

**DEPARTMENT OF EDUCATION****34 CFR Part 668**

RIN 1840-AB44

**Student Assistance General Provisions****AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the Student Assistance General Provisions. These amendments are necessary to implement the Student Right-to-Know Act, as amended by the Higher Education Technical Amendments of 1991 and the Higher Education Technical Amendments of 1993. The proposed regulations would require an institution that participates in any student assistance program under Title IV of the Higher Education Act of 1965, as amended (title IV, HEA program) to disclose information about graduation rates to current and prospective students. The proposed regulations would also require an institution that participates in any title IV, HEA program and awards athletically related student aid to provide certain types of data regarding the institution's student population, and the graduation rates of categories of student-athletes, to potential student-athletes and to the athletes' parents, coaches, and high school guidance counselors.

**DATES:** Comments must be received by October 25, 1995.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to: Ms. Paula Husselmann, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026-3272, or to the following internet address: [srtk@ed.gov](mailto:srtk@ed.gov).

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the regulations.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in the above paragraph.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula Husselmann or Mr. David Lorenzo, U.S. Department of Education, 600 Independence Avenue, SW., ROB-3, Room 3045, Washington, DC 20202-

5346. Telephone: (202) 708-7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Student Assistance General Provisions (34 CFR part 668) apply to all institutions that participate in the student financial assistance programs authorized by Title IV of the Higher Education Act of 1965, as amended (HEA). The proposed changes in these regulations are necessary to implement changes to the HEA made by the Student Right-to-Know Act, Public Law 101-542, as amended by the Higher Education Technical Amendments of 1991, Public Law 102-26, and the Higher Education Technical Amendments of 1993, Public Law 103-208. The Secretary published a proposed rule on July 10, 1992 to implement the Student Right-to-Know and Campus Security Act. Over three hundred commenters responded to those proposed rules. Final regulations implementing the Campus Security Act were published separately on April 29, 1994.

This second proposed rule incorporates a number of recommendations submitted by the higher education community in response to the first proposed rule. In addition, this second proposed rule is published in response to comments expressed in many meetings with the higher education community concerning the implementation of the various graduation rate requirements mandated by the Higher Education Amendments of 1992, Public Law 102-325.

The HEA, as amended by Public Law 102-325, uses completion or graduation rates for administering provisions of the statute beyond those governing student consumerism. The July 10, 1992 NPRM proposed a rigorous, standardized methodology so that the same data could be used for purposes of the Student Right-to-Know regulations, the State Postsecondary Review Program, and regulations governing institutional eligibility for short-term vocational programs. However, Congress has rescinded funding for the State Postsecondary Review Program and has not proposed funding for future years. Unlike the provisions of the Student Right-to-Know Act, the statutory requirements for completion or graduation rate data for institutional eligibility purposes do not apply to all schools that participate in title IV, HEA

programs. The Secretary has therefore decided that this proposed rule would address only the calculation of completion or graduation rates for purposes of the consumer information requirements of the Student Right-to-Know Act, and that these proposed rules would be more flexible than the July 10, 1992 NPRM.

The Secretary appreciates that some members of the higher education community favor the promulgation of a single valid methodological approach that would cover all the Student Assistance General Provisions regulations that require the calculation of completion or graduation rates. The Secretary believes, however, that the flexible approach and narrow scope of these proposed rules are appropriate. The Student Right-to-Know statute only requires completion or graduation rate calculations for consumer information purposes, so the scope of these proposed regulations is consistent with the law. The relative lack of methodological prescription in the statute means that the more prescriptive approach needed to generate completion or graduation rate calculations for other purposes would not be required by this law. The separation of these regulations governing student consumer information requirements from other regulations also makes it easier for the Department to meet the requirements of Executive Order 12866 to regulate flexibly and minimize burden on institutions. Finally, the Secretary solicits comments on whether the guidance these proposed regulations would provide is sufficient to generate useful data for the student consumer information purposes outlined in the statute, and on ways in which these proposed rules might be improved.

