DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840–AC14

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations. These amendments are necessary to implement a new requirement in the Higher Education Act of 1965, as amended (HEA), added by the Improving America's Schools Act of 1994 (IASA), Pub. L. 103–382. The IASA provisions, titled the ''Equity in Athletics Disclosure Act'' (EADA), require certain co-educational institutions of higher education to prepare annually—and make available to students, potential students, and the public—a report on participation rates, financial support, and other information on men's and women's intercollegiate athletic programs. These regulations implement these new statutory requirements.

EFFECTIVE DATE: These regulations take effect on July 1, 1996. However, affected parties do not have to comply with the information collection requirements in § 668.41 and § 668.48 until the Department of Education publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Mr. David Lorenzo or Ms. Paula Husselmann, 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 regulations (34 CFR part 668) apply to all institutions that participate in the title IV, HEA programs. The changes in these regulations are necessary to implement changes to the HEA made by the Equity in Athletics Disclosure Act (EADA), which was included in the Improving America's Schools Act of 1994 (IASA), Pub. L. 103–382, enacted on October 20, 1994. The EADA requires that certain institutions of higher education disclose annually—to students, potential students, and the public—financial, participation, and other information concerning the institution's women's and men's intercollegiate athletic programs. The EADA is a ''sunshine'' law designed to make ''prospective students and prospective student athletes...aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students'' (IASA, section 360B(b)(7)).

The EADA does not require that this information be submitted to the Federal Government. The Secretary may, however, request that institutions of higher education that are subject to the EADA provide a copy of the report in order to verify compliance with these requirements. The EADA does require that all institutions subject to its provisions make the information available to students, potential students, and the public.

Background

On February 3, 1995, the Secretary published a Notice of Proposed Rulemaking (NPRM) for part 668 in the Federal Register (60 FR 6940). The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which the discussion of those issues can be found:

The Secretary proposed definitions of the terms ''intercollegiate athletic program'' and ''varsity team'' and solicited comments as to whether type or level of financial support should be part of the definition of varsity team (page 6940).

The Secretary solicited comments on the date for schools to make available the annual report of data beyond the statutory date of October 1, 1996 for the first report (page 6940).

The Secretary requested comments on what definition of ''academic year'' and ''undergraduate student'' should be employed in these regulations (pages 6940–6941).

The Secretary requested comments on whether certain categories of athletes, such as ''redshirts,'' should be counted as participants on a team (page 6941).

The Secretary proposed a list of items to be included under the category of ''operating expenses,'' interpreted the statute to require the reporting of expenses incurred for both home and away contests, and interpreted the statute to require the reporting of expenses in categories specifically listed in the law. The Secretary also solicited comments as to what items are included under the statutory categories (page 6941).

The Secretary interpreted the statute to require institutions to disclose two total amounts of athletically-related aid, one for male athletes and one for female athletes. The Secretary also proposed that the definition of athletically-related student aid for these provisions be the same as that provided in section 485(e)(8) of the HEA, and solicited comments on whether to apply this definition to particular categories of students (page 6941).

The Secretary interpreted the statute to require institutions to calculate a ratio of the total amount of athletic aid awarded to men to the total amount of athletic aid awarded to women (page 6941).

The Secretary interpreted the statute to require institutions to report the total expenditures used for recruiting male athletes, and the total expenditures used for recruiting female athletes. The Secretary also solicited comment on what items should be included as ''expenditures on recruiting'' (page 6941).

The Secretary interpreted the statute to require institutions to report the total annual revenues for men's teams and the total annual revenue for women's teams, and interpreted ''total annual revenues'' to mean ''annual gross income.'' The Secretary also requested comments on whether the definition of ''expenses'' here should follow that in section 487 of the HEA, and whether the definition of ''total annual revenues'' should follow the definition in 34 CFR 668.14 (pages 6941–6942).

The Secretary interpreted the statute to require a report of coaches' salaries on average across all men's sports, and on average across all women's sports, for both head coaches and assistant coaches. The Secretary also requested comments on a definition of ''salary,'' and whether the salary of a volunteer coach should be listed as zero for averaging purposes (page 6942).

The Secretary requested comments on how information on co-educational teams could be reported with a minimum of burden (page 6942).

The Secretary interpreted the statute to require reports to be based on actual expenditures, not budgeted expenditures (page 6942).

The Secretary requested comments on how schools should report when their academic year differs from their fiscal year (page 6942).

The Secretary requested comments on whether the provision of substantially comparable data to an athletic

conference satisfies the requirements of the statute (page 6942).

The Secretary requested comments and suggestions on possible formats for the report, and whether a mandatory format was necessary (pages 6942–6943).

The Secretary requested comments and suggestions regarding the availability and accessibility of the report (page 6943).

The following discussion describes the significant changes since publication of the NPRM. These topics will be discussed in the order in which they appear in the text of the regulations.

Section 668.41—Reporting and Disclosure

The Secretary has decided not to regulate where this report is to be made available to students and the public, nor the specific publications in which institutions must publish notice of its availability. The Secretary has added a regulatory requirement that is consistent with the statute in requiring institutions to make the report available in easily accessible places and in a timely manner. The discussion below provides guidance as to ways in which this requirement may be satisfied.

With regard to the date for reporting the information listed in the statute, the Secretary has decided to change the reporting date to October 15 for years subsequent to 1996.

Section 668.48—Report on Athletic Program Participation Rates and Financial Support Data

The Secretary does not provide any exemptions to institutions from reporting the data listed in the statute. The Secretary does, however, permit flexibility where appropriate in the manner in which institutions may report certain data elements.

The Secretary provides in the regulations definitions of the terms ''reporting year'' and ''undergraduate student'' that allow institutions, within certain limits, to use their customary definitions of those terms. The Secretary also defines in the regulations the terms ''athletically-related student aid,'' ''institutional salary,'' ''recruiting expenses,'' and ''varsity team.'' The Secretary also includes an explanatory note discussing the term ''participant.''

The Secretary adds a regulatory requirement for an institution to disclose as part of each annual report the list of recruiting expenses on which it bases the figures it discloses as expenditures on recruiting.

The Secretary interprets the statute to require institutions to report an average of those salaries the institution pays to coaches as compensation for coaching. The Secretary also interprets the statute to require institutions to report any team expenses the institution directly funds.

The Secretary provides as an appendix to these regulations an optional form institutions may use to report the data required in the regulations.

Preparation of Final Regulations

The Secretary has formulated these regulations in accordance with Executive Order 12866, the Administration's initiative on regulatory reinvention, and the Department's own principles for regulating. The Secretary's goal is to regulate only when necessary, and then as flexibly as possible, while implementing such rules as are essential to advance the purpose of the statute. The Secretary has also placed renewed emphasis on minimizing burden on institutions, and on making regulations easy to read and understand.

The Department expects good faith efforts from institutions, and has tried wherever possible to provide guidance regarding reasonable ways of complying with the statute rather than promulgating overly prescriptive rules. The Department relies upon its experience with the community as to the level of guidance necessary to ensure compliance and full knowledge of the Department's expectations. However, the Department also recognizes that any new reporting requirements, such as those contained in this statute, may produce unforeseen questions, or problems of compliance and interpretation. In the event that such questions or problems arise, the Department may revisit these regulations or provide further guidance to resolve those matters.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 26 parties, including representatives from large and small schools, athletic associations, university associations, student advocacy groups, and right-to-know advocates, submitted comments on the proposed regulations. A summary of those comments, and an analysis of changes in the regulations since the publication of the NPRM, follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

General

Comments: One commenter complimented the Department on the clarity of the proposed regulations and the clarification they brought to the statute.

