

The Department convened a negotiated rulemaking committee, the Institutional and Programmatic Eligibility Committee, to consider proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended, (HEA). Through the Notice of Proposed Rulemaking (NPRM), docket number ED-2022-OPE-0062, the Secretary proposes new regulations to promote transparency, competence, stability, and effective outcomes for students in the provision of postsecondary education.

The Department proposes the changes to the following sections in information collection 1845-0022 Student Assistance General Provisions: §§ 668.14, 668.15, 668.16, 668.23, 668.43, 668.171.

The NPRM proposes that new paragraph (e) outlines a non-exhaustive list of conditions that the Department may opt to apply to provisionally certified institutions. The NPRM proposes that institutions at risk of closure must submit an acceptable teach-out plan or agreement to the Department, the State, and the institution's recognized accrediting agency. The NPRM proposes that institutions at risk of closure must submit an acceptable records retention plan that addresses title IV, HEA records, including but not limited to student transcripts, and evidence that the plan has been implemented, to the Department. The NPRM also proposes that an institution at risk of closure that is teaching out, closing, or that is not financially responsible or administratively capable, would release holds on student transcripts. Other conditions for institutions that are provisionally certified and may be applied by the Secretary are also proposed.

Section 668.14-Program participation agreement.

The proposed NPRM regulatory language in § 668.14 would add burden to all institutions, domestic and foreign. The proposed change in § 668.14(e) would potentially require provisionally certified institutions at risk of closure to submit to the Department acceptable teach-out plans, and acceptable record retention plans. For provisionally certified institutions at risk of closure, are teaching out or closing, or are not financially responsible or administratively capable, the proposed change requires the release of holds on student transcripts.

We believe that this type of update would require 10 hours for each institution to provide the appropriate material, or required action based on the proposed regulations. As of January 2023, there were a total of 863 domestic and foreign institutions that were provisionally certified. We estimate that of that figure 5% or 43 provisionally certified institutions may be at risk of closure.

We estimate that it would take private non-profit institutions 250 hours (25 x 10 = 250) to complete the submission of information or required action.

Section 668.15-Factors of financial responsibility.

This section is being removed and reserved. This would remove 866 respondents, 866 responses, 816 hours from private institutions.

Section 668.16-Standards of administrative capability.

The Department proposes to amend § 668.16 to clarify the characteristics of institutions that are administratively capable. The NPRM proposes amending § 668.16(h) which would require institutions to provide adequate financial aid counseling and financial aid communications to advise students and families to accept the most beneficial types of financial assistance available to enrolled students. This would include clear information about the cost of attendance, sources and amounts of each type of aid separated by the type of aid, the net price, and instructions and applicable deadlines for accepting, declining, or adjusting award amounts. Institutions would also have to provide students with information about the institution's cost of attendance, the source and type of aid offered, whether it must be earned or repaid, the net price, and deadlines for accepting, declining, or adjusting award amounts.

The NPRM also proposes amending § 668.16(p) which would strengthen the requirement that institutions must develop and follow adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education. The Department proposes to update the references to high school completion in the current regulation to high school diploma which would set specific requirements to the existing procedural requirement for adequate evaluation of the validity of a student's high school diploma.

The proposed NPRM regulatory language in § 668.16 would add burden to all institutions, domestic and foreign. The proposed changes in § 668.16(h) would require an update to the financial aid communications provided to students.

We believe that this update would require 8 hours for each institution to review their current communications and make the appropriate updates to the material based on the proposed regulations.

We estimate that it would take private non-profit institutions 15,304 hours ($1,913 \times 8 = 15,304$) to complete the required review and update.

The proposed changes in § 668.16(p) would add requirements for adequate procedures to evaluate the validity of a student's high school diploma if the institution or the Department has reason to believe that the high school diploma is not valid or was not obtained from an entity that provides secondary school education.

We believe that this update would require 3 hours for each institution to review their current policy and procedures for evaluating high school diplomas and make the appropriate updates to the material based on the proposed regulations.

We estimate that it would take private non-profit institutions 5,739 hours ($1,913 \times 3 = 5,739$) to complete the required review and update.

Section 668.23-Compliance audits and audited financial statements.

The Department proposes to add § 668.23(d)(2)(ii) that would require that an institution, domestic or foreign, that is owned by a foreign entity holding at least a 50 percent voting or equity interest to provide documentation of its status under the law of the jurisdiction under which it is organized, as well as basic organizational documents. The submission of such documentation would better equip the Department to obtain appropriate and necessary documentation from an institution which has a foreign owner or owners with 50 percent or greater voting or equity interest which would provide a clearer picture of the institution's legal status to the Department, as well as who exercises direct or indirect ownership over the institution.