Given the flexible and limited approach the Secretary has adopted, the Secretary also, in the preparation of final regulations, wants to strike an appropriate balance among several important but sometimes competing aims related to these issues. First, the Secretary wants to balance the need to preserve flexibility with the need to avoid requiring institutions to use different methodologies when calculating completion or graduation rates to satisfy the requirements of this statute and other statutes and regulations. Second, the Secretary wants to balance the need to regulate institutions within the current level of technology and available information while preserving the flexibility to anticipate future developments. The Secretary foresees that institutions' ability to gather information and measure completion or graduation rates

will evolve and improve in the future. Such developments might lead to the identification and adoption of more rigorous methodologies for calculating completion or graduation rates for other regulatory purposes. If such methodologies are identified and adopted, the Secretary will look at the possibility of allowing institutions to use those methodologies to satisfy the requirements of the Student Right-to-Know statute as well as the requirements of other statutes and regulations.

In this regard the Secretary asks for comments on possible ways that consistency might be attained and overall burden reduced in light of the different purposes to which completion or graduation rate calculations are used in the Student Assistance General Provisions regulations. The Secretary also asks for comments on whether these proposed regulations strike the appropriate balance between flexibility and duplication of effort, and between current conditions and future developments in technology and information management, and how these regulations might be improved to better address these issues.

#### Preparation of Proposed Regulations

The Secretary has formulated these proposed regulations in accordance with Executive Order 12866, the Administration's initiative on regulatory reinvention, and the Department's own Principles for Regulating.

The Secretary believes that the Student Right-to-Know Act establishes important consumer information disclosure standards for institutions. In proposing these regulations, the Secretary's goal is to ensure that institutions provide consistent and useful information on completion and graduation rates. With this information in hand, the Secretary believes that students and student-athletes can make better, more informed choices when they choose a postsecondary institution.

The Secretary believes these proposed regulations strike an appropriate balance between establishing a basic level of useful consumer information for students, and keeping the burden on institutions to a minimum. However, the Secretary solicits comments on ways to reach both the goal of providing useful consumer information and the goal of keeping burden on institutions to a minimum, and on whether these proposed regulations are successful in meeting both goals.

#### Summary of the Proposed Regulations

The following is a summary of the regulations that the Secretary proposes

to implement the Student Right-to-Know Act:

#### *Section 668.41 Reporting and disclosure of information*

Public Law 101-542 expands the types of "consumer information" that institutions must disclose to students to include completion or graduation rates. The statute and § 668.41(a)(3) of these regulations require an institution to update this information annually, and to make that updated information readily available, through appropriate publications and mailings, to both current and prospective students. The statute also requires an institution to disclose the information to prospective students before they enroll or enter into any financial obligation with the institution. The statute defines a prospective student as "an individual who has contacted an eligible institution requesting information concerning admission to that institution." The Secretary also encourages institutions to make the rates available to secondary schools and guidance counselors so they have the information needed to advise student and parent consumers.

The Secretary invites comments on the differences between the reporting requirements contained in these proposed regulations and those contained in the Campus Security Act final regulations, with regard to where the institutions should publish this information, and whether the Department should regulate the placement of information in publications.

With respect to potential student-athletes, the statute and § 668.41(b) require that institutions that award athletically related student aid develop an annual, updated report containing information regarding the graduation rates of athletes, categorized by race, gender, and sport, as well as other data regarding the institution's student profile. The statute, and these proposed regulations, also require that institutions provide this report not only to the prospective student-athlete, but also to his or her parents, coach, and guidance counselor when the institution offers a potential student-athlete some form of athletically related student aid. The statute, and these regulations, define athletically related student aid as "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 in order to receive that assistance."

The statute, and § 668.41(b)(2) of these regulations, require that institutions provide a copy of this report on the completion or graduation rates of student-athletes to the Secretary by every July 1, beginning July 1, 1997.

The Secretary is proposing the following definitions in § 668.41(c) of these regulations:

The Secretary proposes to define "full-time" to mean the student workload, measured in credit or clock hours, that the institution consistently designates as a full-time workload. The Secretary is proposing this definition rather than the definition found elsewhere in the student assistance general provisions, in 34 CFR 668.2, to allow institutions greater flexibility in establishing the group of entering students on which the graduation rate is based. The definition of "full-time" in § 668.2 is designed for the narrow purpose of calculating award amounts for title IV, HEA program purposes; the Secretary proposes that institutions have wider latitude in defining "full-time" for this purpose than is provided by that definition.

The Secretary emphasizes, however, that this flexibility does not allow institutions to create new definitions of "full-time" for use only for purposes of these calculations. The Secretary also expects that the institution's customary definition of "full-time" is located in publications widely available to students. The Secretary solicits comment as to the utility of requiring an institution to supply its definition of "full-time" in the completion or graduation rate information it discloses so that students will have information about the different underlying components that contribute to a final completion or graduation rate.