One commenter argued that the statute was based on misconceptions about interest in the kinds of data most institutions would supply and on general interest in comparing institutions' athletic programs, and that the Secretary should consider these caveats when determining what level of cost is justified to provide these data.

One commenter noted that the proposed regulations contain no specific provisions governing the consequences of non-compliance, and urged the Department to detail those provisions, including a reference to the Higher Education Act of 1965, as amended (HEA), if that is the source of sanctions.

Discussion: The Secretary wishes to emphasize that care was taken, consistent with the purpose and terms of the statute, to respond to concerns and minimize the burdens associated with reporting these data.

The Secretary notes that these regulations implement an amendment to the HEA, and thus form a part of the regulations governing an institution's participation in the title IV, HEA programs. Institutions that do not comply with these reporting requirements are subject to the same penalties applicable to other regulatory violations, namely, possible fines, limitation, suspension, or termination of participation in the title IV, HEA programs. The regulations governing these possible sanctions are located in 34 CFR Part 668, Subpart G.

Changes: None.

Section 668.41 Reporting and Disclosure

Comments: Several commenters proposed that reports be available for examination at an accessible office during normal business hours. One commenter suggested that the information should be made available on request. Another commenter suggested that the information be available at the institution's library. Still another commenter recommended that the information be available in all admissions, financial aid, and intercollegiate athletic offices, as well as available on request. Several commenters suggested that the information, in addition to being generally available, also be supplied automatically to students who have been offered an athletic scholarship and to their parents, just as the National

Collegiate Athletic Association (NCAA) now requires schools to disclose to those parties the institution's retention rate. One commenter inquired whether the information should be supplied to the Department, and if so, to whom it should be sent.

Discussion: The Secretary agrees that the statute requires only that the report be available on request. To allow institutions flexibility in complying with this statutory requirement, the Secretary will not regulate where the report be made available. However, the Secretary believes that the intent of the statute is for institutions to make the annual reports easily accessible, and adds a regulatory requirement to that effect. The Secretary believes that an institution would fulfill this obligation if, for example, it made copies of this report available in such places as intercollegiate athletic offices, admissions offices, and libraries. An institution may also fulfill this obligation by electronic means, for example, by providing a copy to every student in his or her electronic mailbox.

As noted in the February 3, 1995 Notice of Proposed Rulemaking, 60 FR 6940, institutions are not required to submit this report to the Secretary. However, the Secretary may request that the report be provided during a program review or compliance audit, for example, in order to verify compliance with these regulations.

Changes: Section 668.41(e)(1)(i) has been changed to include a requirement that institutions make the information contained in this report easily accessible to students, prospective students, and the public, and that an institution make the information available in a timely fashion when requested.

Comments: Several commenters proposed that notice of the report's availability be published in at least one publication distributed once a year. One commenter advised that the campus security report model for giving notice be adopted. Several commenters believed notice should be published in the institution's catalogue and registration packets, and one commenter added financial aid and intercollegiate athletic department publications to that list.

Discussion: The statute simply requires institutions to inform students of their right to request the information contained in the report. In order to provide flexibility to institutions and make it easier for them to meet this requirement, the Secretary will not regulate the specifics of notification.

The Secretary agrees that an appropriate way to meet this requirement would be to publish a notice at least once a year in a widely-distributed institutional publication. The Secretary also agrees that publishing a notice in an institution's catalogue, registration materials, or relevant intercollegiate athletic department publications distributed to all students, distributing a separate notice to all students, or distributing the report directly to all students would each be an appropriate step toward meeting this requirement.

Changes: None.

Comments: Several commenters supported allowing institutions to charge the general public a reasonable fee for copies of the report as a means of reducing costs to the institution.

Discussion: The Secretary emphasizes that charging such a fee to students, potential students, parents, or coaches would violate the intent of the statute. However, upon reviewing the comments and the statute, the Secretary agrees that the statute does not prohibit institutions from charging the general public (persons other than those listed above) a fee to cover copying expenses only.

Changes: None.

Comments: Several commenters supported October 1 as a reasonable reporting date beyond 1996, for which the statute requires reporting by October 1. Several other commenters opposed an October 1 reporting date, arguing that it would be burdensome or impossible for their institutions to meet this timetable, especially if actual figures rather than budget figures must be reported, since these institutions' fiscal years end near October 1. One of these commenters suggested November 1 as an alternate reporting date beginning in 1997.

Discussion: The Secretary believes it is vital to fulfilling the intent of the statute that all prospective student athletes have this information available before they commit themselves to attending an institution as a student athlete. The Secretary also, however, appreciates the concerns of those commenters who believe that the October 1 disclosure date would be difficult to meet if an institution's fiscal year ends shortly before October 1. The Secretary believes it is possible to balance those concerns by designating October 15 as the disclosure date, beginning in 1997. The Secretary believes that allowing institutions two additional weeks provides needed flexibility. The Secretary also believes that the October 15 date will allow students adequate time to request this information before the start of the NCAA early signing period in the first week of November. Because the purpose of the legislation is to provide student consumers with timely information, the Secretary does not believe it justifiable to push the disclosure date past October 15, due to the early NCAA signing period.

The Secretary notes that the October 1, 1996 reporting date is set by the statute, and cannot be changed by the Department.

The Secretary reiterates that information derived from an institution's budget would not necessarily provide the data on actual expenditures the statute requires. All reported data must be based on the institution's actual expenditures.

Changes: Section 668.41(e)(2) has been amended to establish October 15 as the annual disclosure date beginning October 15, 1997.

Section 668.48 Report on Athletic Program Participation Rates and Financial Support Data

Comments: Several commenters questioned the scope of the regulations. They argued that small institutions, and institutions that do not award athletic scholarships, or do not derive revenue from athletic programs, should not be required to report under these provisions. These commenters in general maintained that applying the same reporting requirements to these institutions as to large institutions would be unfair and burdensome, given that large institutions have more extensive resources at their command and that making information about these institutions' athletic programs is purportedly the main reason for the statute.

One commenter stated that his institution did not give athletically-related student aid, and inquired whether these provisions applied to such institutions.

Discussion: The statute requires that all co-educational institutions of higher education that participate in any title IV, HEA program and have an intercollegiate athletic program prepare this report. It does not provide for any exemptions to this reporting requirement.

Changes: None.

Comments: Many commenters favored the development of a common format for the report to save staff time and to foster the provision of comparable data to students, but differed as to whether the format should be optional or mandatory.

Several commenters favored an optional common format, arguing that a school is the best judge of how to present its information, and that if a school differed from the norm, using a mandatory form would only increase cost and burden. Some of these

commenters favored the development by the Department, institutions, or athletic associations and conferences of several different optional formats geared toward specific types of schools (e.g., NCAA Division I or Division II, junior colleges). One of these commenters also favored designating schools based on different types of sports sponsorship, and according to whether schools award athletically-related student aid.

Several commenters favored a single, mandatory format. One of these commenters argued that such a format would save schools time and resources. Other commenters supporting such a format urged its adoption on the grounds that only a single format would ensure the reporting of comparable data and total compliance with the provisions of Title IX of the Education Amendments of 1972 (Title IX).

