## DEPARTMENT OF EDUCATION

### 34 CFR Part 668

**RIN 1840–AB44**

### Student Assistance General Provisions

**AGENCY:** Department of Education.

**ACTION:** Final rule.

**SUMMARY:** The Secretary amends the Student Assistance General Provisions. These amendments are necessary to implement the Student Right-to-Know Act, as amended by the Higher Education Amendments of 1991, and the Higher Education Technical Amendments of 1993. These final regulations require an institution that participates in any student financial assistance program under Title IV of the Higher Education Act of 1965, as amended (title IV, HEA program) to disclose information about graduation or completion rates to current and prospective students. The final regulations 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 or completion rates of categories of student-athletes, to potential student-athletes, and to the athletes' parents, coaches, and high school counselors.

**EFFECTIVE DATE:** These regulations take effect on July 1, 1996, and apply to the 1996–1997 and subsequent award years. However, affected parties do not have to comply with the information requirements in § 668.41, § 668.46, and § 668.49 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:** Ms. Paula Husselmann or Mr. David Lorenzo, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. 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 8:00 a.m. and 8:00 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). These final regulations are necessary to implement changes to the HEA made by the Student Right-to-Know Act, Pub. L. 101–542, as amended by the Higher Education Technical Amendments of 1991, Pub. L. 102–26, and the Higher Education Technical Amendments of 1993, Pub. L. 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. A second proposed rule addressing the Student Right-to-Know portion of Pub. L. 101–542 was published on September 21, 1995.

Background

The September 21, 1995 Notice of Proposed Rulemaking (NPRM) contained regulations that would implement the Student Right-to-Know portion of Pub. L. 101–542 for consumer information purposes only. In that NPRM the Secretary emphasized that the proposed regulations were meant to provide flexibility and create a minimum of burden to institutions, while generating useful and comparable data for student consumer information purposes. The Secretary's discussion and solicitation of comments on these and related issues are contained in 60 FR 49156–49157.

The September 21, 1995 NPRM also included a discussion of major issues regarding the proposed regulations that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues can be found.

Disclosure of information on graduation or completion rates for the general student population contained in § 668.41(a) (page 49157).

Disclosure of information on the general student population, and on the completion or graduation rates of various categories of student athletes, and the report of that information to the Secretary, contained in § 668.41(b) (page 49157).

Issues concerning the definitions of ''full-time,'' ''normal time,'' ''athletically-related student aid,'' and ''prospective student,'' as contained in § 668.41(a) (pages 49157–49158).

Issues concerning the composition of students who make up the denominator of the institution's graduation or completion rate fraction, as contained in 668.46(a) (page 49158).

Issues concerning the tracking of students, related to § 668.46(a) (page 49158).

Issues concerning the latest dates on which institutions must disclose their completion or graduation rate information, contained in § 668.46(a)(2) (pages 49158–49159).

The students an institution may include in the numerator of its completion or graduation rate fraction, and issues related to the documentation of those students, as contained in § 668.46(b) (pages 49159–49160).

The students who may be excluded from the institution's calculation of a completion or graduation rate, as contained in § 668.46(b)(2) (page 49160).

The disclosure of the components of the numerator of the institution's completion or graduation rate fraction, as contained in § 668.46(c) (page 49160).

The provisions for waivers for institutions that are members of athletic conferences or associations that provide substantially comparable data, as contained in § 668.46(d) (page 49160).

The requirement that institutions that award athletically-related student aid disclose data regarding the completion or graduation rates of student athletes, and other general information, to a student offered athletically-related student aid, and to his or her parents, coaches, and high school counselors, and send a report of that data to the Secretary, as contained in § 668.49(a) (page 49160).

The requirement that such institutions report and disclose that data by July 1 of every year, beginning July 1, 1997, as contained in § 668.49(a) (page 49160).

The kinds of general data to be reported and disclosed, and the categories of students for whom completion or graduation rates are to be calculated, reported, and disclosed, as contained in § 668.41(a) (pages 49160–49161).

The definition of ''sport'', as contained in § 668.49(a)(2) (page 49161).

The requirement that completion or graduation rates be calculated in the same manner as specified in § 668.46 (b) and (c), as contained in § 668.49(b).

The provision that an institution, if it wishes, may provide information to potential student-athletes and the Secretary regarding the completion or graduation rate of students who transfer into the institution, and the number of students who transfer out of the institution, as contained in § 668.49(c) (page 49161).

The provision that allows institutions that are members of athletic conferences

or associations to obtain waivers if the conference or association of which it is a member provides substantially comparable information, as contained in § 668.49(d) (page 49161).

Summary of Changes From the Proposed Regulations

The Secretary has added definitions of ''first-time freshman students,'' ''certificate- or degree-seeking students,'' and ''undergraduate students''. The Secretary has also changed the definitions of ''full-time students'' and ''normal time''.

The Secretary requires institutions to disclose information on completion or graduation rates and transfer-out rates for the general student body by the January 1 immediately following the expiration of 150% of normal time for the group of students on which the institution bases its completion or graduation rate calculation.

The Secretary requires an institution that offers a predominant number of programs based on standard terms (semesters, trimesters, or quarters) to establish a fall cohort, consisting of undergraduate students who are enrolled as of October 15, or the end of the institution's drop-add period, on which to calculate its completion or graduation rate. The Secretary also requires such an institution to count as an entering student an undergraduate student who is enrolled at the institution as of October 15.

The Secretary requires an institution that does not offer a predominant number of programs based on standard terms (semesters, trimesters, or quarters) to count as entering students all full-time undergraduate students who enter the institution between July 1 and June 30 for purposes of calculating its completion or graduation rate. Such an institution will consider a student to have entered for these purposes if the student attends at least one day of class.

The Secretary requires an institution to count as an entering student only first-time freshman students as defined in the regulations. An institution may calculate a completion or graduation rate or rates for students who transfer into the institution as separate and supplemental rate or rates.

The Secretary requires institutions to publish two rates: one, the rate at which students complete or graduate, and the other, the rate at which students transfer out of the institution.

The Secretary allows institutions to count as completers those students who complete a transfer preparatory program described in § 668.8(b)(1)(ii).

The Secretary is dropping the proposal that would have allowed institutions to count as completers those students still enrolled in good standing in programs longer than the program on which the institution bases its disclosure date.

The Secretary will require documentation of a transfer in order for an institution to count a student as a transfer-out, and will accept such documentation as a certification letter, electronic certification, confirmation of enrollment data from a legally-mandated tracking system, or institutional data exchange information confirming that a student has enrolled in another institution.

The Secretary is clarifying that an institution that is covered by waivers for substantially comparable data gathered by an athletic association or conference must still comply with the information dissemination provisions of the statute and these regulations.

The Secretary is including a *de minimus* exception to the disclosure requirements for the completion or graduation rates of student athletes that allows institutions not to disclose those rates for categories that include five or fewer students.

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 believes that the Student Right-to-Know Act establishes important consumer information disclosure standards for institutions. In promulgating 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 prospective students, and prospective student athletes, will be better able to make informed choices when they choose a postsecondary institution.

The Secretary believes that these final regulations strike an appropriate balance between establishing a basic level of useful consumer information for students, and keeping burden on institutions to a minimum.