The Department also proposes adding new § 668.23(d)(5) that would require an institution to disclose in a footnote to its financial statement audit the dollar amounts it has spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

The proposed NPRM regulatory language in § 668.23(d)(2)(ii) would add burden to foreign institutions and certain domestic institutions to submit documentation, translated into English as needed.

We believe this reporting activity would require an estimated 40 hours of work for affected institutions to complete.

We estimate that it would take private non-profit institutions 13,520 hours ($338 \times 40 = 13,520$) to complete the required documentation gathering and translation as needed.

The proposed NPRM regulatory language in § 668.23(d)(5) would add burden to all institutions, domestic and foreign. The proposed changes in § 668.23(d)(5) would require a footnote to its financial statement audit regarding the dollar amount spent in the preceding fiscal year on recruiting activities, advertising, and other pre-enrollment expenditures.

We believe that this footnote reporting activity would require an estimated 8 hours per institution to complete.

We estimate that it would take private non-profit institutions 15,304 hours ($1,913 \times 8 = 15,304$) to complete the required footnote activity.

Section 668.43-Institutional and programmatic information.

Under proposed § 668.43(d), the Department would establish and maintain a website for posting and distributing key information and disclosures pertaining to the institution's educational programs. An institution would provide such information as the Department prescribes through a notice published in the Federal Register for disclosure to prospective and enrolled students through the website.

This information could include, but would not be limited to, the primary occupations that the program prepares students to enter, along with links to occupational profiles on O*NET or its successor site; the program's or institution's completion rates and withdrawal rates for full-time and less-than-full-time students, as reported to or calculated by the Department; the length of the program in calendar time;

the total number of individuals enrolled in the program during the most recently completed award year; the total cost of tuition and fees, and the total cost of books, supplies, and equipment, that a student would incur for completing the program within the length of the program; the percentage of the individuals enrolled in the program during the most recently completed award year who received a title IV, HEA loan, a private education loan, or both; whether the program is programmatically accredited and the name of the accrediting agency; and the supplementary performance measures in proposed § 668.13(e).

The institution would be required to provide a prominent link and any other needed information to access the website on any webpage containing academic, cost, financial aid, or admissions information about the program or institution. The Department could require the institution to modify a webpage if the information about how to access the Department's website is not sufficiently prominent, readily accessible, clear, conspicuous, or direct.

In addition, the Department would require the institution to provide the relevant information to access the website to any prospective student or third party acting on behalf of the prospective student before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution.

The proposed NPRM regulatory language in § 668.43(d) would add burden to all institutions, domestic and foreign. The proposed changes in § 668.43(d) would require institutions to supply the Department with specific information about programs it is offering as well as disclose to enrolled and prospective students this information.

We believe that this reporting or disclosure activity would require an estimated 50 hours per institution.

We estimate that it would take private non-profit institutions 95,650 hours ($1,913 \times 50 = 95,650$) to complete the required reporting or disclosure activity.

Section 668.171 General.

The NPRM proposes to amend § 668.171(f) by adding several new events to the existing reporting requirements, and expanding others, that must be reported generally no later than 10 days following the event. Implementation of the proposed reportable events would make the Department more aware of instances that may impact an institution's financial responsibility or stability. The proposed reportable events are linked to the financial standards in § 668.171(b) and the proposed financial triggers in § 668.171 (c) and (d) where there is no existing mechanism for the Department to know that a failure or a triggering event has occurred. Notification regarding these events would allow the Department to initiate actions to either obtain financial protection, or determine if financial protection is necessary, to protect students from the negative consequences of an institution's financial instability and possible closure.

The NPRM also proposes to amend § 668.171(g) by adding language which would require a public institution to provide to the Department a letter from an official of the government entity or other signed documentation acceptable to the Department. The letter or documentation must state that the institution is backed by the full faith and credit of the government entity. The Department also proposes similar amendments to apply to foreign institutions.

The proposed NPRM regulatory language in § 668.171(f) would add burden to institutions regarding evidence of financial responsibility. The proposed regulations in § 668.171(f) would require institutions to demonstrate to the Department that it met the triggers set forth in the regulations. We estimate that domestic and foreign, have the potential to hit a trigger that would require them to submit documentation to determine eligibility for continued participation in the title IV programs. The overwhelming majority of reporting would likely stem from the mandatory triggering event on gainful employment programs that are failing with limited reporting under additional events.

We believe that this documentation and reporting activity would require an estimated 2 hours per institution.

We estimate it would take private non-profit institutions 100 hours (50 institutions x 2 hours = 100) to complete the required documentation and reporting activity.

TOTALS

Responses – 7,199

Respondents – 1,193

Burden Hours – 145,051

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1845-0022. Public reporting burden for this collection of information is estimated to average 19 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain a benefit (34 CFR 668). If you have comments or concerns regarding the status of your individual submission of this information, please contact Beth Grebeldinger at beth.grebeldinger@ed.gov directly.