic address at which the information is posted; and

(ii) A statement that the institution will provide a paper copy of the information on request.

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student, on request, through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42);

(2) The institution (pursuant to § 668.43); and

(3) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(e) *Annual security report.* (1) *Enrolled students and current employees—annual security report.* By October 1 of each year, an institution must distribute, to all enrolled students and current employees, its annual security report described in § 668.46(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet website or an Intranet website, subject to paragraphs (e)(2) and (3) of this section.

(2) *Enrolled students—annual security report.* If an institution chooses to distribute its annual security report to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) *Current employees—annual security report.* If an institution chooses to distribute its annual security report to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must,

by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report.* The institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report, upon request, to a prospective student or prospective employee. If the institution chooses to provide its annual security report to prospective students and prospective employees by posting the disclosure on an Internet website, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(5) *Submission to the Secretary—annual security report.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by § 668.46(c) to the Secretary.

(f) *Prospective student-athletes and their parents, high school coach and guidance counselor—report on completion or graduation rates for student-athletes.*

(1)(i) Except under the circumstances described in paragraph (f)(1)(ii) of this section, when an institution offers a prospective student-athlete athletically related student aid, it must provide to the prospective student-athlete, and his or her parents, high school coach, and guidance counselor, the report produced pursuant to § 668.48(a).

(ii) An institution's responsibility under paragraph (f)(1)(i) of this section with reference to a prospective student athlete's high school coach and guidance counselor is satisfied if—

(A) The institution is a member of a national collegiate athletic association;

(B) The association compiles data on behalf of its member institutions, which data the Secretary determines are substantially comparable to those required by § 668.48(a); and

(C) The association distributes the compilation to all secondary schools in the United States.

(2) By July 1 of each year, an institution must submit to the Secretary

the report produced pursuant to § 668.48.

(g) *Enrolled students, prospective students, and the public—report on athletic program participation rates and financial support data.*

(1)(i) An institution of higher education subject to § 668.47 must, not later than October 15 of each year, make available on request to enrolled students, prospective students, and the public, the report produced pursuant to § 668.47(c). The institution must make the report easily accessible to students, prospective students, and the public and must provide the report promptly to anyone who requests it.

(ii) The institution must provide notice to all enrolled students, pursuant to paragraph (c)(1) of this section, and prospective students of their right to request the report described in paragraph (g)(1) of this section. If the institution chooses to make the report available by posting the disclosure on an Internet website or an Intranet website, it must provide in the notice the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report on request. For prospective students, the institution may not use an Intranet website for this purpose.

(2) An institution must submit the report described in paragraph (g)(1)(i) of this section to the Secretary within 15 days of making it available to students, prospective students, and the public.

(Approved by the Office of Management and Budget under control number 1845-0004 and 1845-0010)

(Authority: 20 U.S.C. 1092)

4. Section 668.42 is removed, and §§ 668.43 through 668.49 are redesignated as §§ 668.42 through 668.48, respectively.

5. Newly redesignated § 668.42 is amended by removing the word "and" at the end of paragraph (c)(5); by removing the period at the end of paragraph (c)(6), and adding, in its place, "; and"; by adding a new paragraph (c)(7) and revising the OMB control number to read as follows:

**§ 668.42 Financial assistance information.**

\* \* \* \* \*

(c) \*\*\*

(7) The terms and conditions under which students receiving Federal Family Education Loan or William D. Ford Federal Direct Loan assistance may obtain deferral of the repayment of the principal and interest of the loan for—

(i) Service under the Peace Corps Act (22 U.S.C. 2501);

(ii) Service under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951); or

(iii) Comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service.

(Approved by the Office of Management and Budget under control number 1845-0022)

\* \* \* \* \*

6. Newly redesignated § 668.43 is revised to read as follows:

**§ 668.43 Institutional information.**

(a) Institutional information that the institution must make readily available upon request to enrolled and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the institution;

(3) The requirements and procedures for officially withdrawing from the institution;

(4) A summary of the requirements under § 668.22 for the return of title IV grant or loan assistance;

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(6) The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(7) A description of any special facilities and services available to disabled students;

(8) The titles of persons designated under § 668.44 and information regarding how and where those persons may be contacted; and

(9) A statement that a student's enrollment in a program of study abroad

approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs.