Analysis of Comments

In response to the Secretary's invitation in the September 21, 1995 NPRM, approximately 100 parties, including representatives of large and small institutions, athletic associations, college and university associations, associations of collegiate registrars and institutional researchers, student advocacy groups, and student 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:* Some commenters agreed that the amount of flexibility contained in the proposed rules was appropriate for the purpose of providing consumer information. These commenters believed that the added flexibility of these proposed rules reduced burden, reflected the letter and spirit of the statute, or took into account changes in technology. Some of these commenters maintained that nationwide comparability of data should not be the most important factor in the implementation of the statute, and expressed appreciation that these proposed rules, unlike earlier proposals, recognized the diversity of institutions of higher education. Other commenters agreed that the level of flexibility was appropriate because the only relevant comparisons to be made were within different sectors of the higher education community, and that these proposed rules provided adequate guidance to make such comparisons possible.

Some commenters believed that any degree of flexibility defeated the purpose of the statute in providing meaningful and useful consumer information, and asked the Department to establish and require the use of a standard federal methodology and a set of standard federal definitions.

A majority of commenters appreciated the Secretary's attempt to provide flexibility, but believed the amount of flexibility contained in the proposed rules did not serve well the consumer purpose of this statute. These commenters maintained that the proposed rules would result in the provision of inconsistent, incomparable data that would be of little use to student consumers.

Of these commenters, many believed that for reasons of comparability and burden reduction, the final rules should require all institutions to report according to the definitions and methods contained in the forthcoming National Center for Education Statistics (NCES) Integrated Postsecondary Education Data System (IPEDS) Graduation Rate Survey (GRS). These

commenters maintained that only a mandatory system would generate meaningful, comparable, and useful consumer information, and that this goal would be met with the least burden by requiring the use of the GRS rather than the imposition of another, different methodology. These commenters noted that all institutions would soon be required to report to the NCES through the GRS.

Many others asked that the Secretary give serious consideration to following the recommendations of the report on graduation rates and other statistics the Joint Commission on Accountability Reporting (JCAR) is now developing. These commenters argued that (1) graduation rate statistics alone are not meaningful consumer information, and that the JCAR survey will provide better information in the form of statistics on graduation, completion, transfers, advancement, and persistence, and (2) the JCAR statistics are fair, consistent among all institutions, and easy to calculate.

A number of commenters asked that the GRS, the JCAR survey, or the National Collegiate Athletic Association (NCAA) survey be approved as ways of meeting the requirements of this statute. One commenter asked that the IPEDS GRS be adopted as the model methodology. One commenter asked that the Secretary implement final regulations that would provide consistency among those reports and the report required by this statute.

Several commenters maintained that the simple model the Secretary put forth would lead to meaningless or dishonest reporting, in that it attempts to condense necessary information into a single statistic. One of these commenters argued that the type of information needed for student consumers was more complex than that required by other types of consumers, and that such information could only be gathered by closely scrutinizing an institution's mission and programs in the context of the student's own interests, abilities, and willingness to complete a program.

*Discussion:* The Secretary continues to believe that the provision of graduation rate data will provide meaningful information to student consumers, and that a degree of flexibility is consonant with generating useful consumer information. However, the Secretary has been persuaded by the number and nature of comments that the degree of flexibility contained in the proposed rules may present problems of comparability.

Therefore, based on these comments, the Secretary is making changes to the final regulations that address problems of comparability. The Secretary requires institutions to use the definitions of ''certificate- or degree-seeking students,'' ''first time students,'' and ''undergraduate students'' that are based on those definitions as they are published in the IPEDS GRS Glossary, NCES 95–822. These definitions have been changed slightly from the IPEDS definition to conform to the statute, but are the functional equivalent of the IPEDS definitions. Because institutions will in the future be required to report these data according to these definitions under IPEDS, the Secretary believes that using definitions based on the IPEDS definitions that are slightly changed to fit the requirements of the statute, will increase comparability without increasing burden.

Also in the interests of comparability, the Secretary has removed from the definitions the flexible definition of ''full-time students'' included in the proposed rules. Institutions must instead use the definition of ''full-time student'' as defined in § 668.2 of the Student Assistance General Provisions regulations. This definition that is functionally equivalent to the definition found in the IPEDS Glossary.

In order to increase comparability and to decrease the possibility that institutions will need to calculate duplicate graduation or completion rates, the Department will work with organizations such as the NCES, the JCAR, athletic conferences or associations, and state agencies, or other organizations that are attempting to gather completion or graduation rate data, to help those organizations develop protocols that will generate data substantially comparable to the data required by the statute and these regulations. If these organizations do develop such protocols that meet the methodological and definitional standards set by the statute and regulations, the Secretary will inform institutions that the use of those protocols meet the requirements for the compilation of these data under the statute and the regulations. The Secretary, however, will not accept the protocols of these organizations for these purposes, nor grant waivers to athletic associations or conferences for their protocols, nor deem the protocols of any organization or institution to be in compliance with the statute and these regulations, if those protocols fail to incorporate the provisions of the statute and regulations.

*Changes:* Section 668.41(c) has been changed to include definitions of ''degree- or certificate-seeking student'' and ''first-time freshman student'' that are based on the definitions published by IPEDS. ''Full-time student'' is defined in accordance with the definition in § 668.2.

*Comments:* Many commenters expressed concern that these proposed rules would create another set of reporting criteria that institutions must meet, in addition to other reports on the same topic now required of institutions by the NCES, the NCAA, JCAR, and accrediting agencies, and that therefore these proposed rules were overly burdensome. Some of these commenters maintained that smaller institutions, which employ small staffs, would find it impossible to meet any new reporting requirements in addition to those which they must already meet. Some commenters reported that their institutions already were collecting information based on the NCAA model (in which completion or graduation rates are calculated for a cohort of first-time, full-time, baccalaureate students who enter an institution during the institution's fall term), the model set forth in the 1991 Dear Colleague letter, or another system, and that to force them to change systems to comply with new regulations would be prohibitively expensive and extremely burdensome. One commenter asked that the final rules not differ significantly from the guidance provided by Dear Colleague Letter GEN–91–27. One commenter reported that the flexibility of the rules allowing institutions to set their own definitions would prevent coordinating bodies from collecting information from groups of institutions.

One commenter believed that the provision of graduation rate information as a regulatory issue was moot, given that several athletic associations and news publications now provide statistics, and expressed the belief that a regulatory system for providing this information would only add to the current confusion.

*Discussion:* The Secretary recognizes that the calculation of these rates in different ways as required by different organizations would represent a burden on institutions. However, the Secretary is bound by statute to require that these rates be calculated and published, and that they be calculated according to statutory requirements. Insofar as is possible within the terms of the statute, the Secretary is providing flexibility for institutions to report according to protocols by which institutions will be required to calculate completion or graduation rates in the future, notwithstanding these regulations, e.g., the IPEDS GRS and the JCAR survey, as well as surveys by state agencies and the NCAA. However, if any particular

organization on this list fails to develop protocols that accord with the statute and these regulations, the Secretary cannot simply waive the requirements of this statute or change the specifics of the statutory calculation to fit those circumstances. Institutions must calculate and publish these rates, and do so in accordance with the statute and regulations.