These regulations would define the statutory term "normal time" as the minimum length of time necessary for a full-time student, continuously attending the institution, to complete a certificate or degree program. Many students do not complete or graduate within this definition of normal time for a variety of reasons, for example, family responsibilities, the need to work to earn income, the need for remediation, or changes in academic program or goals. An institution's completion or graduation rate may be influenced by varying factors, such as open admission requirements and student profiles. But the Secretary believes it was the intent of Congress in using the term "normal time" in the statute to mean a minimal length of time, rather than an average length of time, and that Congress meant to address the issues discussed above when it set the limit for counting

completers or graduates at 150% of normal time.

These regulations also contain the statutory definitions of the terms "athletically related student aid" and "prospective students".

*Section 668.46 Report on Completion/ Graduation Rate*

This new section of the regulations would incorporate section 485(a)(1)(L) of the HEA, which requires an institution to disclose the completion or graduation rate of certificate- or degree-seeking, full-time, undergraduate students entering the institution. To promote flexibility and reduce regulatory burden, the Secretary is proposing that each institution have discretion to define the terms "certificate- or degree-seeking students" and "undergraduate students" for purposes of these regulations, but expects that the definitions it uses for these terms will be those it customarily employs. The Secretary solicits comment as to the utility of requiring an institution to supply its definition of "full-time" in the completion or graduation rate information it discloses so that students will have information about the different underlying components that contribute to a final completion or graduation rate.

Institutions are required by the statute to base their graduation rate on the group of students who enter between each July 1 and June 30, beginning with students who enter on or after July 1, 1996. This is reflected in §§ 668.46(a) and 668.46(a)(1)(i). An institution may arrive at this rate by counting all the graduates or completers among all the students who enter for this entire time period (year-long data), or by counting those in a portion of this time period (e.g., fall enrollment) who complete or graduate and then extrapolate from those data a final rate. In this regard, the Secretary only requires that the institution's methodology be reasonable, and that the completion or graduation rate yielded by that methodology represent an accurate description of the completion or graduation rate at the institution. However, the Secretary invites comments on this proposal, and particularly wishes to hear the views of the higher education community with regard to issues of comparability between those institutions that use fall cohorts, and those institutions that count all students who enter during the year.

The Department will publish a sample methodology that institutions may use to satisfy the requirements of this statute, and will work with the higher

education community to identify other satisfactory methodologies.

With regard to the statutory provision that institutions base their graduation rate on students who "enter" between every July 1 and June 30, the Department's July 10, 1992 NPRM would have excluded transfer students from the completion or graduation rate calculation, on the grounds that those students were not "first-time students." The Secretary received comments from the higher education community that failure to consider transfer students in an institution's completion or graduation rate did not accurately reflect the true completion or graduation rate for institutions that admit a considerable number of transfer students. In light of these comments, the Secretary proposes to require the inclusion of transfer students—as well as first-time students—in the denominator of the institution's completion or graduation rate fraction.

Thus, the Secretary proposes in § 668.46(a)(1)(ii) of these regulations that "entering students" include both first-time students and students who enter the institution by transfer. The Secretary also believes that for both first-time and transfer students, "enter" would mean a student's attendance of at least one day of class.

The concept of "entering" raises in addition the question of how to track students' performance. The July 10, 1992 NPRM proposed for institutions without continuous enrollment the tracking of first-time students entering in the fall, as defined by the Integrated Postsecondary Educational Data System (IPEDS), or, for institutions with continuous enrollment, the tracking of first-time students entering between July and September. These proposed regulations do not prescribe any specific tracking methodology. Instead, these regulations allow institutions the flexibility to choose the methodology that best suits the institution's circumstances, including tracking on a student by student basis, on a program by program basis, or on a cohort basis, so long as that methodology (a) is applied to a population of students based on the group of full-time, certificate- or degree-seeking students who enter between every July 1 and June 30; (b) is applied to both first-time students and transfer students, as discussed above; and (c) is reasonable and generates an accurate completion or graduation rate for the group of students described by the statute.

Nor do these regulations *per se* propose that institutions track students continuously during 150% of normal time for completion or graduation from

their respective programs. These regulations only propose that an institution take a reasonable methodological approach to tracking students for purposes of calculating the completion or graduation rates required by the statute. One reasonable approach an institution may choose to take is to establish a cohort for a given year and look back after 150% of normal time has elapsed to see how many students in that cohort completed, graduated, or transferred to a program for which the student's prior program provided substantial preparation. This process entails no individual tracking and keeps administrative burden to a minimum. The Secretary plans to disseminate non-binding guidance at a later date that will contain a model methodology for tracking students that institutions may use (but will not be required to use) to satisfy the requirements of the statute and these regulations.

