

(4) Has participated in the title IV, HEA programs under the same ownership for at least three award years preceding the institution's waiver request;

(5) Is financially responsible under § 668.171, and does not rely on the alternative standards of § 668.175 to participate in the title IV, HEA programs;

(6) Is not on the reimbursement or cash monitoring system of payment;

(7) Has not been the subject of a limitation, suspension, fine, or termination proceeding, or emergency action initiated by the Department or a guarantee agency in the three years preceding the institution's waiver request;

(8) Has submitted its compliance audits and audited financial statements for the previous two fiscal years in accordance with and subject to § 668.23, and no individual audit disclosed liabilities in excess of \$10,000; and

(9) Submits a letter of credit in the amount determined in paragraph (d) of this section, which must remain in effect until the Secretary has resolved the audit covering the award years subject to the waiver.

(d) *Letter of credit amount.* For purposes of this section, the letter of credit amount equals 10 percent of the amount of title IV, HEA program funds the institution disbursed to or on behalf of its students during the award year preceding the institution's waiver request.

(e) *Rescission of the waiver.* (1) The Secretary rescinds the waiver if the institution—

(i) Disburses \$200,000 or more of title IV, HEA program funds for an award year;

(ii) Undergoes a change in ownership that results in a change of control; or

(iii) Becomes the subject of an emergency action or a limitation, suspension, fine, or termination action initiated by the Department or a guarantee agency.

(2) If the Secretary rescinds a waiver, the rescission is effective on the last day of the fiscal year in which the rescission takes place.

(f) *Renewal.* An institution may request a renewal of its waiver when it submits its audits under paragraph (b) of this section. The Secretary grants the waiver if the audits and other information available to the Secretary

show that the institution continues to satisfy the criteria for receiving that waiver.

(Authority: 20 U.S.C. 1094)

[64 FR 58618, Oct. 29, 1999]

§ 668.28 Non-title IV revenue (90/10).

(a) *General*—(1) *Calculating the revenue percentage.* A proprietary institution meets the requirement in § 668.14(b)(16) that at least 10 percent of its revenue is derived from sources other than Title IV, HEA program funds by using the formula in appendix C of this subpart to calculate its revenue percentage for its latest complete fiscal year.

(2) *Cash basis accounting.* Except for institutional loans made to students under paragraph (a)(5)(i) of this section, the institution must use the cash basis of accounting in calculating its revenue percentage.

(3) *Revenue generated from programs and activities.* The institution must consider as revenue only those funds it generates from—

(i) Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in § 668.8;

(ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are—

(A) Conducted on campus or at a facility under the institution's control;

(B) Performed under the supervision of a member of the institution's faculty; and

(C) Required to be performed by all students in a specific educational program at the institution; and

(iii) Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible under § 668.8 if the program—

(A) Is approved or licensed by the appropriate State agency;

(B) Is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602;

(C) Provides an industry-recognized credential or certification, or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;

(D) Provides training needed for students to maintain State licensing requirements; or

(E) Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

(4) *Application of funds.* The institution must presume that any Title IV, HEA program funds it disburses, or delivers, to or on behalf of a student will be used to pay the student's tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition, fees, or other charges are satisfied by—

(i) Grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who need that training;

(iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the saving plan qualifies for special tax treatment under the Internal Revenue Code of 1986; or

(iv) Institutional scholarships that meet the requirements in paragraph (a)(5)(iv) of this section.

(5) *Revenue generated from institutional aid.* The institution must include the following institutional aid as revenue:

(i) For loans made to students and credited in full to the students' accounts at the institution on or after July 1, 2008 and prior to July 1, 2012, include as revenue the net present value of the loans made to students during the fiscal year, as calculated under paragraph (b) of this section, if the loans—

(A) Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;

(B) Are issued at intervals related to the institution's enrollment periods;

(C) Are subject to regular loan repayments and collections by the institution; and

(D) Are separate from the enrollment contracts signed by the students.