With regard to the particular case of the GRS survey to be conducted by the NCES, the Secretary appreciates that while the Statement of Educational Impact contained below is technically correct in maintaining that no agency of the federal government is currently gathering this information, commenters were concerned that the forthcoming NCES GRS and these regulations may in the future require institutions to submit the same types of information, compiled in different ways, to the Federal Government. Because the NCES is a federal entity, the Secretary will insure that the results of future NCES GRS surveys will be acceptable for purposes of this statute and these regulations.

The Secretary also notes that the definitions and suggested protocols included in these final regulations substantially mirror the provisions of Dear Colleague Letter GEN–91–27.

*Changes:* None.

*Comments:* Several commenters suggested that the Secretary encourage institutions to supply additional information to place their graduation rate reports in context, as a way of providing greater comparability and usefulness without significantly increasing burden. One commenter asked that all institutions be required to provide such contextual information.

*Discussion:* The Secretary strongly encourages institutions to provide contextual information. There is, however, no statutory authority to require institutions to provide such information.

*Changes:* None.

*Comments:* Several commenters asked that the disclosure requirements for short-term programs at proprietary schools regarding job placement, licensure requirement, and licensure pass rate information that had been previously included in the Student Assistance General Provisions regulations be reinstated as part of these final regulations. One of these commenters argued that the types of students who enter these programs tended to be the consumers most in need of information and protection. This commenter maintained that such provisions would embody the spirit and intent of both the statute and other Congressional commentary on consumer information issues regarding short-term programs. This commenter also recommended that the information generated by such requirements be reported to a government agency to be compiled and published.

*Discussion:* Because these provisions are no longer included in the statute, the Secretary will not include them in these regulations.

*Changes:* None.

*Section 668.41 Information Disclosure*

*Comments:* Several commenters proposed that the Department mandate the Campus Security model for the placement of this information in publications. These commenters maintained that this model was not burdensome.

Several commenters opposed the Campus Security model. Several commenters opposed any regulation of the placement of this information, besides the general requirement that it be published in publications that students and prospective students receive. These commenters maintained that each individual institution was the best judge of where such information be published. One commenter believed that no regulation was necessary so long as institutions provided the information before the student entered into any financial obligation. One commenter asked that nonbinding guidance rather than regulations be promulgated in this matter. One commenter objected to the Campus Security model as now formulated in the regulations, in that it requires the distribution of information.

One commenter asked that the Department mandate publication in the institution's catalog or other similar publication that provides meaningful context to this information. One commenter maintained that trade schools be required to publish this information in their catalog. One commenter asked that the Secretary clarify that publication in a catalog or other such publication meets the requirements of the statute.

One commenter maintained that the requirement to make this information available through publications and mailing to prospective students would be overly burdensome. This commenter argued that general availability through literature racks and provision upon request should be deemed as fulfilling the requirements of this statute.

*Discussion:* The Secretary agrees that the level of specificity contained in the Campus Security model of disclosure need not apply to these regulations. The Secretary believes that such publications as catalogs, admission literature, or other similar types of publication are appropriate places for this material. Because the statute requires that this material be available in ''appropriate mailings,'' the Secretary disagrees that the mere maintenance of this material in literature racks would satisfy the requirements of the statute.

*Changes:* None.

*Comments:* One commenter maintained that the suggestion that institutions also provide this information to secondary schools and guidance counselors was too expensive and burdensome.

*Discussion:* The Secretary will not require institutions to provide this information automatically to secondary schools and guidance counselors, but strongly encourages institutions to provide this information on request to parties such as guidance counselors.

*Changes:* None.

*Comments:* One commenter asked for a clarification of the standard that students have this information before they enter into ''financial obligation,'' and inquired whether payment of an application fee would count as a financial obligation, as opposed, for example, to the payment of tuition. This commenter argued that if the former were the case, insurmountable problems would arise, since some students apply for admission without first contacting the institution.

*Discussion:* The Secretary interprets ''financial obligation'' to mean any agreement that obliges the student to pay significant sums of money. This would include, for example, tuition or room and board deposits, advance payments for tuition, room and board, and books and supplies. The Secretary does not interpret the tacit agreement to pay an application fee when submitting an application to fall within the scope of ''financial obligation'' as that term is used in the statute.

*Changes:* None.

*Section 668.41 Disclosures of Information on Student-Athletes*

*Comments:* One commenter asked the Secretary to reformulate the requirement that institutions provide the graduation rate data for athletes to the student's parents, given that locating and providing materials to both parents in cases of separation or divorce was very burdensome. This commenter recommended that the relevant language be changed to indicate that provision of these data to a single parent or a guardian, when appropriate, would satisfy this requirement.

Several commenters asked that only general guidelines regarding the medium in which the information is transmitted be promulgated, as

institutions are attempting to move away from paper formats to electronic means of transmitting and disseminating information.

*Discussion:* The Secretary interprets this provision of the statute to require the notification of the parent who acts as the student's guardian.

The Secretary agrees that general guidelines will allow institutions flexibility in adapting to technological changes, and believes the regulatory text is consistent with that intent. However, the Secretary also believes that institutions should have paper copies available for parties who do not have electronic access.

*Changes:* None.

*Definitions*

*Comments:* Most commenters requested the Secretary to require the use of standard definitions. Their reasoning was to ensure uniformity, comparability among institutions, and ease of understanding for the consumer of this information. The commenters stated that flexibility with many of the definitions proposed in the NPRM is undesirable because it will produce noncomparable data that would be confusing to the consumer.

Most of the commenters recommended that the regulations require the use of IPEDS definitions. The commenters explained that institutions are already familiar with these definitions, that they are already being used by the Secretary, and they would not require additional classifications of students beyond those already used. As such, these definitions would significantly reduce burden on institutions.

A much smaller number of commenters appreciated the flexibility provided by the NPRM to use varying definitions so long as the definitions were part of the information disclosed. A considerable number of commenters recommended that the Secretary require the definitions used by JCAR. JCAR also uses some of the IPEDS definitions. In particular, most commenters recommended the IPEDS definitions for the following terms: full-time, certificate or degree-seeking, first-time freshman student, and undergraduate student.

*Discussion:* Upon reviewing the comments, the Secretary agrees that statutory definitions of key terms will increase comparability and benefit consumers. The Secretary also agrees that any definitions promulgated in these regulations should be definitions with which institutions are already familiar.

*Changes:* Particular changes to the ''definitions'' section of these regulations are addressed below.

*Comments:* A majority of commenters argued that the amount of flexibility in these proposed rules with regard to the definition of ''normal time'' would result in incomparable data. Many of these commenters asked that the sector (less than two year, two year, and four year) definitions promulgated by IPEDS be placed in the regulations. Many others asked that the JCAR definitions of catalog award-time, extended award-time, and eventual award-time be adopted as mandatory definitions.

One commenter believed that defining ''normal time'' as ''minimal time'' is inappropriate, given the number of students who enter institutions with a large number of credits by means such as Advanced Placement Tests and summer sessions, as well as the number of students who take overloads and independent study courses. This commenter believed that normal time instead be defined as ''designated completion time.'' One commenter maintained that normal time should be the advertised time to graduation or completion published in an institution's advising worksheets, catalog, or similar publications, and that if the institution does not publish such information, that normal time for that institution be one year (twelve months) for a certificate program, two years (twenty-four months) for an associate degree, and four years (forty-eight months) for a bachelor's degree.