With regard to the issue of tracking, the Secretary is concerned that the goals of providing useful consumer information and of providing institutional flexibility both be met in these regulations, and solicits comments concerning how both these goals may be accomplished, and whether this portion of the proposed regulations does in fact accomplish both.

The Secretary is cognizant that tracking students who enter an institution creates particular kinds of administrative burdens on some schools. In view of these concerns, and the lack of statutory requirements on this point, the Secretary does not propose to regulate how institutions must track or place transfer students, but rather proposes that institutions adopt a reasonable approach for tracking transfer students, and placing them in groups of students that make up the denominators of particular completion or graduation rate fractions. However, the Secretary expects institutions to place a transfer student in the group of students that most closely matches the transfer student's academic status. For example, the Secretary would not deem it reasonable for an institution that offers only four-year programs to place a transfer student that it classifies academically as a junior in a group of students that it classifies as freshmen. The Secretary solicits comments on this issue, especially with regard to possible abuses, and whether the Department should include in the final regulations specific guidance regarding the placement of transfer students.

Section 668.46(a)(2)(i) of these regulations proposes that an institution disclose its first graduation rate no later than the October 1st following the

lapsing of 150% of normal time for all certificate- or degree-seeking, full-time undergraduate students who enter the institution between July 1, 1996 and June 30, 1997. If an institution offers programs of varying lengths, these regulations allow the institution to disclose its graduation rate no later than the October 1st following the lapse of 150% of normal time for its longest program. An institution may report earlier if it wishes, or on a program by program basis. The Secretary would expect, however, that an institution would report on the basis of the length of its predominant program, "predominant" being measured by the standards of both the number of programs of a particular length, and the number of students in programs of a particular length. The Secretary also solicits comments on the entire issue of reporting dates, and how the Secretary should balance flexibility in reporting with students' need for timely consumer information.

While these proposed regulations would not require institutions to provide information on groups of students who enter before July 1, 1996, the Secretary encourages institutions to disclose the completion or graduation rates for earlier groups. If an institution does disclose information on earlier groups, it should use the statutory methodology described below for counting the students it places in the completion or graduation rate denominator.

Section 668.46(a)(2)(ii) of these regulations proposes that an institution subsequently disclose its graduation rate no later than the October 1st following the lapsing of 150% of normal time for all certificate- or degree-seeking, full-time undergraduate students who enter between every July 1 and June 30. This date represents the latest time that an institution may disclose its graduation rate for that group, except in cases where 150% of normal time elapses on a date between July 1 and October 1. In those cases the Secretary will allow institutions to report no later than the following October 1.

In all cases, these regulations allow an institution to report earlier than the latest reporting date described above. For example, an institution may choose to report before the lapse of 150% of normal time. And, as discussed above, an institution that has programs of different lengths may choose to report on the basis of 150% of the normal time for its longest program, or a program other than its longest program, subject to the Secretary's expectations on this matter regarding the institution's "predominant" programs. But regardless

of the length of the program on which the institution bases its disclosure date, each student would still be limited to 150% of normal time for his or her program to complete, graduate or transfer in order to count in the numerator of the institution's completion or graduation rate calculation. For example, the students enrolled in a two-year program at an institution would receive three years to complete or graduate in order to count as completers or graduates for these purposes, and students in a year-long program at the same institution would only receive eighteen months to complete or graduate, even if the institution bases its disclosure date on 150% of the normal time for the two-year program.

Under the flexible provisions of these regulations, an institution would have to decide the following: (a) Whether it will track students on a cohort basis, a program by program basis, or an individual basis; (b) whether its methodology will track the entire group of students who enter between July 1 and June 30, or will track some appropriate portion (e.g., fall enrollment); and (c) the length of the program on which the reporting date will be based.