(b) The institution must make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1092)

7. Newly redesignated § 668.45 is revised to read as follows:

**§ 668.45 Information on completion or graduation rates.**

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, full-time undergraduate students, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, full-time undergraduate students, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of its programs based on semesters, trimesters, or quarters must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the cohort of first-time, certificate- or degree-seeking, full-time undergraduate students who enter the institution during the fall term of each year.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(iii) For purposes of the completion or graduation rate and, if applicable, transfer-out rate calculations required in paragraph (a) of this section, an institution must count as entering students only first-time undergraduate students, as defined in § 668.41(a).

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time undergraduate student who is enrolled as of October 15, the end of the institution's drop-add period, or another official reporting date as defined in § 668.41(a).

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time undergraduate student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) An institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the 12-month period ending August 31 during which 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated by the end of the 12-month period ending August 31 during which 150% of the normal time for completion or graduation from their program has lapsed; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, by the end of the 12-month period ending August 31 during which 150% of normal time for completion from that program has lapsed.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who by the end of the 12-month period ending August 31 during which 150% of the normal time for completion or graduation from the program in which they were enrolled has lapsed, have not completed or graduated but have subsequently enrolled in any program of an eligible institution for which its program provided substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may exclude students who—

(1) Have left school to serve in the Armed Forces;

(2) Have left school to serve on official church missions;

(3) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(4) Are totally and permanently disabled; or

(5) Are deceased.

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that

has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate and transfer-out rate for students described in paragraphs (d)(1) through (4) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Approved by the Office of Management and Budget under control number 1845-0004)

(Authority: 20 U.S.C. 1092)

8. Newly redesignated § 668.46 is revised to read as follows:

**§ 668.46 Institutional security policies and crime statistics.**

(a) *Additional definitions that apply to this section.*

*Business day:* Monday through Friday, excluding any day when the institution is closed.

*Campus:* (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

*Campus security authority:* (1) A campus police department or a campus security department of an institution.

(2) Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (1) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

(3) Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

(4) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. If such an official is a pastoral or professional counselor as defined below, the official is not considered a campus security authority when acting as a pastoral or professional counselor.

*Noncampus building or property:* (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

(2) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

*Pastoral counselor:* A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

*Professional counselor:* A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification.

*Public property:* All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

*Referred for campus disciplinary action:* The referral of any student to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

(b) *Annual security report.* An institution must prepare an annual

security report that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c) of this section.

(2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—

(i) Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section;

(ii) Policies for preparing the annual disclosure of crime statistics; and

(iii) A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures.

(3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of current policies concerning campus law enforcement that—

(i) Addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals;

(ii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies; and

(iii) Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

(5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.

(10) A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

(11) A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include—

(i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;

(iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;

(v) Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.

Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

(c) *Crime statistics.* (1) *Crimes that must be reported.* An institution must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of the following that are reported to local police agencies or to a campus security authority:

(i) Criminal homicide:

(A) Murder and nonnegligent manslaughter.

(B) Negligent manslaughter.

(ii) Sex offenses:

(A) Forcible sex offenses.

(B) Nonforcible sex offenses.

(iii) Robbery.

(iv) Aggravated assault.

(v) Burglary.

(vi) Motor vehicle theft.

(vii) Arson.

(viii) (A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.

(B) Persons not included in paragraph (c)(1)(viii)(A) of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

(2) *Recording crimes.* An institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority.

(3) *Reported crimes if a hate crime.* An institution must report, by category of prejudice, any crime it reports pursuant to paragraphs (c)(1)(i) through (vii) of this section, and any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

(4) *Crimes by location.* The institution must provide a geographic breakdown of the statistics reported under paragraphs (c)(1) and (3) of this section according to the following categories:

(i) On campus.

(ii) Of the crimes in paragraph (c)(4)(i) of this section, the number of crimes that took place in dormitories or other residential facilities for students on campus.

(iii) In or on a noncampus building or property.

(iv) On public property.