Several commenters reported that some institutions and associations are now developing standard formats.

Several commenters reported that trials had shown that a report generated using a standard format would require four to six hours to complete and thus did not represent an unreasonable burden. Another commenter stated it was impossible to determine how long on average it would take to complete a report, since each report will differ with institutions' circumstances.

Discussion: In the interest of providing flexibility, the Secretary has decided not to create a mandatory format at this time, but is making available an acceptable optional form that is included with these final regulations. Leaving the form's use optional will allow schools the freedom to design their own format if they prefer. Given that the regulations and statute require all institutions to provide the same information regardless of the format used, the Secretary believes that students and others will be reasonably able to compare data from various institutions even if different reporting formats are used. However, if in the future student consumers or others apprise the Secretary that optional formats are not in practice yielding reasonably comparable information, the Department will consider proposing a standard format or other improvements.

The Secretary does not believe that more than one optional form is necessary. If a reporting item does not apply to a school—for example, athletically-related student aid in the case of an institution that does not award athletic scholarships—the institution may simply note that the item is not applicable, or report zero expenditures.

In order to address other possible concerns, the Secretary has included in the appended optional form a section schools may use to provide further information, or explanations and the context for the data they supply. The Secretary also encourages schools to use this section of the report to provide other information that may assist prospective student-athletes in choosing a school.

Changes: None.

Comments: There was much divergence of opinion among commenters on whether an institution's provision of athletic participation, aid, and revenue data to an entity such as an athletic conference or athletic association satisfies the requirements of this statute. Several commenters strongly endorsed waivers that would allow such a substitution. These commenters argued that waivers would substantially reduce burden on schools while fulfilling the intent of the statute.

Several commenters strongly opposed permitting this substitution. Some opposed the proposed substitution on the grounds that (a) provisions for waivers are not included in the statute, as they are in the Student Right-to-Know Act, and therefore Congress did not intend for waivers to be issued; (b) the methodology of the conference and association reporting requirements does not generate the same data required by the statute; and (c) giving control over the collection of such data to these conferences and associations will result in less access to the data, less public input into collection methodologies and formats, less due process with regard to errors, and less access for research by the higher education community.

Discussion: Upon further review, the Secretary agrees that the statute does not allow waivers from the statutory reporting requirements due to the provision of data to an outside entity. The Secretary will not consider a disclosure to an athletic conference or association as satisfying the requirements contained in this statute. If a disclosure to an athletic conference or association contains data the institution must also report under this statute, it is certainly permissible for the institution to use that disclosure as the source of data for the report required by this statute. If that conference or association disclosure does not contain all of the required data, the institution must still obtain and report the necessary additional information.

The Secretary believes that the amount of information provided the Department during the rulemaking process with regard to the reporting provisions and the optional form has resulted in regulations and an optional reporting format that provide guidance sufficient for institutions and athletic associations to ascertain clearly the requirements set forth in these regulations. The optional form the Secretary provides is adapted from a model form submitted by a commenter. The Secretary also believes that should they wish to do so, institutions and athletic conferences and associations will be able to work together to create other reporting formats that will satisfy the requirements of these regulations.

The Secretary notes here that the reporting requirements under this statute, and those found in section 487(a)(18) of the HEA and § 668.14(d)(1), are quite different. The data supplied in the respective reports are not necessarily comparable, particularly as the respective statutes define ''operating expenses,'' ''revenues,'' and ''sports'' differently. Therefore, the compilations required under section 487(a)(18) of the HEA cannot substitute for reports required by the EADA. The Secretary will consider asking Congress for a statutory change that will reconcile these different reporting requirements.

Changes: None.

Comments: Several commenters supported reporting data on an academic year basis. One commenter supported reporting by academic year as defined by the Student Assistance General Provisions regulations in 34 CFR Part 668. Several other commenters supported the reporting by academic year as opposed to a calendar year. Several more commenters supported defining an academic year for these purposes as a twelve-month period, for example, July 1 through June 30. These commenters argued that only such a definition would capture the relevant data that should be reported, including support given athletes during the summer months, the costs of summer sports camps, and year-round expenditures on coaches' salaries and facilities.

One commenter urged that a twelve-month definition of academic year not be used, since no intercollegiate athletic activities occur during the summer months.

One commenter believed there is no situation in which the academic year and fiscal year of an institution would be different, and suggested that an allocation approach be used if it did occur. Another commenter asserted that such a situation would make reporting by an academic year impossible because it would mean adding and subtracting totals from months that did not overlap in the respective definitions of a ''year.''

One commenter recommended that schools simply be required to report consistently on a fixed twelve-month time period. This commenter stated that forcing institutions to use a standard period would only cause difficulties without benefit, because schools do have a variety of fiscal year and academic year definitions. One commenter recommended that institutions allocate the monthly income statement in which the academic year ends proportionally in accordance with the number of academic days in that month which are included in the academic year.

Discussion: In order to prevent confusion regarding the different uses of ''academic year,'' the Secretary for purposes of this discussion and this section of the regulations will use the term ''reporting year'' whenever the statute refers to an ''academic year''.

The Secretary disagrees that the definition of an ''academic year'' found in the Student Assistance General Provisions regulations is adequate for the purposes of this statute. The definition in § 668.2 of those regulations does not necessarily define a set period of calendar time, and is used primarily in determining the amount of aid a student may receive.

The Secretary agrees with the commenters who interpreted the statute to require a twelve-month reporting period, and disagrees with those who opposed such an interpretation. The Secretary notes that some programs do make expenditures on athletics during the summer months, and these must be reported to ensure the complete reporting of data the statute requires. Those schools that only make expenditures during nine months of the year and make no expenditures during the summer will not face increased burden, as they simply will have no additional expenses to report.

The Secretary agrees with the commenter who argued that, because institutions base their academic years on different periods of time, institutions should not be required to use a single, standard twelve-month period of time. The Secretary agrees that institutions should make an effort to ensure that they use a consistent time period from year to year. The Secretary also notes that whatever the time designated as the reporting year, the Secretary expects institutions to disclose on each annual report the exact time period covered by each report. The Secretary has supplied a space on the optional form for institutions to supply this information.

Thus, the Secretary interprets the statute to allow, for these purposes only, each institution to designate a period of calendar time as its reporting year, so long as the period of time so designated is twelve consecutive months in length. As noted above, the Secretary believes this specification of ''year'' as a twelve-month period is necessary to fulfill the statute's intent that institutions report all specified information regarding expenditures on athletics throughout the year.

The Secretary will deem it reasonable for an institution to designate its fiscal year as its reporting year for these purposes, so long as the fiscal year is twelve months in length.

Changes: A new section 668.48(b), *Definitions,* has been added; a new § 668.48(b)(4) is added to clarify the relevant definition of a reporting year for purposes of this section only.

Comments: Several commenters supported using the definition of an undergraduate student contained in the Student Assistance General Provisions regulations. One commenter urged that either a Departmental definition or the NCAA definition be adopted. One commenter urged the adoption of the definition of an undergraduate as ''a student who has not received a degree from that or any other institution.'' One commenter supported defining an undergraduate student as someone enrolled in a baccalaureate degree-seeking program as defined by the regulations of the certifying institution. This commenter argued that such a definition is superior to that found in the program regulations, in that it defers to the institution, and is flexible, specific and clear. One commenter argued that the term is already defined in the education community and hence no clarification is needed.