For example, suppose an institution (a) uses a cohort methodology; (b) uses a fall only cohort, and admits students in the fall up to September 1; and (c) offers only four-year programs on a fall and spring semester schedule. The institution would tag students who enter during the fall of 1996, allow 150% of normal time to elapse (six years), and disclose its first graduation rate no later than October 1, 2002. That rate would be based on the percentage of students in the original cohort who completed or graduated no later than the end of the institution's sixth academic year at the end of the spring semester of 2002. If the institution had chosen to track the cohort of students who entered up to the beginning of the spring semester of 1997, rather than the fall only cohort, disclosure would take place no later than October 1, 2003, and would include all students who completed, graduated, or transferred as of the end of the fall semester of 2002.

If an institution (a) tracked students on a student by student basis, (b) tracked all students who entered between July 1 and June 30, and (c) offered two-year associate degree programs only, the latest that institution could disclose a graduation rate for students entering the institution between July 1, 1996 and June 30, 1997 would be October 1, 2000. This would allow 150% of normal time—that is,

three years—to elapse for all students who entered up to June 30, 1997 and would include in the numerator of the fraction all students in the group who completed, graduated, or transferred by June 30, 2000.

If an institution (a) tracked on a program by program basis, (b) offered six-month programs, and (c) tracked students admitted to programs between July 1 and June 30, the last class entering the program by June 30, 1997 would complete 150% of normal time in March, 1998, and the institution would disclose its completion or graduation rate information on the entire group no later than October 1, 1998, reflecting students who completed, graduated, or transferred no later than the end of March 1998 (nine months after the beginning of the program).

Section 668.46(b)(1) of the proposed rules follows the statute in specifying that institutions count a student as having completed or graduated from his or her program only if the student completed or graduated from his or her program within 150% of the normal time for completion or graduation from that program, or, within that time frame, subsequently enrolled in any program of an eligible institution for which the prior program provided substantial preparation.

The Secretary is proposing institutional flexibility with respect to the determination of substantial preparation for transferring students, with the exception that the student must be in good academic standing at the time the student transfers to another eligible program. Each institution must document that substantial preparation has taken place in order to comply with the statute. However, unlike the provisions of the July 10, 1992 NPRM, the Secretary is not proposing regulations that specify the kinds of documentation an institution must collect as proof that a student has transferred. Rather, the Secretary asks for comments regarding which methods for documenting transfers the Department should accept as reasonable interpretations of the statute. For example, should the Department accept as sufficient proof of transfer a simple request that an academic transcript be sent to another institution? Or should the Department only accept a request made by an institution to which the student intends to transfer or has already transferred? The Secretary is also interested in comments proposing other methods for determining the number of students who transfer, other than a student by student count, that would fulfill the requirements of the statute. For example, should the

Department accept the use of a methodology by which an institution samples students who leave the institution and extrapolates from those data a transfer percentage reflecting the entire population?

Also in contrast with the July 10, 1992 NPRM, the Secretary does not propose in these regulations that the transferring student, in order to be counted as a completer or graduate, be required to enter a higher-level program. Several commenters on the earlier NPRM argued that counting only those students who transfer to higher-level programs unfairly penalizes institutions who prepared students to transfer to parallel or other programs. Since the statute only speaks to substantial preparation for a program, the Secretary would allow institutions to count as completers or graduates all transfers that the institution can document as transferring with substantial preparation. However, the Secretary solicits comments on whether this position sufficiently protects against potential abuses, and if there are alternative ways of providing relief in this area that may better protect against potential abuse.

In § 668.46(b)(1)(iii) the Secretary also proposes allowing institutions to count as a completer or graduate for these purposes a student who originally enrolled in a program longer than the program on which the institution bases its disclosure and who is still enrolled in that program and in good academic standing, so long as 150% of the normal time for completion or graduation for the student's program has not elapsed by the date the institution makes its completion or graduation rate information available. The Secretary believes that this is necessary to allow institutions to report on a basis earlier than 150% of normal time for their longest programs and not be penalized for their inability to count students who would complete or graduate from those longer programs. In this case, the Secretary believes that the value derived from encouraging an institution to report its completion or graduation rate information sooner rather than later outweighs any loss of precision that may arise from counting these students who are still enrolled in longer-term programs as completers or graduates. However, the Secretary reiterates the expectation that an institution use as the program on which it bases its reporting date a predominant or other program that best reflects the overall profile of the institution's program offerings.

The July 10, 1992 NPRM proposed the disclosure of what was essentially a persistence rate for all students until such time that the graduation rate could

be disclosed. For institutions that wish to consider the disclosure of a persistence rate, the Secretary considers the use of a persistence rate as a reasonable proxy for a graduation rate until such time that the graduation rate can be disclosed. These proposed regulations, however, would not require that institutions disclose a persistence rate. The Secretary also notes that a persistence rate cannot substitute for the graduation rate mandated by the statute except in the limited circumstances regarding an enrolled student in a program longer than the program on which the institution's disclosure date is based, as described above.