One commenter supported the use of normal time rather than average time, because the latter would tend to change. One commenter supported the definition of normal time as minimal time to complete or graduate from a certificate or degree program, but asked that this be clarified to exclude summer terms.

Several commenters supported the use of some type of ''average'' time rather than minimal time as the definition of normal time, given that outside factors, such as family commitments, work time, and availability of funds, affect the time students need to graduate or complete. These commenters suggested that institutions be permitted to determine ''normal time'' using other means, for example, measuring the ''normal time'' to completion experienced by the most recent cohort of students, or using sampling techniques of student populations. One commenter believed that the concept of normal time itself as used in the statute and defined in these regulations was a misnomer, given that students now routinely switch between full-time and part-time status, and are affected by a whole range of non-academic factors.

Several commenters believed that the definition of normal time should not include the term full-time, given that full-time represents only a minimum number, not a particular number, and so two students who take different full-time loads would have different normal times to graduation or completion. One commenter believed that the definition of normal time could contain the term full-time only if the latter term was clarified to mean the greater of the institution's definition of full-time, or the title IV, HEA definition of full-time.

Several commenters asked the Department to mandate that institutions report their definition of normal time as part of their graduation rate report.

*Discussion:* The Secretary agrees that the term ''normal time'' should not include the term ''full-time'' because the meaning of the term ''full-time'' with regard to academic workloads may vary from student to student.

The Secretary agrees with the commenters who concurred that ''normal time'' not be defined to mean ''average time.'' The Secretary believes that Congress meant to address such issues as stop outs, work, remediation, and other factors when it set the time for graduation or completion at 150% of normal time. The Secretary also believes that Congress meant ''normal time'' itself to be the standard, traditional time to degree, *e.g.*, four years for a bachelor's degree, two years for an associate degree, and the scheduled time for clock hour programs. The Secretary agrees that to make these points clear, the definition of ''normal time'' in the regulations should make reference to an institution's catalog time. The Secretary also agrees to include the specific time in standard terms (semesters, trimesters, or quarters, not including summer terms) to completion that have been traditionally associated with degrees. The Secretary acknowledges that measuring time to completion in standard terms (semesters, trimesters, or quarters) rather than months for degree programs is a change from earlier guidance, but believes this change is necessary in order for this information to be provided in a timely fashion. Time to completion measured in months, for example, for a four year institution, would end after the July 30 date for completors or graduates to count, and would therefore delay disclosure for up to 15 months after the end of the students' 150% of normal time, given the change to the January 1 disclosure date discussed below. Measured in standard terms, the data will only be six

months old by the December 1 disclosure date.

With regard to completion or graduation rate, or transfer-out rate calculations based on ''extended catalog time'' (more than 150% of normal time), the statute does not require that such rates be calculated or disclosed. Institutions may always disclose such rates as supplemental information.

*Changes:* A definition of ''normal time,'' based on the JCAR definition of normal time, has been inserted in § 668.41(c), which defines normal time as the time necessary for a student to complete all requirements for a degree or certificate according to an institution's catalog. This is typically 4 years (8 semesters or trimesters, or 12 quarters, excluding summer terms) for a bachelor's degree, 2 years (4 semesters or trimesters, or 6 quarters, excluding summer terms) for an associate's degree, and the scheduled times for certificate programs.

*Comments:* A majority of commenters believed that the degree of flexibility permitted institutions to define full-time would lead to non-comparable data. Most of these commenters supported the mandatory use of the IPEDS definition of full-time.

Several commenters supported the proposed regulatory definition. One commenter asked that an institution be required to disclose any differences between its definition of full-time for academic purposes and its definition of full-time for tuition purposes. Several commenters asked that the Secretary require institutions to publish their definitions with their graduation rate data.

*Discussion:* Upon further consideration, the Secretary agrees with the commenters who asked that a definition of ''full-time'' be included in the regulations. Because the definition of ''full-time'' in § 668.2 is familiar to all institutions, was the definition provided in Dear Colleague Letter GEN–91–27, and is functionally the same as the IPEDS definition of ''full-time,'' the Secretary applies that definition to this section of the regulations. The Secretary believes that for these reasons referring to this definition in the regulations will increase comparability and decrease potential confusion.

*Changes:* The definition of ''full-time student'' has been removed from § 668.41(c). Institutions are required to use the definition of ''full-time student'' found in § 668.2.

*Comments:* Most commenters recommended the use of the first-time freshman student definition under IPEDS. This definition provides for a student attending any institution for the first time at the undergraduate level; this includes students enrolled in the fall term who attended college for the first time in the prior summer term, and also includes students who entered with advanced standing.

*Discussion:* The Secretary agrees with the commenters that for reasons of comparability, consistency, and burden reduction, the regulations should mandate the use of a particular definition of ''first-time freshman student,'' and that the definition should be the IPEDS' definition or its functional equivalent. Promulgating such a definition will ensure consistency of data among institutions, and is less burdensome to institutions because institutions are already familiar with the IPEDS definitions.

*Changes:* Section 668.41(c) has been changed to require institutions to use a definition of ''first-time freshman student'' that is based on the IPEDS definition found in the IPEDS Glossary, NCES 95–22.

*Comments:* Many commenters asked that the IPEDS definition of ''undergraduate student'' be included in the final regulations.

*Discussion:* For reasons of consistency and familiarity, the Secretary agrees to include the IPEDS definition of ''undergraduate student'' in the final regulations.

*Changes:* The definition of ''undergraduate student'' as found in the IPEDS Glossary, NCES95–822, has been added to § 668.41(c).

*Section 668.46 Information on Completion or Graduation Rates and Transfer-Out Rates*

*Comments:* Many commenters objected to the October 1 disclosure date for this information. In general these commenters maintained that the amount of time between June 30 and October 1 was insufficient for institutions to calculate these graduation rates. Several of these commenters maintained that the statute provided institutions with one year between the point in time when a group's 150% of normal time elapsed and the required disclosure date. Several other commenters suggested disclosure dates in the November or December immediately following the elapse of 150% of normal time.

*Discussion:* The Secretary agrees to allow a disclosure date in the next calendar year following the expiration of 150% of normal time. However, in the interest of consumers, the Secretary believes that this date should be the earliest possible. Therefore, the Secretary changes the disclosure date to the first January 1 following the expiration of 150% of normal time for the entire group of students on which the institution bases its completion or graduation rate calculation.

*Changes:* Section 668.46(a)(5) has been changed to require that an institution, beginning with the group of students who enter the institution on or after July 1, 1996, disclose this information no later than the January 1 immediately following the point in time that 150% of normal time has elapsed for the entire group of students on which the institution bases its completion or graduation rate, and every January 1 thereafter.

*Comments:* Most commenters recommended that the Secretary require the use of a snapshot approach for tracking students, that is, taking a snapshot of a cohort that does not change for the entire length of the analysis. Electronically, this methodology means comparing only two files. For institutions that will make calculations from paper records, the ''snapshot'' methodology requires looking at records from only two academic years. The commenters explained that a snapshot methodology will limit the requirement to comparison of a cohort's file for only two years—at the time of entry and at the time of disclosure. The commenters' concern is that continuous tracking would be an added and unnecessary burden on institutions. The commenters also indicated that the snapshot methodology is sufficient to produce the required information under the statute. Very few commenters supported the concept of tracking individual students.