One commenter questioned the need to collect enrollment information for numbers of male and female undergraduate students for the entire academic year, and instead urged the use of the Integrated Postsecondary Education Data Systems (IPEDS) Fall Enrollment Survey to collect this information.

Discussion: Upon further review, the Secretary agrees, for the purposes of these provisions only, that the term ''undergraduate student'' is sufficiently well-understood in the higher-education community. The Secretary will allow each institution to use its customary definition of an undergraduate student as the basis for reporting the data required by the statute. The Secretary believes that allowing each institution to report numbers of undergraduate students on the basis of its customary definition will satisfy these reporting requirements, and that for the Department to provide a special definition that might oblige an institution to recount students on the basis of a definition different from the one it ordinarily employs would be needlessly burdensome. The Secretary does, however, expect institutions to provide a definition of undergraduate student if that definition is not found elsewhere in the institution's catalog or other similar publications.

The Secretary also stresses that for all other regulations governing title IV, HEA programs, the relevant definition of undergraduate student continues to apply according to its terms.

Changes: A new section 668.48(b)(5)is added that clarifies the definition of undergraduate student for purposes of this section only.

Comments: One commenter agreed that the term ''intercollegiate athletic program'' should include only varsity teams, not intramural teams.

Discussion: The Secretary appreciates the commenter's support for this interpretation.

Changes: None.

Comments: One commenter suggested that the defining element in designating a team as a varsity team be that it is funded through the university's department of athletics. This commenter argued that general institutional support does not necessarily indicate varsity status. One commenter argued that the level of financial support not be a factor in determining varsity status; rather, membership in an athletic association should be the determining factor. One commenter argued that both the type and level of financial support be taken into account. This would help prevent institutions from calling a club team an ''unfunded varsity team.'' One commenter believed that a varsity team be designated by its participation in a sport that has an NCAA championship or is an NCAA emerging sport, or by a set number of intercollegiate contests each season, either set absolutely, or preferably by the institution's sports governance group, or some combination of these factors.

Discussion: Upon further review, the Secretary disagrees with the commenters who urged that a varsity team be defined by its receipt of funds through an athletic department, or by the type and level of funding it receives. The Secretary believes these definitions are too narrow in scope for the purposes of the statute. Such definitions would not include acknowledged varsity teams that receive funds from an institution that does not have an athletics department, acknowledged varsity teams that are funded from non-institutional sources, or unfunded teams that play a predominantly

intercollegiate schedule against other varsity teams.

The Secretary agrees that a team's membership in an athletic conference, or its participation in a schedule made up primarily of intercollegiate contests against varsity teams, is a mark of varsity status. However, the Secretary believes that, because it would exclude independent programs, defining varsity status by membership in an athletic conference alone is too limited a definition. The Secretary also believes it would not be productive to set a specific number of annual intercollegiate contests as a defining criterion.

The Secretary therefore defines the term ''varsity team'' as used in the statute to mean a team that is either: (a) designated or defined by its institution or an athletic association as a varsity team, or (b) a team that primarily competes against other teams that are designated or defined as varsity teams.

The Secretary notes that this interpretation is not meant to include as ''varsity teams'' those club teams that annually play a small number of games, or compete in a small number of matches or meets, against varsity teams.

Changes: A new § 668.48(b)(6) is added that clarifies the definition of varsity team.

Comments: One commenter supported counting all varsity participants on a varsity team as participants. One commenter urged that two totals of varsity participants be listed, one including, and one excluding, ''redshirted'' athletes (those athletes who do not play in varsity games in order to preserve their eligibility for a future season). The commenter based this recommendation on the finding in the statute that there is concern about athletic opportunities among different groups of athletes, including redshirts.

Many commenters argued that all players who receive athletically-related aid should be counted as participants. Some of these commenters argued that this included everyone who practices with a varsity team and receives coaching, and thus includes redshirts. Some of the commenters who supported this definition construed it to cover only varsity and junior varsity players. Others argued that such a definition included members of freshmen and junior varsity teams as well as redshirts. One of these commenters thought such a definition should include all student-athletes, whether or not they are eligible or competing at the time. Another of these commenters supported this definition and the inclusion of redshirts as participants on the grounds that it coincides with provisions in Title IX regulations.

One commenter believed that the term ''varsity participant'' should include everyone who participates as of the first day of practice. One commenter supported the inclusion of redshirts, but not the inclusion of athletes on medical waivers, as this is consistent with NCAA procedures. One commenter supported the inclusion of athletes who are injured and unable to compete, as this is consistent with NCAA procedures.

One commenter cautioned that counting varsity participants would include counting more than undergraduates, since previous redshirts might be participating and on scholarship as graduate students under their remaining eligibility. This commenter suggested that Congressional intent be the determining factor in deciding whether to count these students as participants.

Discussion: From the breadth and variety of comments received in this area, the Secretary is concerned that institutions may take an unnecessarily and improperly restrictive view of who is a participant in order to avoid full disclosure. The Secretary recognizes that the term ''participants'' may be open to varied interpretations, and therefore emphasizes that the statute requires institutions to include in the category of participants all members listed on the roster of varsity teams. Institutions may not, for example, apply this term only to those athletes who actually take part in any one contest.

The Secretary agrees that students who receive athletically-related aid should be counted as varsity participants, because they receive financial benefits by reason of their association as athletes with an intercollegiate athletic program. The Secretary, however, does not agree that this should be the sole criterion for designation as a participant, since this would exclude team members not on scholarship (''walk-ons'') and all team members in institutions that do not give athletically-related student aid. The Secretary also agrees that an athlete who practices with the varsity team and receives coaching from varsity coaches as of the day of the first scheduled contest of the designated reporting year should be counted as a participant.

The Secretary agrees that it is reasonable to include redshirts in the count of participants, because these student-athletes may receive athletically-related financial aid, or the benefits of varsity team coaching, or both. Junior varsity team and freshman team players must be included if they are part of the overall varsity program. The Secretary also believes this count must include student-athletes who are injured and still receive scholarship assistance (since they are receiving a substantial financial benefit) as well as fifth-year team members who have already received a bachelor's degree (because they may receive athletically-related financial aid or the benefits of coaching).

Therefore the Secretary interprets the statute as requiring an institution to count all varsity team members as participants, and believes that a reasonable count of participants would also cover all students who receive athletically-related student aid, in addition to students who practice with the varsity team and receive coaching as of the day of the first scheduled intercollegiate contest of the designated reporting year.

Changes: A supplementary note providing a discussion of the term participant has been added to the regulations.

Comments: Several commenters supported the definition of operating expenses as stated, and thought no further regulatory guidance was necessary. One commenter argued for a comprehensive categorization, which would include, for example, travel expenses for coaches' spouses, medical trainers and alumni and alumnae. This commenter also urged that the source of funds used for expenses should have no bearing on the reporting of team-related expenses. One commenter maintained that no one definition should be codified, as there are thousands of different accounting procedures in use by institutions. One commenter urged that a three-year averaging method be used, in order to take into account year-to-year variations in expenditures on such items as uniforms and travel. One commenter recommended that appearance guarantees paid to visiting teams and expenses related to post-season contests not be included. One commenter strongly urged that institutions be required to report expenses for home as well as away contests. One commenter recommended that costs of videotaping and videotape personnel be included, as well as capital expenses exceeding one year. One commenter believed that reporting expenses by team would be misleading, since the required sizes of the teams and the nature of the sports would differ and greatly affect expenses.