(5) *Identification of the victim or the accused.* The statistics required under paragraphs (c)(1) and (3) of this section may not include the identification of the victim or the person accused of committing the crime.

(6) *Pastoral and professional counselor.* An institution is not required to report statistics under paragraphs (c)(1) and (3) of this section for crimes reported to a pastoral or professional counselor.

(7) *UCR definitions.* An institution must compile the crime statistics required under paragraphs (c)(1) and (3) of this section using the definitions of crimes provided in Appendix E to this part and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS EDITION, except that in determining how to report crimes committed in a multiple-offense situation an institution must use the UCR Reporting Handbook. Copies of the UCR publications referenced in this paragraph are available from: FBI, Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306 (telephone: 304-625-2823).

(8) *Use of a map.* In complying with the statistical reporting requirements under paragraphs (c)(1) and (3) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(9) *Statistics from police agencies.* In complying with the statistical reporting requirements under paragraphs (c)(1) through (4) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police

agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

(d) *Separate campus.* An institution must comply with the requirements of this section for each separate campus.

(e) *Timely warning.* (1) An institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

(i) Described in paragraph (c)(1) and (3) of this section;

(ii) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(2) of this section or local police agencies; and

(iii) Considered by the institution to represent a threat to students and employees.

(2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

(f) *Crime log.* (1) An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

(3)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would—

(A) Jeopardize an ongoing criminal investigation or the safety of an individual;

(B) Cause a suspect to flee or evade detection; or

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse

effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

(5) The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(Approved by the Office of Management and Budget under control number 1845-0022)

(Authority: 20 U.S.C. 1092)

9. Newly redesignated § 668.47 is revised to read as follows:

**§ 668.47 Report on athletic program participation rates and financial support data.**

(a) *Applicability.* This section applies to a co-educational institution of higher education that—

(1) Participates in any title IV, HEA program; and

(2) Has an intercollegiate athletic program.

(b) *Definitions.* The following definitions apply for purposes of this section only.

(1) *Expenses.*—(i) *Expenses* means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.

(ii) *Operating expenses* means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as “game-day expenses”), for—

(A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and

(B) Officials.

(iii) *Recruiting expenses* means all expenses an institution incurs attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.

(2) *Institutional salary* means all wages and bonuses an institution pays a coach as compensation attributable to coaching.

(3)(i) *Participants* means students who, as of the day of a varsity team's first scheduled contest—

(A) Are listed by the institution on the varsity team's roster;

(B) Receive athletically related student aid; or

(C) Practice with the varsity team and receive coaching from one or more varsity coaches.

(ii) Any student who satisfies one or more of the criteria in paragraphs (b)(3)(i)(A) through (C) of this section is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (*i.e.*, a redshirt), or for academic, medical, or other reasons.

(4) *Reporting year* means a consecutive twelve-month period of time designated by the institution for the purposes of this section.

(5) *Revenues* means revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.

(6) *Undergraduate students* means students who are consistently designated as such by the institution.

(7) *Varsity team* means a team that—

(i) Is designated or defined by its institution or an athletic association as a varsity team; or

(ii) Primarily competes against other teams that are designated or defined by their institutions or athletic associations as varsity teams.

(c) *Report.* An institution described in paragraph (a) of this section must annually, for the preceding reporting year, prepare a report that contains the following information:

(1) The number of male and the number of female full-time undergraduate students that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants as of the day of its first scheduled contest

of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated.

(ii) Total operating expenses attributable to the team, except that an institution may report combined operating expenses for closely related teams, such as track and field or swimming and diving. Those combinations must be reported separately for men's and women's teams.

(iii) In addition to the data required by paragraph (c)(2)(ii) of this section, an institution may report operating expenses attributable to the team on a per-participant basis.

(iv)(A) Whether the head coach was male or female, was assigned to the team on a full-time or part-time basis, and, if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the institution.

(B) The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(v)(A) The number of assistant coaches who were male and the number of assistant coaches who were female, and, within each category, the number who were assigned to the team on a full-time or part-time basis, and, of those assigned on a part-time basis, the number who were full-time and part-time employees of the institution.

(B) The institution must consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for purposes of this report.