The statute and § 668.46(b)(2) allow an institution to exclude certain students from the calculation of a graduation rate, namely, students who leave the institution to serve: In the Armed Forces; on official church mission assignments; and with a foreign aid service of the Federal Government, such as the Peace Corps. The Secretary also proposes in these regulations to allow an institution to exclude those students who have died, or are unable to continue enrollment because of a permanent and total disability. The Secretary believes that institutions should not be required to include these students in their completion and graduation rate calculation because these students are unable to complete or graduate.

Some commenters on the July 10, 1992 NPRM believed that documenting these statutory exclusions would be difficult. The Secretary notes that the statute and these regulations do not require an institution to exclude these students; rather, an institution may choose whether to do so.

In § 668.46(c) of these regulations the Secretary proposes that institutions disclose as part of their completion or graduation rate the separate ratios of the following to the denominator of the completion or graduation rate fraction: (1) The number of completers or graduates included in the numerator; (2) the number of transfer students included in the numerator; and (3) the number of students in good academic standing still enrolled in programs longer than the program the institution uses as the basis of its disclosure date included in the numerator. The Secretary believes that it is useful and important for students and potential students to have this breakdown of the completion or graduation rate on hand, because it allows them to separate the completion rate of students who received a degree or certificate from the rate of those students who transfer, and from the rate of those who are still

persisting in longer programs. The Secretary also believes that this reporting requirement is not burdensome, as it only requires the reporting of details that the institution would have assembled in order to calculate its completion or graduation rate.

Section 668.46(d) of these proposed rules contains the statutory provision that authorizes the Secretary to waive the requirements of this section if the institution belongs to an athletic association or conference that publishes substantially comparable information, and if the institution, or athletic association or conference, satisfies the Secretary that this information is accurate and substantially comparable. An institution is still responsible for making this information available under the provisions listed in § 668.41(a)(3) even if it does successfully request waivers for this portion of the regulations.

#### *Section 668.49 Report on Completion or Graduation Rates for Student Athletes*

This section incorporates section 485(e) of the HEA by requiring each institution that awards athletically related student aid to disclose the completion or graduation rates of various student populations at the institution, including student athletes, beginning July 1, 1997.

Specifically, the statute and § 668.49(a) require an institution that awards athletically related student aid to disclose to the potential student-athlete and his or her parents, high school coach, and guidance counselor the following information at the time the institution makes the potential student-athlete an offer of athletically related student aid: (1) The number of students at the institution, categorized by race and gender, and (2) the number of those students, by sport, who receive athletically related student aid, categorized by race and gender. The Secretary proposes that the data under these provisions be based on students who attended the institution during the year preceding the year in which the institution discloses the data. This section would also require an institution to supply information concerning the completion or graduation rate for each category (race, gender, and sport) of these students within the group defined in §§ 668.46(a)(1)(i) and 668.46(a)(1)(ii) of these proposed rules. It also requires the provision of a four-year average of the graduation rates of the group of students defined in §§ 668.46(a)(1)(i) and 668.46(a)(1)(ii), categorized by race and gender. An institution that has

completion or graduation rates for fewer than four classes would have to disclose the average rate of those classes for which it has rates.

For these purposes, a sport is defined by the statute, and § 668.49(a)(2) of these proposed regulations, as basketball; football; baseball; cross-country and track combined; and all other sports combined. A "sport" is also defined under the Equity in Athletics Disclosure Act, but it is defined in that statute to include all varsity teams. Normally the Secretary, as encouraged by the higher education community, prefers consistency of definitions under the student aid programs. However, in this case the Secretary has no discretionary authority under either statute to allow for consistent treatment. The Secretary does note that the institutions affected by this section of the proposed regulations are a subset of those covered by the Equity in Athletics Disclosure Act, and that they may obtain waivers to these provisions as described below.

In order to reduce burden on institutions, § 668.49(b) proposes that the calculation of graduation rates in this section follow the regulations contained in § 668.46(b) and (c).

The statute and § 668.49(c) of these proposed regulations provide that an institution may, if it so wishes, provide supplemental information to the Secretary, potential student-athletes, and others regarding: (1) The graduation rate of those students who transfer into the institution, and (2) the number of students who transfer out of the institution.

