

SUPPORTING STATEMENT
FOR PAPERWORK REDUCTION ACT SUBMISSION
Student Assistance General Provisions – Non-Federal revenue (90/10).

- 1. Explain the circumstances that make the collection of information necessary. What is the purpose for this information collection? Identify any legal or administrative requirements that necessitate the collection. Include a citation that authorizes the collection of information. 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, list the sections with a brief description of the information collection requirement, and/or changes to sections, if applicable.**

The Department of Education (the Department) proposes to amend the Student Assistance General Provisions regulations to implement changes to § 668.28 – Non-Federal revenue (90/10). These proposed changes are based on requirements of the American Rescue Plan of 2021 which amended Section 487 of the Higher Education Act of 1965, as amended, (HEA). These proposed regulations are a result of negotiated rulemaking in 2021 and would add new requirements to the current regulations.

The proposed regulations would amend the heading of §668.28 and references throughout the section to change “non-title IV revenue” to “non-Federal funds”.

The proposed regulations would amend §668.28(a)(2) to create a disbursement rule that outlines how proprietary institutions calculate the percentage of their revenue that is Federal revenue and creates an end-of-fiscal-year deadline for proprietary institutions to request and disburse title IV funds to students.

The proposed regulations would also modify §668.28(c)(3) with the steps that proprietary institutions must take if they fail to derive at least 10 percent of their revenue from allowable non-Federal sources by requiring them to notify students of the failure and the students’ potential loss of title IV aid at that proprietary institution.

- 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 proposed new disbursement rule in §668.28(a)(2) would be used by proprietary institutions to develop a new procedure for identifying students for whom title IV, HEA program disbursements must be made prior to the institution’s fiscal year end. This process would ensure that the students have received the funding to which they are entitled and that the institution is properly accounting for funds under the 90/10 rule.

The proposed requirement in §668.28(c)(3) would be used by institutions to disclose to students if it fails the 90/10 revenue requirements and the potential loss of title IV, HEA

program eligibility at the end of the current fiscal year if the institution has failed to meet the 90/10 revenue requirements for the prior fiscal year. This information would be used to assist with the potential impact on student's determination of enrollment and continued financial aid eligibility.

- 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. Please identify systems or websites used to electronically collect this information. Also describe any consideration given to using technology to reduce burden. If there is an increase or decrease in burden related to using technology (e.g. using an electronic form, system or website from paper), please explain in number 12.**

There is nothing in the regulations that would prohibit the use of technology to disclose to students any failure to meet regulatory requirements. It is anticipated that institutions will employ intra- and internet sites to post the required disclosure.

- 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.**

This information is not duplicated in any other information collection.

- 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.**

The Department does not believe the proposed regulations will adversely impact any institution that may meet the small entity designation. Additionally the use of electronic means to provide the required disclosure will also minimize any impact to a small entity.

- 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.**

If the requirements in these proposed regulations do not occur, institutions would not be meeting their regulatory requirements which would threaten their ability to participate in the title IV HEA student aid programs. Additionally, if this information were not provided to a student, they would not have necessary information to

determine the feasibility of their continued enrollment at an institution not meeting the 90/10 revenue requirements. This could risk taxpayer funds.

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.**

This information collection does not require any of the noted 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.**

Include a citation for the 60 day comment period (e.g. Vol. 84 FR ##### and the date of publication). Summarize public comments received in response to the 60 day notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. If only non-substantive comments are provided, please provide a statement to that effect and that it did not relate or warrant any changes to this information collection request. In your comments, please also indicate the number of public comments received.

For the 30 day notice, indicate that a notice will be published. 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.

The Department developed these proposed regulations after conducting negotiated rulemaking with affected entities and other interested parties. The public comment period for this information collection runs concurrently with the Notice of Proposed Rulemaking.

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

No payments or gifts will be provided 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.¹ 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. If no PII will be collected, state that no assurance of confidentiality is provided to respondents. If the Paperwork Burden Statement is not included physically on a form, you may include it here. Please ensure that your response per respondent matches the estimate provided in number 12.**

There are no assurances of confidentiality provided to institutions regarding this 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**

¹ 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)

information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature in this collection.