(3) The unduplicated head count of the individuals who were listed under paragraph (c)(2)(i) of this section as a participant on at least one varsity team, by gender.

(4)(i) Revenues derived by the institution according to the following categories (Revenues not attributable to a particular sport or sports must be included only in the total revenues attributable to intercollegiate athletic activities, and, if appropriate, revenues attributable to men's sports combined or women's sports combined. Those revenues include, but are not limited to, alumni contributions to the athletic department not targeted to a particular sport or sports, investment interest income, and student activity fees.):

(A) Total revenues attributable to its intercollegiate athletic activities.

(B) Revenues attributable to all men's sports combined.

(C) Revenues attributable to all women's sports combined.

(D) Revenues attributable to football.

(E) Revenues attributable to men's basketball.

(F) Revenues attributable to women's basketball.

(G) Revenues attributable to all men's sports except football and basketball, combined.

(H) Revenues attributable to all women's sports except basketball, combined.

(ii) In addition to the data required by paragraph (c)(4)(i) of this section, an institution may report revenues attributable to the remainder of the teams, by team.

(5) Expenses incurred by the institution, according to the following categories (Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses attributable to intercollegiate athletic activities.):

(i) Total expenses attributable to intercollegiate athletic activities.

(ii) Expenses attributable to football.

(iii) Expenses attributable to men's basketball.

(iv) Expenses attributable to women's basketball.

(v) Expenses attributable to all men's sports except football and basketball, combined.

(vi) Expenses attributable to all women's sports except basketball, combined.

(6) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, aggregately for men's teams, and aggregately for women's teams.

(7) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(8) The total amount of recruiting expenses incurred, aggregately for all men's teams, and aggregately for all women's teams.

(9)(i) The average annual institutional salary of the non-volunteer head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer head coaches of all women's teams, across all offered sports, on a per person and a per full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If a head coach has responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary

among the teams on a basis consistent with the coach's responsibilities for the different teams.

(10)(i) The average annual institutional salary of the non-volunteer assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer assistant coaches of women's teams, across all offered sports, on a per person and a full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If an assistant coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(Approved by the Office of Management and Budget under control number 1845-0010) (Authority: 20 U.S.C. 1092)

#### § 668.48 [Amended]

10. Newly redesignated § 668.48 is amended as follows:

A. In paragraph (a)(1), by removing "By July 1, 1997, and by every July 1 every year thereafter, each" and adding, in its place, "Annually, by July 1, an"; by removing "shall" and adding in its place "must"; and by removing "an annual" and adding, in its place "a".

B. In paragraph (a)(1)(iii), by adding "if applicable," before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)";

C. In paragraph (a)(1)(iv), by adding "if applicable," before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)";

D. In paragraph (a)(1)(v), by adding "if applicable," before "transfer-out" both times it appears; by removing "§ 668.46(a)(2), (3), and (4)" and adding, in its place, "§ 668.45(a)(1)"; and by removing "shall" and adding, in its place, "must";

E. In paragraph (a)(1)(vi), by adding "if applicable," before "transfer-out" both times it appears; by adding after "recent," "completing or graduating"; by removing "§ 668.46(a)(2), (3), and (4)" and adding in its place "§ 668.45(a)(1)"; and by removing "shall" and adding in its place "must"; and

F. In paragraph (b), by removing "§ 668.46" and adding in its place "§ 668.45"; by removing "(a)(1)(iii), (a)(1)(iv), and (a)(1)(v)" and adding in

their place “(a)(1)(iii) through (vi)” and by adding “, if applicable,” before “transfer-out.”

G. At the end of the section, by replacing the OMB control number “1840-0719” with the number “1845-0004.”

11. Appendix E is amended by removing the definition of “Murder,” and by adding the following definitions before the definition of “Robbery:”

**Appendix E to Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation’s Uniform Crime Reporting Program**

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**Crime Definitions From the Uniform Crime Reporting Handbook**

*Arson*

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

*Criminal Homicide—Manslaughter by Negligence*

The killing of another person through gross negligence.

*Criminal Homicide—Murder and Nonnegligent Manslaughter*

The willful (nonnegligent) killing of one human being by another.

\* \* \* \* \*

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