In addition, as under § 668.46(d), the Secretary is authorized to waive the requirements of this section if the institution belongs to an athletic association or conference that publishes substantially comparable information, and the institution, or conference or association applying on its behalf, satisfies the Secretary that this information is accurate and substantially comparable to the information this statute requires institutions to produce.

Executive Order 12866

### *1. Assessment of Costs and Benefits*

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of the regulatory action. The potential costs associated with the proposed regulations are those resulting from statutory requirements. Burdens specifically associated with information

collection requirements are identified and explained elsewhere in the preamble under the heading Paperwork Reduction Act of 1995.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on how to minimize potential costs or to increase potential benefits resulting from these proposed regulations consistent with the purposes of the Student Right-to-Know Act.

### *2. Clarity of the Regulations*

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading: For example, § 668.46 *Report on completion or graduation rates*). (4) Is the description of the proposed regulating in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Mr. Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue SW. (room 5121, FOB-10), Washington, DC 20202-2241.

Paperwork Reduction Act of 1995

Sections 668.41, 668.46 and 668.49 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Student Right-to-Know.

These regulations affect the following types of entities eligible to participate in

the Title IV, HEA programs: Educational institutions that are public or nonprofit institutions, and businesses and other for-profit institutions. The information to be collected includes the graduation rate of full-time, certificate- or degree-seeking undergraduate students entering the institution; the number of students attending the institution; the number of students attending the institution who received athletically related student aid, broken down by race and gender; the completion or graduation rate of full-time, certificate- or degree-seeking undergraduate students broken down by race and gender; the completion or graduation rate of full-time, certificate- or degree-seeking undergraduate students who received athletically related student aid, broken down by race and gender within each sport; and the average completion or graduation rate of full-time, certificate- or degree-seeking undergraduate students for the four most recent completing or graduating classes, broken down by race and gender. Institutions of higher education that participate in title IV, HEA programs will need and use the information required by these regulations to meet the eligibility requirements for participation in those programs that were added by the Student Right-to-Know Act. Institutions must make available to current and prospective students the information regarding completion or graduation rates of full-time, certificate- or degree-seeking, undergraduate students described above, and the general and completion or graduation rate information of students who received athletically related student aid to students offered athletically related student aid, and to the parents, coaches, and guidance counselors of those students. Institutions that award athletically related student aid must also provide a report to the Secretary of the completion or graduation rate information those institutions must provide to students offered athletically related student aid. The Secretary needs and uses this report to fulfill statutory requirements under the Student Right-to-Know Act to publish that information broken down by institution and athletic conference.

Information is to be collected and disclosed once each year for institutions covered by §§ 668.41(a)(3) and 668.46, and collected, disclosed, and reported to the Secretary once each year for institutions covered by §§ 668.41(b) and 668.49. Annual public reporting and recordkeeping burden is estimated to average 24.5 hours for each response for 8,000 respondents for § 668.46, and 24.5

hours for each response for 1,800 respondents for § 668.49. These hours include the time needed for searching existing data sources and gathering, maintaining and disclosing the data. Educational institutions that are public or nonprofit institutions or businesses or other for-profit institutions may participate in the Title IV, HEA programs. Institutions of higher education that participate in title IV, HEA programs will need and use the information required by these regulations to meet the eligibility requirements for participation in those programs that were added by the Student Right-to-Know Act. Thus, the total annual reporting and recordkeeping burden for this proposed collection is estimated to be 240,100 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

#### Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3045, Regional Office Building 3, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

#### Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: September 14, 1995.

Richard W. Riley,  
Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant 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 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Intervention and Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

The Secretary proposes to amend 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 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c and 1141, unless otherwise noted.

2. Section 668.41 is amended by adding a new paragraph (a)(3); redesignating paragraph (b) as paragraph (c) and revising the newly redesignated paragraph (c); and by adding new paragraph (b) to read as follows:

#### **§ 668.41 Scope and special definitions.**

(a) \* \* \*

(3) The institution's completion or graduation rate, produced in accordance with § 668.46.

(b)(1) Each institution participating in any title IV, HEA program, when it offers a potential student-athlete athletically related student aid, shall provide to the potential student-athlete, and his or her parents, high school coach, and guidance counselor, the information on graduation rates and other data produced in accordance with § 668.49.

(2) The institution shall also submit to the Secretary the report produced in accordance with § 668.49 by July 1, 1997 and by every July 1 thereafter.