Discussion: While understanding the concerns of those commenters who argued for a more comprehensive categorization of operating expenses, the Secretary notes that the statute includes

a specific definition of the categories of expenses that must be reported. However, the Secretary does wish to emphasize several points with regard to that definition. All items within the categories listed in the statute—lodging, meals, transportation, officials, uniforms, and equipment—must be included in the report. Expenses in these categories related to both home and away contests must be included in the report. Any travel expenses related to intercollegiate athletics paid for by the institution must be included in the report.

Because the statute explicitly defines the kinds of expenses to be captured in this section of the report as operating expenses, the Secretary disagrees with the commenters who maintain that these items must include capital expenses. The inclusion of such items as videotape equipment will depend on whether those items are accounted for by the institution as operating expenses or capital expenses. The Secretary agrees that for reasons of comparability between men's and women's teams and among institutions, items not specifically enumerated in the statute, such as appearance fees or guarantees paid to visiting teams, should not be included in the report.

The Secretary agrees that the original source of the funds used to pay operating expenses (for example, fund-raising organizations) should not exempt the institution from reporting those expenses. If the funds are expended by the institution for one of the purposes listed in the statute, the expenses must be reported.

The Secretary disagrees with the commenter who urged that institutions be allowed or required to report expenses averaged over several years, and also disagrees with the commenter who maintained that institutions be allowed not to report post-season expenses. The statute requires an institution to report for each reporting year, and separately for each team, its expenditures on all specified operating expenses. If an institution wishes to provide further information on these matters, such as multi-year data, or explanations of significant year-to-year variations in expenses, it may do so (e.g., in a ''further information'' section of its form or report).

In this regard the Secretary wishes to point out that while an institution is required to list all teams meeting the definition found in § 668.48(b)(6) as varsity teams regardless of the institution's level of funding for them, the Secretary interprets the statute to require institutions to report only institutional expenditures. An institution shall report expenses for unfunded or non-institutionally-funded varsity teams as zero. For teams an institution only partially funds, the institution shall report as zero those expenses it does not fund.

The Secretary also notes that the statute and these regulations allow institutions to report operating expenses on a per capita basis for each team, and to report combined expenditures attributable to closely-related teams, such as track and field, or swimming and diving.

Changes: None.

Comments: Several commenters supported requiring the proration of expenses for co-educational teams based on the proportion of males to females on such teams. Several commenters supported only prorating ''in a reasonable manner,'' arguing that prorating on the basis of male-female ratios would involve, for example, calculations for each trip taken, and thus would constitute an unwarranted burden on institutions. One of these commenters also believed that these calculations would provide a false precision, as different accounting practices would lead to large discrepancies. Several commenters recommended that expenses for co-educational teams instead be listed as a separate category in order to reduce burdensome calculations.

Discussion: In the interest of reducing burden, and because the EADA does not specifically address the reporting requirements for co-educational teams, the Secretary will allow, but not require, institutions to report the expenses of co-educational teams in a separate category without proration.

However, the Secretary emphasizes that these expenses, in whatever form they are categorized, are to be reported in an unduplicated manner. An institution that prorates co-educational team expenses between men's and women's teams would not report those same expenses under a co-educational team category. Similarly, an institution that lists co-educational team expenses in a co-educational team category would not add a prorated portion of those same expenses to the figures they report for men's and women's teams.

Changes: None.

Comments: One commenter urged that a consistent definition of ''full-time'' coach be promulgated in the interest of consistent reporting. Because few coaches coach twelve months a year, this commenter recommended that the Department define a ''full-time'' coach as someone employed full-time nine months a year, with eighty percent of his or her job responsibilities being related to coaching the particular sport. One commenter recommended that volunteer coaches not be counted, as there is no cost factor involved. One commenter questioned the efficacy of counting assistants and interns, as the required number will vary from sport to sport. This commenter also questioned the relevance of this requirement to the intent of the statute.

Discussion: The Secretary does not agree with the commenter who urged that a definition of ''full-time'' be set by the Department. The Secretary allows institutions to make their own determination of ''full-time'' and ''part-time'', so long as those designations are credible and reasonable. In the interest of accurate and clear reporting the Secretary expects institutions to explain what they mean by those terms, and also expects them to employ the terms consistently. The optional form provides a space for institutions to supply this information.

The Secretary disagrees with the commenters who argued that volunteers, assistants and interns not be counted. While it is true that there is no cost factor associated with volunteers, the statute aims to disclose not only monetary resources expended on student-athletes, but also time and attention spent in instructing student-athletes. Similarly, while the number of assistants and interns needed will depend on the nature of the sport, the statute requires that the number of those coaches be disclosed.

Changes: None.

Comments: One commenter recommended that the definition of athletically-related student aid be defined as ''all unearned, nonrepayable financial aid awarded and administered by the institution's department of athletics (or upon recommendation of the department of athletics) and based on athletic ability (e.g., athletic scholarship). Such aid would include any tuition waiver or room waiver (state or institutional waivers) administered at the institution's discretion based on the student-athlete's athletic ability.'' This commenter argued that such a definition is superior to that found in the HEA, as it is clearer and broader. Several commenters urged that if the aid is made through the athletics department, it should be counted. One commenter argued that all grants to current or former athletes be counted. One commenter agreed that such aid should be defined as it has been in other regulations.

Discussion: The Secretary, while recognizing the merit of the definitions offered by the commenters, concludes that they are neither clearer nor more

comprehensive than that already provided in section 485(e)(8) of the HEA. Therefore, in the interest of consistency, the Secretary will retain that definition for these purposes.

Changes: A new § 668.48(b)(1) is added to clarify the definition of athletically-related student aid incorporating the language of section 485(e)(8) of the HEA.

Comments: One commenter agreed that the statute requires that separate reports of athletically-related student aid be made for male and female teams overall.

Discussion: The Secretary appreciates the commenter's support for this interpretation of the statute.

Changes: None.

Comments: Several commenters supported the inclusion of scholarships for students on medical waivers in the report of athletically-related student aid. Several supported the inclusion of these scholarships if they are still awarded through the athletics department. One commenter opposed the inclusion of these scholarships, on the grounds that the character of the aid changes once the student ceases to be a participant on a team.

Discussion: The Secretary agrees with those commenters who interpret the statute to include these scholarships as part of athletically-related student aid. The Secretary believes these scholarships continue to retain the character of ''athletically-related'' assistance.

Changes: None.

Comments: Several commenters strongly urged that a definition of recruiting expenses be promulgated, arguing that a standard definition is essential to ensuring comparability and to revealing the true commitment of an institution to gender equity. Some of these commenters maintained that such a definition should include a wide scope of expenses, including expenses for literature and videotapes, telephone and travel, campus visitations, and other expenses related to the purpose of persuading a recruit to attend the institution. One of these commenters also argued that the number of letters of intent offered and the terms of these letters be disclosed. One commenter recommended that the value of ''trade-outs'' (goods and services provided by businesses in exchange for advertising or other services provided by the institution) used for recruiting purposes be reported, since often a disproportionate number of these go to men's teams, which artificially lowers their overall official expenses. One commenter believed that a definition of recruiting expenses, possibly based on NCAA-allowed recruiting practices, would be useful.