*Discussion:* The Secretary agrees that a snapshot methodology is appropriate for purposes of these regulations. To help institutions implement this methodology, the Secretary is adjusting other elements of the methodology, such as the characterization of an entering student.

*Changes:* None.

*Comments:* The commenters almost unanimously recommended that the Secretary require the use of a fall cohort to calculate an institution's graduation rate. Most institutions' believe that students entering in this term will be a representative sample of students entering during the entire year. Institutions argue that using the same methodology will produce more consistent and comparable data. The commenters stated that using a full-year cohort would dramatically increase data tracking and reporting burden on institutions. Moreover, use of the fall cohort methodology is consistent with both the IPEDS GRS under development and the JCAR methodology, and many

institutions and state-level agencies have already developed data systems using the fall cohort methodology recommended by Dear Colleague Letter GEN–91–27. A number of institutions opposed extrapolation to a full-year rate; a small number supported such extrapolation. Some institutions believe flexibility should be given to institutions for whom a fall cohort is not representative.

*Discussion:* The Secretary accepts the commenters' assertion that the use of a fall cohort is the best approach for some institutions, namely standard term-based (semester, trimester, quarter) institutions, which primarily commented on this issue. To be a standard term-based institution for these purposes, the institution must offer predominantly standard term-based programs, that is, greater than 50% of its programs must be term-based. In order to accommodate institutions for whom a fall cohort may not suffice, the regulations require the use of a year-long cohort (July 1-June 30) for institutions that do not operate on a standard term basis.

*Changes:* Section 668.46(a)(2) has been added to require institutions that offer a predominant number of semester, trimester, or quarter based programs to use a fall cohort of students entering between every July 1 and October 15. An institution using a snapshot methodology may use a census date of October 15 or another appropriate date to identify that cohort. Institutions that do not have a predominant number of programs based on standard semesters, trimesters, and quarters must use a year-long cohort of students who enter between every July 1 and June 30. The Secretary believes this is a reasonable differentiation because most non-term based institutions are proprietary schools, and the Secretary understands that these institutions are now required by their accrediting agencies to track all their students.

*Comments:* All commenters who addressed the concept of an entering student's attendance for at least one day of class opposed the proposal. The commenters explained that many students register, add and drop courses, and withdraw after the first day of class. Moreover, institutions generally use an enrollment date or census date to record a snapshot of their enrollment. Typically this date is at least ten days to thirty-five days after the beginning of a term; some states mandate the actual census date. The commenters indicated that, realistically, institutions simply do not have mechanisms to know if a student attends only one day of class. Therefore, the commenters feel the Secretary should refer institutions to the definition of entering (or first-time) student under the IPEDS Fall Enrollment Survey (the count of students by the NCES that counts the number of students enrolled as of October 15 for the purpose of providing annual projections of college enrollment for the NCES publications *Condition of Education* and *The Digest of Education*). As previously indicated, institutions are generally familiar with these definitions.

*Discussion:* The Secretary is concerned by the issues raised by the commenters, in part because it is important for other parts of the regulations governing the title IV, HEA programs (e.g., refunds) that institutions know when students withdraw or drop out of an institution. However, given the number and nature of the comments received on this issue, the Secretary agrees that it will reduce burden and increase comparability to require institutions to use the enrollment date (October 15) set by the IPEDS Fall Enrollment Survey, or the end of the institution's drop-add period, for purposes of identifying an entering student for institutions that are required by these regulations to use a fall cohort.

For institutions that use a year-long cohort, an entering student is a student who attends at least one day of class. The Secretary believes that this differentiation among schools on this issue is logical since non-term based schools are better able to track their students from the first day because such institutions do not have drop-add periods.

*Changes:* A change has been made in § 668.46(a) that mandates institutions that offer a predominant number of programs based on semesters, trimesters, or quarters to base their calculations on the students who enter during the institution's fall term, beginning July 1, 1996. An entering student shall be considered to have entered for these purposes if that entering student is enrolled as of October 15 or the end of the institution's drop-add period. All other institutions must count all students who enter between every July 1 and June 30, and attend at least one day of class, beginning July 1, 1996.

*Comments:* The primary concern raised by the commenters concerning the definition of entering students was the treatment of students transferring into an institution. Almost unanimously the commenters favored a separate cohort and graduation rate for these students. The commenters believed that including students who transfer into colleges and universities in the same cohort with first-time freshman students will lead to inconsistent and noncomparable data among institutions, because institutions evaluate transfer students differently and at different times, and different levels of credit may be awarded for different curriculum choices. Some commenters recommended that the progress of transfers-in should be accounted for by using a snapshot methodology at 150% of the normal time to complete from their time of entrance into the new institution. That is, their status should be measured at the time of entry and at the time of disclosure and be reported separately. Other commenters noted that the inclusion of transfers-in with first-time freshman students requires a continuing adjustment to the entering cohort. This approach would violate the snapshot methodology recommended by so many commenters. Moreover, some commenters believe that such a methodology complicates the calculations, creates a burden on the institutions, and ultimately confuses the consumer. Other commenters note that separate reporting for first-time freshman students and transfers-in is consistent with established tracking methodologies in the states, which for the most part concentrate on tracking first-time freshmen.

*Discussion:* In response to the commenters' concerns, the Secretary has reconsidered the position taken in the NPRM and excludes from the definition of ''entering'' students those students who transfer into an institution. The Secretary will now consider reporting on students who transfer into an institution to be an optional disclosure for Student Right-to-Know purposes. If an institution does choose to establish a cohort of transfers-in, the calculation of the completion or graduation rate of these students must be separate from the calculation of the completion or graduation rate of the first-time cohort, and the two rates must be published and labeled as two separate rates.

*Changes:* Section 668.46(a) is revised to make optional and separate the reporting on students transferring into an institution.

*Comments:* Many commenters urged the Secretary to consider adopting the JCAR methodology, which includes the disclosure of completion or graduation rates, and other information, on part-time as well as full-time undergraduate students. These commenters maintained that information on part-time students was necessary to meet the needs of a large number of student consumers who do not fit into the traditional category of full-time students.

*Discussion:* The statute only requires that institutions compile and disclose information on full-time, certificate- or degree-seeking undergraduate students. Institutions may always disclose completion or graduation rates and other information on part-time students or other types of students as supplemental information.

*Changes:* None.

*Comments:* Many commenters recommended that the Secretary not consider students who transfer to a new institution to be completers. These commenters believed that considering transfers-out to be completers is inaccurate because an individual could be counted as a completer by two separate institutions. These commenters also asserted that students who transfer out of an institution are not equivalent to completers, since their final outcome is unknown.

Many other commenters recommended that the Secretary should regulate what types of documentation the Secretary will accept to define ''substantial preparation.'' Moreover, these commenters recommended that the Secretary not define substantial preparation because these definitions would place a burden on institutions, since they would require evaluation of transfer credits at entry, an uncommon practice in higher education. The absence of a standard practice for evaluating transfer credits and the varying definitions of academic standing minimizes the comparability of data from one institution to another and introduces the possibility of data manipulation. Both produce poor consumer information in the eyes of these commenters.