(ii) For loans made to students before July 1, 2008, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iii) For loans made to students on or after July 1, 2012, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iv) For scholarships provided by the institution in the form of monetary aid or tuition discount and based on the academic achievement or financial need of its students, include as revenue the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(6) *Revenue generated from loan funds in excess of loan limits prior to the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA).* For each student who receives an unsubsidized loan under the FFEL or Direct Loan programs on or after July 1, 2008 and prior to July 1, 2011, the amount of the loan disbursement for a payment period that exceeds the disbursement for which the student would have been eligible for that payment period under the loan limit in effect on the day prior to enactment of the ECASLA is included and deemed to be revenue from a source other than Title IV, HEA program funds but only to the extent that the excess amount pays for tuition, fees, or institutional charges remaining on the student's account after other Title IV, HEA program funds are applied.

(7) *Funds excluded from revenues.* For the fiscal year, the institution does not include—

(i) The amount of Federal Work Study (FWS) wages paid directly to the student. However, if the institution credits the student's account with FWS funds, those funds are included as revenue;

(ii) The amount of funds received by the institution from a State under the LEAP, SLEAP, or GAP programs;

(iii) The amount of institutional funds used to match Title IV, HEA program funds;

(iv) The amount of Title IV, HEA program funds refunded or returned under § 668.22. If any funds from the loan disbursement used in the return calculation under § 668.22 were counted as non-title IV revenue under paragraph (a)(6) of this section, the amount of Title IV, HEA program funds refunded or returned under § 668.22 is considered to consist of pre-ECASLA loan amounts and loan amounts in excess of the loan limits prior to ECASLA in the same proportion to the loan disbursement; or

(v) The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(b) *Net present value (NPV)*. (1) As illustrated in appendix C of this subpart, an institution calculates the NPV of the loans it made under paragraph (a)(5)(i) of this section by—

(i) Using the formula, $NPV = \text{sum of the discounted cash flows } R^t/(1+i)^t$, where—

(A) The variable “*i*” is the discount rate. For purposes of this section, an institution must use the most recent annual inflation rate as the discount rate;

(B) The variable “*t*” is time or period of the cash flow, in years, from the time the loan entered repayment; and

(C) The variable “*R*” is the net cash flow at time or period *t*; and

(ii) Applying the NPV formula to the loans made during the fiscal year by—

(A) If the loans have substantially the same repayment period, using that repayment period for the range of values of variable “*t*”; or

(B) Grouping the loans by repayment period and using the repayment period for each group for the range of values of variable “*t*”; and

(C) For each group of loans, as applicable, multiplying the total annual payments due on the loans by the institution's loan collection rate (*e.g.*, the total amount of payments collected divided by the total amount of payments

due). The resulting amount is used for variable “*R*” in each period “*t*”, for each group of loans that a NPV is calculated.

(2) Instead of performing the calculations in paragraph (b)(1) of this section, using 50 percent of the total amount of loans that the institution made during the fiscal year as the NPV. However, if the institution chooses to use this 50 percent calculation, the institution may not sell any of these loans until they have been in repayment for at least two years.

(c) *Sanctions*. If an institution does not derive at least 10 percent of its revenue from sources other than Title IV, HEA program funds—

(1) For two consecutive fiscal years, it loses its eligibility to participate in the Title IV, HEA programs for at least two fiscal years. To regain eligibility, the institution must demonstrate that it complied with the State licensure and accreditation requirements under 34 CFR 600.5(a)(4) and (a)(6), and the financial responsibility requirements under subpart L of this part, for a minimum of two fiscal years after the fiscal year it became ineligible; or

(2) For any fiscal year, it becomes provisionally certified under § 668.13(c)(1)(ii) for the two fiscal years after the fiscal year it failed to satisfy the revenue requirement. However, the institution's provisional certification terminates on—

(i) The expiration date of the institution's program participation agreement that was in effect on the date the Secretary determined the institution failed this requirement; or

(ii) The date the institution loses its eligibility to participate under paragraph (c)(1) of this section; and

(3) It must notify the Secretary no later than 45 days after the end of its fiscal year that it failed to meet this requirement.

(Approved by Office of Management and Budget under control number 1845-NEW2)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, 1141)

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