12. Provide estimates of the hour burden for this current information collection request. The statement should:

- **Provide an explanation of how the burden was estimated, including identification of burden type: recordkeeping, reporting or third party disclosure. Address changes in burden due to the use of technology (if applicable). Generally, estimates should not include burden hours for customary and usual business practices.**
- **Please do not include increases in burden and respondents numerically in this table. Explain these changes in number 15.**
- **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. 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 respondents is desirable.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burden in the table below.**
- **Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories. [Use this site](#) to research the appropriate wage rate. 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. If there is no cost to respondents, indicate by entering 0 in the chart below and/or provide a statement.**

The proposed regulations would amend § 668.28(a)(2) to create a disbursement rule that outlines how proprietary institutions calculate the percentage of their revenue that is Federal revenue and would create an end-of-fiscal-year deadline for proprietary institutions to request and disburse title IV funds to students.

We believe that this proposed change to § 668.28(a)(2) would result in burden for the institution. As of April 2022, there were 1,650 proprietary institutions eligible to participate in the title IV, HEA funded programs. We believe that all proprietary institutions would be required to perform this calculation. We believe that it will take 1,650 institutions an estimated 24 hours each to gather information about the eligible students and payment information to perform the required calculations and request any required disbursements for a total of 39,600 hours (1,650 institutions x 24 hours = 39,600

hours). The estimated costs for institutions to meet this requirement would be \$1,844,964.

The proposed regulations at § 668.28(c)(3) would establish disclosures for proprietary institutions that fail to derive at least 10 percent of their fiscal-year revenues from allowable non-Federal funds.

We believe that the proposed change to § 668.28(c)(3), which would require institutions to notify students when the institution fails the 90/10 revenue test, would result in a burden for the institution. For the 2019-2020 Award Year there were 33 institutions that failed to meet the 90/10 revenue test when adding in Post 9-11 GI Bill and DOD Tuition Assistance funds. Using this number of institutions as representative of the number of institutions that would annually fail the 90/10 revenue test, we estimate that 33 institutions would require 4 hours to develop and post the required notice on the institution's intranet and internet sites for a total of 132 hours (33 institutions x 4 hours = 132 hours). The estimated costs for institutions to meet this requirement would be \$6,150.

Proposed increase in burden due to statutory change and new regulations:

Affected Entity	Respondent	Responses	Total Burden	Cost
For-Profit Inst.	1,650	1,683	39,732	\$1,851,114
Totals	1,650	1,683	39,732	\$1,851,114

There are no prescribed forms or formats for this information. For-Profit institutions are the only entity subject to this information collection. There is no change to the previous burden assessed to this collection.

The monetized net cost of the increased burden for institutions was calculated using wage data developed using Bureau of Labor Statistics (BLS) data. For institutions we have used the median hourly wage for Education Administrators, Postsecondary, \$46.59 per hour according to BLS as of May 2021.

<https://www.bls.gov/oes/current/oes119033.htm>.

Estimated Annual Burden and Respondent Costs Table

Information Activity or IC (with type of respondent)	Number of Respondents	Number of Responses	Average Burden Hours per Response	Total Annual Burden Hours	Estimated Respondent Average Hourly Wage	Total Annual Costs (hourly wage x total burden hours)
Individual	N/A	N/A	N/A	N/A	N/A	N/A
For-Profit Institutions	1,650	1,693	23.47	39,737	\$46.59	\$1,851,346.80
Private Institutions	N/A	N/A	N/A	N/A	N/A	N/A
Public Institutions	N/A	N/A	N/A	N/A	N/A	N/A
Annualized Totals	1,650	1,693	23.47	39,737	\$46.59	\$1,851,346.80

Please ensure the annual total burden, respondents and response match those entered in IC Data Parts 1 and 2, and the response per respondent matches the Paperwork Burden Statement that must be included on all forms.

- 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 is no additional cost.

- 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 additional cost to the Federal government.

- 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).**

Provide a descriptive narrative for the reasons of any change in addition to completing the table with the burden hour change(s) here.

	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate
Total Burden	+39,732		
Total Responses	+1,683		
Total Costs (if applicable)			

This is a request for an increase in burden due to a proposed regulation based on a statutory change. The Department is requesting an increase of 39,732 hours for 1,683 responses at 1,650 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.**

The statute, Section 487(d) of the HEA requires the Secretary to publicly disclose on the proprietary institutions that fail to meet the requirements of the 90/10 revenue test. Institutions that fail to meet the 90/10 Rule will be identified publicly on the Department's collegecost.ed.gov website.

- 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-I.