Several institutions stated that their recruiting expenses were negligible, and that these reporting requirements would be unduly burdensome. They argued that in some cases the cost of reporting expenditures on recruiting would exceed those expenditures. One of these commenters urged that these requirements be limited to the larger programs. One commenter disclosed that his institution does not track recruiting expenditures, those expenditures being incurred for the most part in the form of telephone calls and letters. One commenter stated that such expenditures will depend on the sport, and thus are not comparable across sports. This commenter also questioned the relevance of this requirement to the intent of the statute.

Discussion: The statute requires institutions to report all expenses they incur for recruiting. The Secretary defines these expenses to include, but does not limit them to, the following items: expenditures for transportation, lodging, and meals for both recruits and institutional personnel engaged in recruiting; all expenditures for on-site visits; and all other related expenses, such as those incurred for printing recruiting materials, creating recruiting videos, and mass mailings. The Secretary believes that these and all other expenses logically related to recruiting activities must be reported. In the interest of clear and accurate reporting, the Secretary expects institutions to provide an explanation of how they derived the data on recruiting expenses they report and to disclose the list of expenses on which they base the figures they report as recruiting expenses. The optional form provides a space for institutions to provide this information.

The Secretary agrees that, to balance burden appropriately with the statutory requirement to collect data, institutions need not, for example, trace every telephone call or every postage stamp. The Secretary will allow schools to make a reasonable estimate of actual expenses for such items as telephone usage and postage if those expenses cannot readily be separated from telephone and postage charges incurred for other purposes.

The Secretary also believes that an accurate accounting of recruiting expenses would include an estimate of the value of trade-outs used in the respective recruiting of male and female athletes.

Changes: A new section 668.48(b)(4) has been added to clarify the definition of recruiting expenses for purposes of this section only.

Comments: Several commenters recommended the Secretary use the definition of ''total annual revenues'' in § 668.14 of the Student Assistance General Provisions regulations. One commenter recommended that fund-raising dollars be included in the determination of male and female athletic revenues.

Discussion: The Secretary agrees with the commenters that institutions must use the definition of total revenues found in § 668.14(e)(1)–(2), and interprets this definition to include revenues derived from fund-raising activities.

Changes: None.

Comments: One commenter urged that all types of compensation, including bonuses and benefits, be included in the calculation of a coach's salary. Several commenters supported the use of W–2 forms for purposes of salary calculation. One of these commenters noted that this method would capture all benefits without the necessity of doing additional calculations. One commenter urged that years of experience be listed along with salaries, because this is (or should be) an important component in the awarding of salary. This commenter also questioned the relevance of this requirement to the intent of the statute.

One commenter urged that income derived from shoe and television contracts be included in the calculation of a coach's salary. This commenter noted that this is important because these contracts are a factor in the large discrepancies existing between male and female coaches' salaries at NCAA Division I and II institutions. One commenter recommended that shoe and television contracts not be included in salary calculations, since these are revenue sources that are not derived from the institution or institutional property, but that revenue from summer sports camps held at the institution be included.

One commenter recommended that NCAA categories be used in the calculation of salaries, and that these should include funds provided by booster organizations.

Discussion: In requiring the disclosure of ''institutional salary,'' the Secretary interprets the statute as obligating institutions to report all wages and bonuses the institution pays a coach as compensation attributable to coaching. To meet these reporting requirements, an institution may base its report on a coach's W–2 form, so long as that document contains information conforming to the Secretary's

interpretation of the statute. However, the Secretary notes that these forms may contain information that is not required by the statute.

Whether an institution must report as part of institutional salary such payments as those associated with sports camps, television shows, and shoe contracts will depend on the role the institution plays in the provision of those payments. Such payments must be disclosed if they form part of the coach's institutional compensation for coaching.

The Secretary agrees with the commenter who maintained that years of experience is useful information relevant to salaries, but notes that the statute does not require that this information be reported. Institutions may include this information separately on their form in a section for additional information.

Changes: A new section 668.48(b)(2) has been added that clarifies the definition of institutional salary for purposes of this section only.

Comments: Several commenters favored only listing the number of volunteer coaches, and not assigning their salaries as zero for averaging purposes. These commenters argued that to assign these salaries as zero would distort the salary averages for that particular sport. One of these commenters argued that such a practice would seem to understate funding for men's sports, since they traditionally have many volunteer coaches. One commenter supported reporting salaries of such coaches as zero, provided that the number of such coaches per sport is included in the report. Several commenters recommended that a salary of zero should be used for calculating average salaries, since this most accurately reflects the comparative expenditures for men's and women's teams.

Some commenters also expressed concern that, due to the small number of such teams, privacy issues might arise in reporting the salaries of coaches who coach co-educational teams.

Discussion: The Secretary recognizes that averaging in volunteer coaches with zero salaries may result in averages that are not readily comparable across men's and women's teams, depending on the number of volunteers utilized by those teams. Men's teams with large numbers of volunteers may appear to pay lower salaries than is actually the case. Since averaging in zero salaries will distort the average for salaries actually paid, the Secretary is changing the position taken in the NPRM. The Secretary believes that the average of actual salaries is more useful for comparison than an average diluted with zero salaries. Further, the EADA specifically directed that volunteers be included in the counts of head coaches and assistant coaches institutions must report, but did not direct that volunteers be included in the salary calculation. Thus, the Secretary interprets the statute to require that volunteer coaches be excluded from the calculation of average salaries.

As noted in the discussion of operating expenses, the Secretary interprets the statute to require that the salaries of coaches paid by entities other than the institution be excluded from this calculation as well. In the interest of clarity and ease of comparison, the Secretary expects institutions to report the number of salaried coaches that are included in the calculation of average salary, and has provided a place on the optional form where this information may be reported.

With respect to the privacy concerns expressed above that may arise in the case of small numbers of coaches coaching co-educational teams, the Secretary notes that institutions are not required to report separately average salaries for co-educational teams. Institutions may report the appropriate pro-rated portion of those salaries as part of the averages of institutional salaries of coaches of men's and women's teams.

Changes: None.

Comments: One commenter supported the Secretary's interpretation that the requirement to report coaches' salaries in the aggregate requires institutions to report a single average for all men's sports in the aggregate and a single average for all women's sports in the aggregate. One commenter recommended that these aggregate averages be broken down into categories of full-time and part-time coaches, so that accurate comparisons may be made between the men's and women's programs.

One commenter recommended that when a coach instructs both male and female teams, a proration be calculated based on the time spent with each team. One commenter argued that when closely-related male and female teams share coaches and practice time, a proration of expenses and salaries should be made. One commenter noted that her institution's male and female track and cross country teams work out together and have the same coach; consequently, the institution has a combined budget for these men's and women's teams that cannot be separated by gender. One commenter noted that all of her institution's coaches coach more than one sport, so that full-time coaches for two different sports would not represent two different people.

One commenter agreed with the Department that a faculty member who also coaches should have his or her salary reasonably attributed to both activities. One commenter maintained that it would be difficult to separate out the costs associated with a faculty member who also coaches. One commenter noted that all of her institution's coaches coach a sport as part of their teaching load, and that this differentiates this institution from many others, thus meriting special consideration.

Discussion: The Secretary does not interpret the statute as requiring institutions to break down these averages into full-time and part-time categories. If an institution wishes to explain differences in average salaries by referencing the number of part-time and full-time coaches it employs, it may provide that explanation in a section for additional information on its form.