Some commenters appreciated the flexibility to allow transfers-out in good standing to be completers and request that the institutions be allowed to define good standing.

A number of commenters consider a request for a transcript an insufficient indicator of students' transfer behavior; transcript requests do not provide the necessary certification, as they are generated for many reasons unrelated to a student's intent to transfer.

Some commenters indicate that surveys are also insufficient. Such estimates introduce considerable uncertainty and variation in the data. Other commenters support the idea of surveys as a viable means of dealing with this statutory requirement.

Many commenters recommended that the regulations allow one of four types of documentation that a student has transferred to another institution. First, a certification letter or document from the registrar of the receiving institution that a student is enrolled is evidence of transfer. Second, an electronic certification, such as a SPEEDE/ExPRESS or a secure e-mail message, from the registrar of the receiving institution is evidence of transfer. Third, the confirmation of enrollment data from a legally-mandated, statewide or regional tracking system (or shared information from such systems) is evidence of transfer. Fourth, other documentation of enrollment at the receiving institution, such as institutional data exchanges of students enrolled as of the official enrollment date, is evidence of transfer. Some commenters requested that the Secretary specify these means of evidence in the regulations. A number of commenters believed that enrollment at a new institution alone is evidence of substantial preparation. Further, institutions should be permitted to use a variety of sources for this rate, without being required to have documented proof of transfer on a student-by-student basis. It must be emphasized that an approximate rate is more useful to the student than a rate which is clearly underrepresented because of difficulties in student-by-student data collection and documentation.

Most commenters urged the Secretary to adopt separate reporting of completion and transfer-out rates if it is legally necessary to address transfers-out. The resulting statistics represent distinct pieces of consumer information depending upon an entering student's own objective. The commenters indicate that combining these rates into a single statistic will not help students make the choices that actually face them.

Many of the commenters petitioned the Secretary to work with the academic community to devise procedures which would facilitate the transfer of data among institutions which chose to participate in such data transfer mechanisms. A significant number of commenters recommended that the Secretary consider the method employed by the GRS because of its flexibility in reporting students who transfer out of an institution. Some commenters recommended that transfers-out be considered completers if they are ''transfer-ready.'' In other words, if the student enrolled in a transfer preparation program had achieved a certain grade point average and completed a certain number of credits, the student could be considered to have received ''substantial preparation'' and therefore, be ''transfer-ready.'' This student, the commenters maintained, is a completer.

*Discussion:* The Secretary agrees that combining graduates with transfers-out in a single rate will lead to confusing and sometimes misleading information. Therefore, the Secretary requires that institutions publish separately its transfer-out rate.

The Secretary recognizes the variety of serious problems associated with the statutory provision that transfers-out be reported. Because the provision is mandated by law, institutions may not ignore it. However, the Secretary wishes to provide institutions with flexibility to address transfers-out. Therefore, consistent with the treatment of transfers-out in the GRS, an institution is only required to report on those students the institution knows have transferred to another institution.

For the reasons cited by the commenters, the Secretary agrees that merely requesting a transcript is insufficient evidence of transfer. There must be reasonable evidence of a transfer in order for an institution to consider a student a transfer-out. The four examples of valid documentation suggested by many of the commenters have been incorporated into the regulations per their request.

Moreover, in order to resolve the conflict between the transfer-out provision and the particular mission of community colleges in preparing students for transfer to other institutions, these regulations provide that institutions that offer transfer preparatory programs as described in § 668.8(b)(1)(ii) may consider a student who is ''transfer-ready'' to be a completer. A transfer-ready student is a student who has successfully completed his or her transfer program.

With respect to the Student Right-to-Know Act disclosures, in response to the commenters' concerns, an institution must disclose the transfer-out rate separately from its graduation rate, but may provide additional information that combines the completion or graduation rate with its transfer-out rate.

*Changes:* A change has been made in § 668.46(c) that mandates that institutions report their transfer-out rate separately. Section 668.46(c) has also been changed to require an institution to document that a student has transferred to another institution, and provides examples of the types of documentation necessary to document a transfer-out.

A change has been made to § 668.46(b) which allows an institution to count in its completion or graduation rate a student who has successfully completed a transfer-preparatory program as described in § 668.8(b)(1)(ii).

*Comments:* Some commenters believe the use of a persistence rate for programs longer than the predominant

program is necessary because it shows recognition that not all programs are defined in the same way among all institutions. Other commenters believe that persistence rates should not be allowed to substitute for graduation rates in any cases because an institution cannot determine whether a persister will graduate. These commenters believe that counting persisters as completers distorts the graduation rate. These commenters therefore believe that students who are enrolled in a program that is longer than the program on which the institution bases its disclosure, should not be counted as completers. These commenters recommended use of the GRS.

Other commenters recommended that institutions be given an option of calculating a persistence rate until they are able to calculate a graduation rate.

*Discussion:* While the Secretary is concerned that graduation rates be disclosed as early as is legally possible so that students may receive current information, the Secretary has been persuaded by the commenters that any type of equation of persisters with graduates is misleading. Therefore, the Secretary has eliminated the proposal that an institution consider students in good standing who are enrolled in programs longer than the predominant programs' length as completers for the purpose of disclosing its graduation or completion rate.

As for the disclosure of a persistence rate in general, either before a disclosure date, or at the disclosure date, an institution may disclose such a rate as supplemental information, but must clearly mark the rate as a persistence rate.

*Changes:* A change has been made to § 668.46(b) that eliminates the inclusion of students persisting in programs longer than the program on which the disclosure date is based as completers.

*Comments:* Most commenters support the cohort's exclusion of students who die or become permanently and totally disabled. A number of commenters pointed out the small number of these students would have little effect on graduation rates.

Some commenters expressed serious concern that the graduation rates at institutions with a significant number of legal exclusions may appear artificially low. For example, an institution with a large percentage of its students who serve on church missions will report a low graduation rate if those students do not complete within the statutory time frame. Many commenters objected to the statutory exclusions and believe that any post-hoc adjustment of the cohort based on subsequent student behavior will affect comparability of data. These commenters recommend use of the GRS to allow reporting these students as not enrolled if the time of reporting coincides with the time of the special circumstance, and separate statistics for students who have left the institution for various reasons, *e.g.,* performing church missions, joining the Armed Forces, etc. One commenter argued that in order to be excluded, the student must leave school for the express purpose of joining the Armed Forces, going on a church mission, etc., and not just subsequently join such an endeavor after leaving school for another reason.

*Discussion:* In response to the commenters' support, the regulations retain the exclusions for students who die or become totally and permanently disabled.

The Secretary appreciates the concerns raised regarding the other statutory exclusions, such as church missionary activity. However, the Secretary is unable to extend the time frame within which graduation or completion may take place for the student to be counted as a completor or graduate in the institution's completion or graduation rate, because this time frame (150% of normal time) is a statutory provision. An institution, however, may choose to deal with the difficulties of this situation in several ways. It could explain the reasons why only a few students are in its cohort, if it excludes these students through the statutory provisions. Or it could include these students in its cohort, and supplement the required calculation with additional information on the graduation rate of those students when an extended time frame is applied. The Secretary encourages institutions to provide supplementary information and data concerning these and other limitations of its graduation rate disclosure.

