

**SUPPORTING STATEMENT  
FOR PAPERWORK REDUCTION ACT SUBMISSION**

**Student Assistance General Provisions – Non-Title IV Revenue Requirements (90/10)**

**A. Justification**

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a hard copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information, or you may provide a valid URL link or paste the applicable section<sup>1</sup>. Specify the review type of the collection (new, revision, extension, reinstatement with change, reinstatement without change). If revised, briefly specify the changes. If a rulemaking is involved, make note of the sections or changed sections, if applicable.

The regulations in 34 CFR 668.28 provide that a proprietary institution must derive at least 10% of its annual revenue from sources other than Title IV, HEA funds, identifies sanctions for failing to meet this requirement, and otherwise implement the statute. An institution discloses in a footnote to its audited financial statements the amounts of Federal and non-Federal revenues, by category, that it used in calculating its 90/10 ratio (see section 487(d) of the HEA).

The publication of final regulations on September 2, 2020, removed section 668.285(b) regarding Net Present Value in the calculation of the 90/10 ratio and reserved this subparagraph as of the effective date of the regulation, July 1, 2021.

This request is to revise the currently approved information collection package, OMB Control Number 1845-0096, to include burden hours based on section 668.28(c) Sanctions. The information collection requirements in the regulations are necessary to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Section 668.28(c) – Sanctions

The regulation provides that the institution must notify the Secretary no later than 45 days after the end of the fiscal year if it fails to meet the 90/10 requirement.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The institutions may report the meeting or failure to meet the 90/10 revenue requirements as a footnote to the required annual financial audit, allowing the

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<sup>1</sup> Please limit pasted text to no longer than 3 paragraphs.

Department to institute either provisional certification or loss of eligibility to participate proceedings. The institutional information regarding the failure to meet the 90/10 revenue must be reported to the Secretary who must publicly disclose the institutional information on the Department's College Navigator Website.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision of adopting this means of collection. Also describe any consideration given to using technology to reduce burden.

The reporting of this information via the audited financial statements may be sent to the Department in an electronic format using the eZ-Audit process.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

There is no duplication of data as a result of the collection of this information.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction, which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

These regulatory requirements are met by use of a footnote in the required annual financial audit, minimizing the reporting burden to any small entity. Additionally the audit is submitted through use of the free eZ-Audit software provided by the Department.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Per statute, the information must be collected annually. If the information is not collected annually a school not meeting this revenue requirement could continue to participate in the Title IV, HEA programs inappropriately, risking abuse of HEA program funding and inhibiting the Department's ability to institute either provisional certification or loss of eligibility to participate proceedings against the institution. Additionally, the Department is required to publicly disclose the institutional information and does so on the Department's [collegecost.ed.gov](http://collegecost.ed.gov) website and on the Federal Student Aid Data Center. The Department's reporting requirement would be hampered if this reporting requirement were not fulfilled.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;
- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- in connection with a statistical survey, that is not designed to produce valid and reliable results than can be generalized to the universe of study;
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or that unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The information collection requirements require no special circumstances.

8. As applicable, state that the Department has published the 60 and 30 Federal Register notices as required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instruction and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On October 25, 2021, a Federal Register Notice was published (Vol. 86, No. 203, pages 58900-58901) requesting public comment on the burden assessment for this collection. There were three comments received. Two of the comments were substantive but spoke to the underlying regulations and suggesting changes. That is outside the scope of this effort. The suggestions have been forwarded to the appropriate office at the Department of Education for review and consideration. The third comment expressed

dissatisfaction with the collection but did not explain why or offer improvements. There is no change to the burden estimate. The Department is now requesting a 30-day public comment period to allow for review and comment on the burden calculated for this reporting requirement.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees with meaningful justification.

There are no payments or gifts to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If personally identifiable information (PII) is being collected, a Privacy Act statement should be included on the instrument. Please provide a citation for the Systems of Record Notice and the date a Privacy Impact Assessment was completed as indicated on the IC Data Form. A confidentiality statement with a legal citation that authorizes the pledge of confidentiality should be provided.<sup>2</sup> If the collection is subject to the Privacy Act, the Privacy Act statement is deemed sufficient with respect to confidentiality. If there is no expectation of confidentiality, simply state that the Department makes no pledge about the confidentiality of the data.