The Secretary notes that there are two different instances where a coach instructs both male and female athletes, and these are covered by different requirements. For coaches who coach both a men's team and a women's team, the statute specifies that an institution must divide the salary of the coach by the number of teams coached, then allocate the salary among the teams on the basis of the coach's responsibilities for the different teams. For coaches who coach a co-educational team or teams, the institution may allocate the salary of the coach as above, or report the average salaries as part of a separate category. As noted above, the Secretary also expects institutions to provide an explanation of what they mean by the term ''full-time,'' particularly when an institution employs a coach who acts as a ''full-time'' coach for more than one team.

The Secretary agrees with the commenter who maintained that for a faculty member who also coaches, the portion of his or her salary attributed to coaching activities should be included in the calculation of average salary. In cases where coaching is added to other teaching responsibilities for additional compensation, the additional amount should be readily available. If coaching is part of the regular workload of a faculty member and the institution does not differentiate the compensation paid for teaching from compensation paid for coaching, the institution must make a reasonable effort to attribute an appropriate portion of the salary for coaching.

Changes: None.

Executive Order 12866

These final 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 this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal government in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comments and Changes.*

Paperwork Reduction Act of 1995

Sections 668.41 and 668.48 contain information collection requirements.

Collection of information: Student Assistance General Provisions—

Section 668.41—Reporting and disclosure of information—Co-educational institutions that have intercollegiate athletic programs must make available the information described in section 668.48 to students, prospective students, and the public upon request.

Section 668.48—Report on athletic program participation rates and financial support data—Co-educational institutions that have intercollegiate athletic programs are required to gather information on program participation rates and financial support data for purposes of consumer information. The information to be collected includes: information on participation rates of male and female athletes; information on the number of men's and women's varsity teams; information on athletically-related student aid awarded male and female athletes; and various types of information regarding the financial support of men's and women's athletic teams, including revenues, operating expenses, recruiting expenses, the number of coaches, and coaches' salaries.

Institutions are to collect this information annually. An estimate of the total annual reporting and recordkeeping burden that will result from the collection of the information is 5.5 hours per response for 1,800 respondents, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden equals 9,900 hours.

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 a 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 collection of information on those who are to respond, including through 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.

The Department requests comments concerning the collection of information contained in these final regulations by January 29, 1996.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to Patrick Sherrill, U.S. Department of Education, 600 Independence Avenue, S.W., Room 5624, ROB–3, Washington, D.C. 20202.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not 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.

(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; 84.032 Federal Consolidation Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Direct Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program.)

Dated: November 22, 1995.

Richard W. Riley,

Secretary of Education.

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, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.41 is amended by revising the heading, reserving paragraphs (c) and (d), adding a new paragraph (e), and revising the authority citation to read as follows:

§ 668.41 Reporting and disclosure of information.

* * * * *

(e)(1)(i) An institution of higher education subject to § 668.48 shall make available to students, prospective students, and the public upon request the information contained in the report described in § 668.48(c). The institution shall make the information easily accessible to students, prospective students, and the public and shall provide the information promptly to anyone who requests the information.

(ii) The institution shall inform all students and prospective students of their right to request that information.

(2) Each institution shall make available its first report under § 668.48 not later than October 1, 1996, and make available each subsequent report no later than October 15 each year thereafter.

(Authority: 20 U.S.C. 1092(g)(3) and (5))

3. A new section 668.48 is added to subpart D to read as follows:

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

(a) *Applicability.* This section applies to each 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) *Athletically-related student aid* means any scholarship, grant, or other form of financial assistance, the terms of which require the recipient to participate in a program of intercollegiate athletics at an institution of higher education in order to be eligible to receive that assistance.

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

(3) *Recruiting expenses* means all expenses institutions incur for recruiting activities, including but not limited to expenditures for transportation, lodging, and meals for both recruits and institutional personnel engaged in recruiting, all expenditures for on-site visits, and all other expenses related to recruiting.

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

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

(6) *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 as varsity teams.

(c) *Report.* An institution subject to this section shall annually, for the immediately preceding reporting year, prepare a report that contains the following information regarding intercollegiate athletics:

(1) The number of male and 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, by team, as of the day of the first scheduled contest of the reporting year for the team.

(ii) Total operating expenses attributable to those teams. For the purposes of this section, the term ''operating expenses'' means expenditures on lodging and meals, transportation, officials, uniforms and equipment. An institution—

(A) Also may report those expenses on a per capita basis for each team; and

(B) May report combined expenditures attributable to 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)(A) Whether the head coach was male or female and whether the head coach was assigned to that team on a full-time or part-time basis.

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

(iv)(A) The number of assistant coaches who were male and the number of assistant coaches who were female for each team and whether a particular coach was assigned to that team on a full-time or part-time basis.

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

(3) 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.

(4) The ratio of-(i) Athletically-related student aid awarded male athletes; and

(ii) Athletically-related student aid awarded female athletes.

(5) The total amount of expenditures on recruiting aggregately for all men's teams, and aggregately for all women's teams.

(6) The total annual revenues generated across all men's teams, and the total annual revenues generated across all women's teams. An institution may also report those revenues by individual team.

(7)(i) The average annual institutional salary of the head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the head coaches of all women's teams, across all offered sports.

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

(8) The average annual institutional salary of the assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the assistant coaches of women's teams, across all offered sports.

Note to paragraph (e): The Secretary interprets the statute to require an institution to count all varsity team members as participants, and not merely those athletes who take part in a scheduled contest. ''Participants'' include all students who practice with the varsity team and receive coaching as of the day of the first scheduled intercollegiate contest of the designated reporting year, including junior varsity team and freshman team players if they are part of the overall varsity program. The Secretary believes that a reasonable count of participants would also cover all students who receive athletically-related student aid, including redshirts, injured student athletes, and fifth-year team members who have already received a bachelor's degree.

(Authority: 20 U.S.C. 1092(g)(1), (2) and (4))

Appendix

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4000–01–P

Equity in Athletics Disclosure Act--Optional Form (DRAFT)

All co-educational institutions of higher education that participate in any federal student financial aid program (Federal Pell, Federal SEOG, and Federal SSIG Grants; Federal Work Study; and Federal Family Education, Federal Perkins, and William D. Ford Federal Direct Loans) and have intercollegiate athletic programs must provide information concerning their intercollegiate athletic programs under the Equity in Athletics Disclosure Act of 1994, Section 360B of Pub. L.103-382. This Act and accompanying federal regulations require that the following information, based on the previous reporting year, be available for inspection by students, prospective students, and the public by October 1, 1996, and by October 15 each year thereafter. An institution may use this or any format to disclose this information.

I. General Information

A. Institution:_____

Information is for the reporting year beginning _____ and ending_____

B. *Optional*

Name of person completing form:_____

Signature:_____

Title:_____

Phone:_____

Date completed:_____

Current Organizational Classification:

NCAA Division_____ NAIA Division_____ Other_____

C. Enrollment: Indicate the number of undergraduates by gender:

	#	%
Male undergraduates	_____	_____
Female undergraduates	_____	_____
Total undergraduates	_____	100%

II. Intercollegiate Athletics— Varsity Teams

A. Athletic Participation: Indicate the number of participants by gender for each varsity team. A participant is a student athlete who either a) is listed as a team member, b) practices with the team and receives coaching as of the day of the first scheduled intercollegiate contest, or c) receives athletically-related student aid. Mark coed teams, specify "other" teams, and use additional pages if necessary.