The Secretary also agrees that a student must leave the institution due to one of the circumstances described in § 668.46(d) in order to be excluded from the denominator of the completion or graduation rate fraction.

*Changes:* None.

*Comments:* Most commenters recommended that institutions not report a single graduation rate number based on a ratio of completers, transfers and persisters. Institutions strongly recommend the reporting of separate rates for graduates, students still enrolled, transfers-out, transfers-in and students not enrolled or graduated. The commenters believe that combining these rates will lead to a meaningless statistic.

*Discussion:* As noted above, the Secretary has dropped the proposal that institutions be allowed to count students persisting in programs longer than the program on which the institution bases its disclosure date as completers. The Secretary also mandates a separate completion or graduation rate, and a separate transfer-out rate. Therefore, the provisions in the proposed § 668.46(c) that required the break out of the different factors of the institution's graduation or completion rate have been eliminated.

As noted above, an institution may also supply supplemental information describing the transfer rate of the students who transfer into the institution. It may also publish supplemental information describing the rate of those who complete or graduate when combined with the rate of those students who transferred-out.

*Changes:* Section 668.46(c) is revised as described above.

*Comments:* Several commenters supported the provisions that allow the Secretary to waive the requirements of §§ 668.46 and 668.49 if an athletic association or conference of which it is a member satisfies the Secretary that it compiles and publishes substantially comparable data. Some of these commenters asked that the standard process for obtaining a waiver be published with the final regulations. One of these commenters also expressed the belief that the granting of the waiver should be *pro forma.* One of these commenters asked that an institution that is a member of such an athletic association or conference be allowed to maintain, publish, and distribute its own set of data as well. One commenter asked that an athletic conference or association be allowed to apply on behalf of all its members at once, rather than for each institution individually.

One commenter asked that state higher education agencies be given the opportunity to request similar waivers for their member institutions. This commenter argued that such additional waivers would not result in any more incomparability than would already be generated under the flexible rules the Secretary is proposing.

Several commenters argued that the Secretary should not give institutions the opportunity to obtain a waiver. These commenters maintained that in the interests of accurate and comparable consumer information, the Department recognize only the GRS as an acceptable method for gathering this information, and that athletic associations or conferences not be allowed to determine the methodology by which any of these data is gathered.

Several commenters asked that waivers granted to institutions for substantially comparable data supplied to athletic conferences or associations not exempt those institutions from the requirement to supply information to students, prospective students, the public, or high school counselors and coaches, as stipulated in §§ 668.41(a)(3) and 668.41(b).

One commenter asked that small institutions be allowed to request waivers exempting them entirely from these regulations. This commenter argued that small denominators in graduation rate fractions would lead to huge variances in rates from year to year. If waivers could not be granted, this commenter asked that such institutions be permitted to report data for several years together in order to cure this problem.

*Discussion:* The statute provides institutions the opportunity to ask for waivers through their athletic conferences or associations. The Secretary does not have the authority to remove this opportunity, or to withhold waivers to associations or conferences that submit applications that meet reasonable criteria. The Secretary will not approve waivers if the application does not specify that the methodology by which the conference or association is to gather these data meets the criteria set forth by the statute and these regulations. The Secretary believes that these approval criteria will provide comparable data between those institutions that report according to athletic association or conference protocols, and those that do not.

As noted above, the Secretary will also consider the protocols of state higher education agencies or other associations as acceptable methodologies if those protocols meet the requirements set by the statute and these regulations.

The statute is clear in requiring that all institutions that participate in any title IV, HEA program must comply with the requirements for supplying completion or graduation rate information and transfer-out rate information for their undergraduate populations, and that all institutions that participate in any title IV, HEA program and award athletically-related student aid must comply with the requirements to supply information on their general student population and the completion or graduation rate and transfer-out rate of their student-athletes. The statute only allows waivers for substantially comparable data submitted to an athletic conference or association. It does not empower the Secretary either to exempt an institution from these requirements, or to allow institutions to make these disclosures and reports on any but an annual basis.

In response to the concerns of small schools, institutions are always able to provide additional information, such as prior years' data, and explanations of factors affecting their completion or graduation rates.

The Secretary does not construe the statute to prohibit institutions from compiling and publishing these data even if its athletic conference or association has successfully requested waivers on its behalf, so long as the institution generates the information in compliance with the requirements of the statute, these regulations, and other Departmental guidance regarding acceptable protocols.

The Secretary agrees with the commenter that the successful application for waivers of data collection requirements on behalf of an institution by an athletic association or conference does not also exempt that institution from supplying this information to the parties identified in the statute. Institutions that obtain such waivers must still comply with the information dissemination requirements set by § 668.41.

The Secretary will publish at a later date the procedures by which an athletic association or conference may request waivers for its member institutions.

*Changes:* A change has been made to § 668.46(e) that clarifies that an institution that obtains waivers through its athletic association or conference for the generation of this data must still comply with the provisions of § 668.41.

*Section 668.49 Graduation or Completion Rate and Transfer-out Rates of Student-athletes*

*Comments:* Several commenters expressed concern over the July 1, 1997 reporting date for the data on graduation and completion rates of student athletes. These commenters contended that requiring institutions to meet this date would entail gathering information on students who had entered as far back as 1993, and because institutions who were not members of the NCAA are not tracking those students, the result would be inaccurate and flawed data, as well as a heavy burden on those institutions. These commenters believed that the tracking of these students should begin with the students entering after July 30, 1996, and that the Department not require the first report to be compiled and issued until after the 150% of the time for graduation or completion for that group of students has elapsed.

*Discussion:* The Secretary appreciates the concerns of these commenters with regard to the issue of disclosing completion or graduation rates for students entering before July 1, 1996.

With regard to the students on which institutions must compile completion or graduation rate information, the Secretary will not require institutions to provide this information for students who enter before July 1, 1996, subject to the regulatory provisions regarding the provision of average rates for previous years. However, the Secretary is aware that a large number of schools will have in hand data on students entering prior to that date as a result of complying with the requirements of organizations such as the NCAA. The Secretary strongly encourages those institutions to report those data.

All institutions must disclose the information other than the completion or graduation rate data required by this section beginning July 1, 1997. Institutions affected by these regulations must disclose the information on completion or graduation rates for student-athletes beginning on the July 1 immediately following the expiration of 150% of normal time for the group of students entering on or after July 1, 1996 on which the institution bases its completion or graduation rate, in accordance with § 668.46(a)(2).

The Secretary also wishes to clarify that the disclosure and reporting date for this information is the July 1 of the calendar year following the expiration of the 150% of normal time for the students whose graduation or completion rate performance is measured. Institutions thus will not be required to disclose this information for approximately one year after the expiration of the 150% period. The Secretary encourages institutions to disclose earlier, for example, along with the January 1 disclosures for non-student athletes.

*Changes:* None.

*Comments:* Several comments expressed concern that the level of detail the statute requires regarding the gender and race of athletes within particular sports will result in the possibility that particular students will be identifiable from the data an institution reports. These commenters contended that such a situation would violate the privacy provisions of the Buckley Amendment (Family Educational Rights and Privacy Act), and therefore asked that the Department allow institutions to leave blank those categories in their reports in which the status of a very few students (less than five) would be reported.