This collection does not include any confidential information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. The justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The Department is not requesting any sensitive data.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- Indicate the number of respondents by affected public type (federal government, individuals or households, private sector – businesses or other for-profit, private sector – not-for-profit institutions, farms, state, local or tribal governments), frequency of response, annual hour burden, and an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure. All narrative should be included in item 12. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential

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<sup>2</sup> Requests for this information are in accordance with the following ED and OMB policies: Privacy Act of 1974, OMB Circular A-108 – Privacy Act Implementation – Guidelines and Responsibilities, OMB Circular A-130 Appendix I – Federal Agency Responsibilities for Maintaining Records About Individuals, OMB M-03-22 – OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, OMB M-06-15 – Safeguarding Personally Identifiable Information, OM:6-104 – Privacy Act of 1974 (Collection, Use and Protection of Personally Identifiable Information)

respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in the ROCIS IC Burden Analysis Table. (The table should at minimum include Respondent types, IC activity, Respondent and Responses, Hours/Response, and Total Hours)
- Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

The Department estimates the hours for proprietary institutions to meet the regulatory requirement to report to the Secretary the failure to meet the non-Title IV revenue (90/10) requirement to be 30 minutes per institution.

Affected Entities and Burden:

<u>Institutions</u>	<u># of Respondents</u>	<u># of Responses</u>	<u># of Burden Hours</u>
Proprietary	10	10	X .50 hours = 5 hours
Revised TOTAL	10	10	5 hours

Current Burden Inventory:

<u># of Respondents</u>	<u># of Responses</u>	<u># of Burden Hours</u>
1,872	1,872	2,808

Difference in Inventory:

<u># of Respondents</u>	<u># of Responses</u>	<u># of Burden Hours</u>
-1,862	-1,862	-2,803

The Department estimates that the cost to the institutional respondents will be:

<u>Institutions</u>	<u># of Respondents</u>	<u>Est. \$/ Hour</u>	<u>Est. \$ of Burden</u>
Proprietary	10	X \$36.55	X .50 hours = \$ 182.75
TOTAL			\$ 182.75

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

- The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the

information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and acquiring and maintaining record storage facilities.

- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices. Also, these estimates should not include the hourly costs (i.e., the monetization of the hours) captured above in Item 12

Total Annualized Capital/Startup Cost :  
Total Annual Costs (O&M) :  
  
Total Annualized Costs Requested : \_\_\_\_\_

There are no system start-up costs or additional cost burdens associated with this collection other than those listed in item 12.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

There is no cost to the government associated with these regulations.

15. Explain the reasons for any program changes or adjustments. Generally, adjustments in burden result from re-estimating burden and/or from economic phenomenon outside of an agency's control (e.g., correcting a burden estimate or an organic increase in the size of the reporting universe). Program changes result from a deliberate action that materially changes a collection of information and generally are result of new statute or an agency action (e.g., changing a form, revising regulations, redefining the respondent universe, etc.). Burden changes should be disaggregated by type of change (i.e., adjustment, program change due to new statute, and/or program change due to agency discretion), type of collection (new, revision, extension, reinstatement with change, reinstatement without change) and include totals for changes in burden hours, responses and costs (if applicable).

With the cancellation of the requirement to calculate the Net Present Value, this request is to revise the current information collection to estimate the burden for the reporting of the sanction to the Department. We estimate that an average of 10 institutions will be required to report to the Department that they have not met the non-Title IV revenue (90/10) requirement. The estimated burden hours are now estimated at 5 hours, a decrease of 2,803, based on the estimated number of institutions required to report information of 10, a decrease of 1,682 institutions.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Institutions that fail to meet the 90/10 Rule will be identified publicly on the Department's [collegecost.ed.gov](http://collegecost.ed.gov) website and on the Federal Student Aid Data Center.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Department is not seeking this approval.

18. Explain each exception to the certification statement identified in the Certification of Paperwork Reduction Act.

The Department is not requesting any exceptions to the "Certification for Paperwork Reduction Act Submissions" of OMB Form 83-1.