

The Department of Education (the Department) proposes to amend the Student Assistance General Provisions regulations issued under the Higher Education Act of 1965, as amended (HEA), to implement changes made to the Student Assistance General Provisions regulations in §§668.14, 668.171 and 668.175.. These proposed regulations are a result of negotiated rulemaking and would add new requirements to the current regulations.

These proposed regulations in §668.14 are intended to increase outreach by the Secretary and institutions and make more information available to borrowers eligible for a closed school discharge so that they are aware of the option. The proposed regulations in §668.171 include conditions and events that trigger a requirement that the school provide financial protection, such as a letter of credit. Such conditions and events include incurring significant amounts of liability in recent years for borrower defense claim losses, an institution's inability to pay claims, and events that would compromise an institution's ability to continue its participation in the title IV, HEA programs. The proposed regulations in §668.175 identifies the amounts of financial protection, such as letters of credit, required in the event of particular occurrences.

Section §668.14--Program participation agreement.

Under proposed §668.14(b)(32) as part of the program participation agreement, an institution would be required to provide all enrolled students a closed school discharge application and a written disclosure, describing the benefits and the consequences of a closed school discharge as an alternative to completing their educational program through a teach-out plan after the Department initiates any action to terminate the participation of the school in any title IV, HEA program or after the occurrence of any of the events specified in §668.14(b)(31) that would require the institution to submit a teach-out plan.

From AY 2011-12 to 2014-15 there were 182 institutions that closed (30 private, 150 proprietary, and 2 public). The number of students who were enrolled at the institutions at the time of the closure was 43,299 (5,322 at the private institutions, 37,959 at the proprietary institutions, and 18 at the public institutions). With these figures as a base, we estimate that there could be 46 schools closing in a given award year (182 institutions divided by 4 = 45.5) with an average 238 students per institution (43,299 divided by 182 = 237.9).

There will be burden on institutions to disseminate the required closed school discharge form and other information. We estimate that an institution will require two hours to prepare and process the required written disclosure with a copy of the closed school discharge application and the necessary mailing list for currently enrolled students. We anticipate that most schools will provide this information electronically to their students, thus decreasing burden and cost.

On average, we estimate that it will take the estimated 38 proprietary institutions that will close a total of 1,537 hours to prepare and process the required written disclosure with a copy of the closed school discharge application and the necessary mailing list for the estimated 9,044 enrolled students.

§668.171 Financial responsibility. General.

Under proposed §668.171(d), in accordance with procedures to be established by the Secretary, an institution would notify the Secretary of any action or triggering event described in proposed §668.171(c) no later than 10 days after that action or event occurs.

In that notice, the institution may show that certain actions or events are not material or that those actions are resolved. Specifically:

- The institution may explain why a judicial or administrative proceeding the institution disclosed to the SEC does not constitute a material event.
- The institution may demonstrate that a withdrawal of owner's equity was used solely to meet tax liabilities of the institution or its owners. Or, where the composite score is calculated based on the consolidated financial statements of a group of institutions, the amount withdrawn from one institution in the group was transferred to another entity within that group.
- The institution may show that the creditor waived a violation of a loan agreement. If the creditor imposes additional constraints or requirements as a condition of waiving the violation and continuing with the loan, the institution must identify and describe those constraints or requirements. In addition, if a

default or delinquency event occurs or other events occur that trigger, or enable the creditor to require or impose, additional constraints or penalties on the institution, the institution would be permitted to show why these actions would not have an adverse financial impact on the institution.

There will be burden on schools to provide the notice to the Secretary when one of the actions or triggering events identified in §668.171(c) occurs. We estimate that an institution will take two hours per action or triggering event to prepare the appropriate notice and provide it to the Secretary.

We estimate that 169 private institutions may have 2 events annually to report for a total burden of 676 hours (169 institutions x 2 events x 2 hours).

We estimate that 392 proprietary institutions may have 3 events annually to report for total burden of 2,352 hours (392 institutions x 3 events x 2 hours).

We estimate that 91 public institutions may have 1 event annually to report for a total burden of 182 hours (91 institutions x 1 event x 2 hours).

§668.175 Alternative standards and requirements.

Under the provisional certification alternative in §668.175, we propose to add a new paragraph (f)(4) that ties the amount of the financial protection that an institution must submit to the Secretary to an action or triggering event described in proposed §668.171(c). Specifically, under this alternative, an institution would be required to provide the Secretary financial protection, such as an irrevocable letter of credit, for an amount that is:

- For a State or Federal action under proposed §668.171(c)(1)(i)(A) or (B), 10 percent or more, as determined by the Secretary, of the amount of Direct Loan program funds received by the institution during its most recently completed fiscal year; and
- For repayments to the Secretary for losses from borrower defense claims under proposed §668.171(c)(2), the greatest annual loss incurred by the Secretary during the three most recently completed award years to resolve those claims or the amount of losses incurred by the Secretary during the most recently completed award year, whichever is greater, plus a portion of the amount of any outstanding or pending claims based on the ratio of the total value of claims resolved in favor of borrowers during the three most recently completed award years to the total value of claims adjudicated during the three most completed award years;
- For any other action or triggering event described in proposed §668.171(c), if the institution's composite score is less than 1.0, or the institution no longer qualifies under the zone alternative, 10 percent or more, as determined by the Secretary, of the total amount of title IV, HEA program funds received by the institution during its most recently completed fiscal year.

There will be burden on schools to provide the required financial protection, such as a letter of credit, to the Secretary to utilize the provisional certification alternative. We estimate that an institution will take 40 hours per action or triggering event to obtain the required financial protections and provide it to the Secretary.

We estimate that 169 private not-for-profit institutions may have 2 events annually to report for a total burden of 13,520 hours (169 institutions x 2 events x 40 hours).

We estimate that 392 proprietary institutions may have 3 events annually to report for total burden of 47,040 hours (392 institutions x 3 events x 40 hours).

TOTALS

Responses	11,396
Respondents	430
Burden Hours	50,929