*Discussion:* The Secretary agrees with the commenters, and will not require institutions to report this information if five or fewer students are involved. The institution must supply a note stating that the disclosure was not made due to privacy concerns.

*Changes:* A change has been made in § 668.49 to add a provision that an institution need not disclose a completion or graduation rate or a transfer-out rate for categories that include five or fewer students.

*Comments:* Several commenters supported the provision that the same cohort of students be the subject of the reports in both §§ 668.46 and 668.49.

*Discussion:* The Secretary appreciates these commenters' support.

*Changes:* None.

*Comments:* Several commenters noted the absence of a definition of the term ''athlete'' in the proposed rules, and maintained that such a definition should be supplied in the final rules in order for the regulations to generate comparable data among institutions. One of these commenters inquired whether the term referred only to athletes who receive athletically-related student aid, whether it would include only participants in intercollegiate athletic sports, and how long participants need participate before being deemed ''athletes.''

*Discussion:* The Secretary does not agree that it is necessary to define the term ''athlete.'' The Secretary notes that the statutory term ''athletically-related student aid'' governs the selection of students upon whose performance completion or graduation rates are reported, and to whom information on performance is provided. The Secretary believes that for the purposes of the information required by § 668.49(a)(1)(ii), students who receive athletically-related student aid are all students who receive that aid at any time during the previous reporting year. For purposes of § 668.49(a)(1)(iv), entering students who receive athletically-related student aid are those students who receive athletically-related student aid for any period of time between July 1 and June 30 of their entering year. The Secretary notes that this is a methodology similar to that now employed for these purposes by the NCAA.

*Changes:* None.

Executive Order 12866

These 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 regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

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 Comment and Changes.*

Paperwork Reduction Act of 1995

Sections 668.41, 668.46 and 668.49 all 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 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.

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.

Section 668.41—Institutions must make available to students and potential students information on the completion or graduation rates and transfer out rates of the general full-time undergraduate population.

Institutions that award athletically-related student aid must provide the potential student athlete, and his or her parents, coaches, and high school counselor information on the completion or graduation rates and transfer-out rates of student-athletes. Institutions must also provide a copy of this information to the Secretary. 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.

Section 668.46—The information to be collected includes the completion or graduation rate, and the transfer-out rate of full-time, certificate- or degree-seeking undergraduate students entering the institution.

Section 668.49—The information to be collected includes the number of students attending the institution who received athletically related student aid, broken down by race and gender; the completion or graduation rate and transfer-out rate of full-time, certificate- or degree-seeking undergraduate students broken down by race and gender; the completion or graduation rate and transfer-out rate of full-time, certificate- or degree-seeking undergraduate students who received athletically related student aid, broken down by race and gender with each sport; and the average graduation or completion rate and transfer-out rate of full-time, certificate- or degree-seeking undergraduate students for the four most recent graduating or completing classes, broken down by race and gender.

Information is to be collected and disclosed once each year for institutions covered by §§ 668.41(a) 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. Thus the total annual reporting and recordkeeping burden for this collection is estimated to be 240,100 hours. These hours include the time needed for searching existing data sources and gathering, maintaining, and disclosing the data.

OMB is required to make a decision concerning the collections of information contained in these final regulation between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

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.

Regulatory Flexibility Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary solicited 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 rule, 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; 84.033 Federal Work-Study Program; 84.038 Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program.)

Dated: November 24, 1995.

Richard W. Riley,

*Secretary of Education.*

## 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 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 and its transfer-out 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 completion and graduation rates, transfer-out 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 every year 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.

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

*First-time freshman student* means an entering freshman who has never attended any institution of higher education. Includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

*Normal time* is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years (8 semesters or trimesters, or 12 quarters, excluding summer terms) for a bachelor's degree in a standard term-based institution, two years (4 semesters or trimesters, or 6 quarters, excluding summer terms) for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

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

*Undergraduate students,* for purposes of this section only, means students enrolled in a 4- or 5-year bachelor's degree program, an associate's degree program, or a vocational or technical program below the baccalaureate.

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

(2)(i) An institution that offers a predominant number of programs based on semesters, trimesters, or quarters shall base its completion or graduation rate and transfer-out rate calculations on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution during the fall term.

(ii) An institution not covered by the provisions of paragraph (a)(2)(i) of this section shall base its completion or graduation rate and transfer-out rate calculations on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution between every July 1st of one year and June 30th of the following year.

(3)(i) For purposes of the completion or graduation rate and transfer-out rate calculations required in paragraph (a)(1) of this section, an institution shall count as entering students only first-time freshman students, as defined in § 668.41(c).

(ii) An institution may also calculate the completion or graduation rate of students who transfer into the institution as a separate, supplemental rate.

(4)(i) An institution covered by the provisions of paragraph (a)(2)(i) of this section shall count as an entering student a first-time freshman student who is enrolled as of October 15, or the end of the institution's drop-add period.

(ii) An institution covered by the provisions of paragraph (a)(2)(ii) of this section shall count as an entering student a first-time freshman student who has attended at least one day of class.

(5)(i) Beginning with the group of students who enter the institution between July 1, 1996 and June 30, 1997, an institution shall disclose its completion or graduation rate and transfer-out rate information no later than the January 1 immediately following the point in time that 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and transfer-out rate calculations.

(ii) An institution shall disclose no later than January 1 each year thereafter its completion or graduation rate information for each succeeding group

of students who completed or graduated within 150% of the normal time for completion or graduation from their programs as of June 30 of the preceding year.

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

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

(2) Students who have completed a transfer program as described in § 668.8(b)(1)(ii) within 150% of normal time for completion from that program may be counted as completers.

(c)(1) In calculating the transfer-out rate under section paragraph (a) of this section, an institution shall count as students who have transferred out those 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;

(2) An institution shall document that its program provided substantial preparation to a student by obtaining a copy of any of the following:

(i) Certification letter from the receiving institution stating that a student is enrolled in that institution;

(ii) Electronic certification from the receiving institution stating that a student is enrolled in that institution;

(iii) Confirmation of enrollment data from a legally-authorized statewide or regional tracking system (or shared information from those systems) confirming that a student has enrolled in another institution;

(iv) Institutional data exchange information confirming that a student as enrolled in another institution; or

(v) An equivalent level of documentation.

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

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

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

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

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

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

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

(3) An institution, or athletic association or conference applying on behalf of an institution that seeks a waiver under paragraph (e)(1) of this section 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 every year 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 and transfer-out rate of all the entering, certificate- or degree-seeking, full-time, undergraduate students described in § 668.46(a) (1), (2), (3) and (4).

(iv) The completion or graduation rate and transfer-out rate of the entering students described in § 668.46(a) (1), (2), (3)and (4) who received athletically-related student aid, categorized by race and gender within each sport.

(v) The average completion or graduation rate and transfer-out rate for the four most recent completing or graduating classes of entering students described in § 668.46(a) (2), (3), and (4) categorized by race and gender. If an institution has completion or graduation rates and transfer-out 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.

(3) If a category of students identified in paragraph (a)(1)(iv) above contains five or fewer students, the institution need not disclose information on that category of students.

(b) The provisions of § 668.46 (a), (b) and (c) apply for purposes of calculating the completion or graduation rates and transfer-out 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—

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

(2) 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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