PROGRAM	MEN'S TEAMS	WOMEN'S TEAMS
BASKETBALL		
BASEBALL		
CROSS COUNTRY		
DIVING		
FENCING		
FIELD HOCKEY		
FOOTBALL		
GOLF		
GYMNASTICS		
ICE HOCKEY		
LACROSSE		
RIFLE		
ROWING		
SKIING		
SOCCER		
SOFTBALL		
SQUASH		
SWIMMING		
SYNCHRONIZED SWIMMING		
TRACK & FIELD		
TEAM HANDBALL		
TENNIS		
VOLLEYBALL		
WATERPOLO		
WRESTLING		
OTHERS (SPECIFY TEAMS)		
TOTAL PARTICIPANTS		

B. Operating Expenses: For each team, please indicate total institutional expenditures for lodging, meals, transportation, officials, uniforms and equipment for both home and away games. You may report co- ed team expenses separately, or pro-rate them as part of men's and women's teams' expenses, but you may not report the same coed expenses both ways. Specify all "other" teams and use additional pages if necessary.

PROGRAMS	MEN'S TEAMS	WOMEN'S TEAMS	CO-ED TEAMS	TOTALS
BASKETBALL				
BASEBALL				
CROSS COUNTRY TRACK & FIELD				
FENCING				
FIELD HOCKEY				
FOOTBALL				
GOLF				
GYMNASTICS				
ICE HOCKEY				
LACROSSE				
RIFLE				
ROWING				
SKIING				
SOCCER				
SOFTBALL				
SQUASH				
SWIMMING & DIVING				
SYNCHRONIZED SWIMMING				
TEAM HANDBALL				
TENNIS				
VOLLEYBALL				
WATER POLO				
WRESTLING				
OTHERS (SPECIFY TEAMS)				
TOTAL EXPENSES	$ (%)	$ (%)	$ (%)	$ (100%)

C. Head Coaches: For each team, please indicate the gender of the head coach (including volunteers) and whether the head coach is assigned to the team on a full-time or part-time basis. Specify "other" teams, and use additional pages if necessary.

PROGRAMS	HEAD COACH MEN'S TEAMS				HEAD COACH WOMEN'S TEAMS				HEAD COACH CO-ED TEAMS			
	MALE		FEMALE		MALE		FEMALE		MALE		FEMALE	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
BASKETBALL												
BASEBALL												
CROSS COUNTRY												
DIVING												
FENCING												
FIELD HOCKEY												
FOOTBALL												
GOLF												
GYMNASTICS												
ICE HOCKEY												
LACROSSE												
RIFLE												
ROWING												
SKIING												
SOCCER												
SOFTBALL												
SQUASH												
SWIMMING												
SYNCHRONIZED SWIMMING												
TEAM HANDBALL												
TENNIS												
TRACK & FIELD												
VOLLEYBALL												
WATER POLO												
WRESTLING												
OTHERS												
TOTALS												

D. Assistant Coaches: For each team, please indicate the number of assistant coaches by gender (including volunteers) and whether they are assigned to the team on a full-time or part-time basis. Specify "other" teams and use additional pages if necessary.

PROGRAMS	ASS'T COACHES MEN'S TEAMS				ASS'T COACHES WOMEN'S TEAMS				ASS'T COACHES CO-ED TEAMS			
	MALE		FEMALE		MALE		FEMALE		MALE		FEMALE	
	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT	FT	PT
BASKETBALL												
BASEBALL												
CROSS COUNTRY												
DIVING												
FENCING												
FIELD HOCKEY												
FOOTBALL												
GOLF												
GYMNASTICS												
ICE HOCKEY												
LACROSSE												
RIFLE												
ROWING												
SKIING												
SOCCER												
SOFTBALL												
SQUASH												
SWIMMING												
SYNCHRONIZED SWIMMING												
TEAM HANDBALL												
TENNIS												
TRACK & FIELD												
VOLLEYBALL												
WATER POLO												
WRESTLING												
OTHER (SPECIFY TEAMS)												
TOTALS												

Please provide definitions of full-time and part-time coaches:

III. Overall Athletics Program

A. **Recruiting Expenditures**: Please report the total institutional expenditures associated with recruiting for the men's and women's teams. Costs include, but are not limited to: transportation, lodging and meals for both recruits and institutional personnel engaged in recruiting; expenditures for on-site visits; and all other major expenses logically-related to recruiting. You may report expenditures for coeducational teams separately, or as a pro-rated portion of the expenditures reported for men's men's and women's teams. Do not list the same expenses under both men's or women's teams **and** coeducational teams.

Men's Teams	$_____	_____%
Women's Teams	$_____	_____%
Coeducational Teams	$_____	_____%
Total	$_____	100%

Please explain how these figures were derived:

B. **Revenue**: Please report the total revenue for the reporting year generated by all men's and women's teams. You may report revenues for coeducational teams separately, or as a pro rated portion of the revenues reported for men's and women's teams. Do not report the same revenues under both men's or women's teams **and** coeducational teams.

Men's Teams	$_____	_____%
Women's Teams	$_____	_____%
Coeducational Teams	$_____	_____%
Total	$_____	100%

C. **Athletically-Related Student Aid**: Please report the total amount of athletically-related student aid awarded men and women student athletes. Athletically-related student aid is aid awarded a student that requires the student to participate in an intercollegiate athletics program.

Athletically-related student aid awarded male athletes	$_____	___%
Athletically-related student aid awarded female athletes	$_____	___%
Total amount of athletically-related student aid	$_____	100%

D. **Head Coaches' Salaries**: Please report the average annual institutional salary of the head coaches of the men's and women's teams. Volunteer head coaches and head coaches whose salaries are paid by entities other than this institution are excluded from this calculation. You may report average salaries of head coaches of coeducational teams separately, or as a pro rated portion of the salaries of head coaches of men's and women's teams. Do not list the same salaries under both men's or women's teams **and** coeducational teams. Institutions are encouraged to report the number of coaches to clarify the number of salaries represented in the average.

Average salary of head coaches for men's teams $_____
Number of head coaches included in this average: _____

Average salary of head coaches for women's teams $_____
Number of head coaches included in this average _____

Average salary of head coaches for coeducational teams $_____
Number of head coaches included in this average _____

E. Assistant Coaches' Salaries: Please report the average annual institutional salary of the assistant coaches for the men's and women's teams. Volunteer assistant coaches and assistant coaches whose salaries are paid by entities other than this institution are excluded from this calculation. You may report the average salary of assistant coaches for coeducational teams separately, or as a pro rated portion of the salaries of assistant coaches of men's and women's teams. Do not report the same salaries under both men's or women's teams **and** under coeducational teams. Institutions are encouraged to report the number of coaches to clarify the number of salaries represented in the average.

Average salary of assistant coaches for men's teams $_____
Number of assistant coaches included in this average _____

Average salary of assistant coaches for women's teams $_____
Number of assistant coaches included in this average _____

Average salary of assistant coaches for coeducational teams $_____
Number of assistant coaches included in this average _____

IV. Optional Section

An institution is encouraged to provide here any further information it believes might be helpful to students, prospective students, or the public to interpret the information provided above, or that might help a prospective student-athlete make an informed choice of an athletic program. For example, an institution may include here a history of its athletic programs, or explanations of unusual or exceptional circumstances that would better explain the data or their significance.

[FR Doc. 95–28968 Filed 11–28–95; 8:45 am]
BILLING CODE 4000–01–C