(c) 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 in order to receive that assistance.

*Full-time* means the student workload, measured in credit or clock hours, that the institution customarily designates as a full-time workload.

*Normal time* means the amount of time necessary for a full-time student continuously attending the institution to complete a certificate or degree program.

*Prospective students* means individuals who have contacted an eligible institution requesting information concerning admission to that institution.

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

3. Section 668.46 is added to subpart D, to read as follows:

#### **§ 668.46 Information on completion or graduation rates.**

(a) An institution shall prepare annually information regarding the completion or graduation rate of the certificate- or degree-seeking, full-time undergraduate students entering that institution on or after July 1, 1996.

(1)(i) An institution must base its completion or graduation rate calculation on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution between every July 1st and June 30th.

(ii) An institution shall count as entering students—

(A) First-time students; and  
(B) Students who enter the institution by transfer.

(2)(i) Beginning with the group of students who enter the institution between July 1, 1996 and June 30, 1997,



an institution shall disclose its graduation or completion rate information no later than the October 1 immediately following the point in time when 150% of the normal time for completion or graduation has elapsed for all the students in the group.

(ii) An institution shall disclose no later than October 1 each year thereafter its completion or graduation rate information for each succeeding group of students who, as of the preceding June 30, completed or graduated within 150% of normal time for completion or graduation from their programs.

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

(i) Students who have completed or graduated within 150% of the normal time for completion or graduation from their program;

(ii) Students who, within 150% of the normal time for completion or graduation from the program in which the student was enrolled, subsequently enroll in any program of an eligible institution for which the prior program provides substantial preparation; or

(iii) Students who are in good standing and still enrolled in a program of greater length than the length of the program on which the institution bases its reporting date, unless 150% of the normal time for graduation or completion from that longer program has elapsed by the reporting date.

(2) For the purpose of calculating a completion or graduation rate, an institution may exclude from the calculation of completion or graduation rates students who—

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

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

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

(iv) Are deceased, or totally and permanently disabled.

(c) In reporting the graduation or completion rate as calculated in paragraph (b) of this section, the

institution shall, as part of its disclosure of its overall rate of graduation or completion rate, disclose the ratio of each of the following to the group:

(1) The number of students who graduated or completed, as described in paragraph (b)(1)(i) of this section.

(2) The number of students who transferred, as described in paragraph (b)(1)(ii) of this section.

(3) The number of students who are persisting in programs that are longer than the program on which the disclosure date is based, as described in paragraph (b)(1)(iii) of this section, if the institution includes these students in its graduation or completion rate.

(d)(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, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (d)(1) of this section shall 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.

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

4. Section 668.49 is added to subpart D, to read as follows:

**§ 668.49 Report on completion or graduation rates for student-athletes**

(a)(1) By July 1, 1997, and by every July 1 thereafter, each institution that is attended by students receiving athletically related student aid shall produce an annual report containing the following information:

(i) The number of students, categorized by race and gender, who attended that institution during the year prior to the submission of the report.

(ii) The number of students described in paragraph (a)(1)(i) of this section who

received athletically related student aid, categorized by race and gender within each sport.

(iii) The completion or graduation rate of all the entering, certificate- or degree-seeking, full-time, undergraduate students described in § 668.46(a)(1)(i) and § 668.46(a)(1)(ii), categorized by race and gender.

(iv) The completion or graduation rate of the entering students described in § 668.46(a)(1)(i) and § 668.46(a)(1)(ii) who received athletically related student aid, categorized by race and gender within each sport.

(v) The average completion or graduation rate for the four most recent completing or graduating classes of entering students described in § 668.46(a)(1)(i) and § 668.46(a)(1)(ii), categorized by race and gender. If an institution has completion or graduation rates for fewer than four of those classes, it shall disclose the average rate of those classes for which it has rates.

(2) For purposes of this section, *sport* means—

(i) Basketball;

(ii) Football;

(iii) Baseball;

(iv) Cross-country and track combined; and

(v) All other sports combined.

(b) The provisions of § 668.46(b) and (c) apply for purposes of calculating the completion or graduation rates required under paragraphs (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of this section.

(c) Each institution of higher education described in paragraph (a) of this section may also provide to students and the Secretary supplemental information containing—

(i) The graduation or completion rate of the students who transferred into the institution; and

(ii) The number of students who transferred out of the institution.

(d) Section 668.46(d) applies for purposes of this section.

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

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