

## DEPARTMENT OF EDUCATION

## 34 CFR Part 668

## Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** The Secretary amends the Student Assistance General Provisions regulations. These technical amendments are necessary to correct citations and typographical errors, to clarify regulatory language, and to add Office of Management and Budget control numbers.

**EFFECTIVE DATE:** These regulations take effect July 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** John Kolotos or Lloyd Horwich, U.S. Department of Education, 7th and D Streets, SW, Regional Office Building 3, Room 3045, Washington, DC 20202-5345. Telephone: (202) 708-8242. 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 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** The following regulations are amended to correct citations and typographical errors and to clarify regulatory language in the text of the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 668.172 and 668.173 are amended to clarify regulatory language explaining the general standards of financial responsibility. Sections 668.174 and 668.175 are amended to correct certain citations to other sections.

Section 668.174 also is amended to correct typographical errors concerning the percentage of ownership necessary for a person or entity to be considered to exercise substantial control over an institution that receives funds under title IV of the Higher Education Act of 1965, as amended, or over a third-party servicer to such an institution.

Final regulations for §§ 668.171, 668.172, 668.174, and 668.175 were published on November 25, 1997 (62 FR 62830). Compliance with information collection requirements in these sections was subject to Office of Management and Budget (OMB) approval and assignment of an OMB control number. OMB assigned a control

number on January 20, 1998.

Publication of the control number in these final regulations notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

Appendix G to Part 668 is amended to clarify the definition of an accounting term used in calculating an institution's Primary Reserve Ratio.

**Waiver of Proposed Rulemaking**

In accordance with the Administrative Procedure Act, 5 U.S.C. 553, it is the Secretary's practice to offer interested parties the opportunity to comment on proposed regulations. However, the regulatory changes in this document are necessary to add OMB control numbers and correct minor technical errors and omissions in the Student Assistance General Provisions regulations, 34 CFR 668. They do not establish any new substantive rules. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

**Regulatory Flexibility Act Certification**

The Secretary certifies that these final regulations will not have significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These regulations contain technical amendments designed to clarify and correct current regulations. The changes will not have a significant economic impact on any of the institutions affected.

**Paperwork Reduction Act of 1995**

These regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

**Assessment of Educational Impact**

Based on its own review, 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.

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**List of Subjects in 34 CFR Part 668**

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: July 20, 1998.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

The Secretary amends Part 668 of Title 34 of the Code of Federal Regulations as follows:

**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.

**§§ 668.171, 668.172, 668.174, 668.175 [Amended]**

2. Sections 668.171, 668.172, 668.174, and 668.175 are amended by adding the OMB control number following the sections to read as follows: "(Approved by Office of Management and Budget under control number 1840-0537)".

**§ 668.172 [Amended]**

3. Section 668.172 is amended by removing "Primary Reserve ratio" and adding in its place "ratio calculations" in paragraph (c)(5)(ii).

4. Section 668.173 is amended by revising paragraph (b) to read as follows:

**§ 668.173 Refund reserve standards.**

\* \* \* \* \*

(b) *Timely refunds.* An institution demonstrates that it makes required refunds within the time permitted under § 668.22(j)(4) if the auditor(s) who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years—

(1) Finds in the sample of student records audited or reviewed for each of those fiscal years that—

(i) Less than five percent of the refunds that the institution made within that sample were late (for purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the

sample only those title IV, HEA program recipients who received or should have received a refund under § 668.22); or

(ii) The institution made only one late refund within that sample (regardless of the percentage of the refunds within that sample represented by the one late refund); and

(2) Did not note for either of those fiscal years a material weakness or a reportable condition in the institution's report on internal controls that is related to refunds.

\* \* \* \* \*

**§ 668.174 [Amended]**

5. Section 668.174 is amended by removing "20 percent ownership" and adding in its place "25 percent

ownership" in paragraphs (c)(3)(i), (ii), (iii) and (iv)(B).

6. Section 668.174 is amended by adding "a general partner" after "board of directors" in paragraph (c)(3)(iv) introductory text.

**§ 668.175 [Amended]**

7. Section 668.175 is amended by removing "668.174(d)" and adding in its place "668.174(b)(1) and (c)" in paragraphs (f)(3)(i) and (ii).

8. Section 668.175 is amended by removing the semicolon and inserting ", except that this requirement does not apply to a public institution;" at the end of paragraph (f)(2)(i).

9. Section 668.175 is amended by removing "668.174(d)" and adding in

place "668.174(b)(1) and (c)" and by removing "668.174(c)(2)(ii)" and adding in its place "668.174(b)(2)(ii)" in paragraph (g)(1)(i)(A).

10. Section 668.175 is amended by removing "668.171(b) and (d)" and adding in its place "668.171(b) and (d)(1)" in paragraph (g)(1)(ii).

**Appendix G—[Amended]**

11. Appendix G, Section 1, to Part 668 is amended by inserting

"—(unsecured related-party receivables)" at the end of the definition of Expendable Net Assets.

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