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UNITED STATES DEPARTMENT OF EDUCATION

Office of Student Financial Assistance Programs

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Kansas City, Missouri 64153-1367

FILE COPY

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August 31, 1999

60188100

Dr. James J. Ross, President
Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

Certified Mail
Return Receipt Requested

PRCN: 199940716575

Dear Dr. Ross:

During the week of July 19, 1999, Susan Crim, B. Ann Hageman and Steve Dorssom, Institutional Review Specialists, conducted a focused program review of the Campus Security Act of 1990 administered by Mount Saint Clare College. The findings of that review are presented in the enclosed report.

This report contains findings regarding the school's administration of the Title IV Student Financial Assistance programs. Findings of noncompliance are referenced to the applicable regulations and specify the action required to comply with the regulations and statutes. Please review and respond to the report, indicating the corrective actions taken by the institution. Your response should be sent directly to Mr. Dorssom within 30 days.

I would like to express my appreciation for the courtesy and cooperation extended during the review. If you have any questions concerning this report, please call Mr. Dorssom at 816-880-4054.

Sincerely,

Ralph A. LoBosco, Area Case Director
Kansas City Case Management Team
Institutional Participation and Oversight Service
Student Financial Assistance Programs

Enclosure

cc: Mr. David L. Womack, Dean of Student Affairs
Mr. Paul Bookmeyer, CPA, Director of Administrative Services
Document Receipt and Control Center
Iowa College Student Aid Commission

PROGRAM REVIEW REPORT

Mount Saint Clare College
400 Bluff Blvd
Clinton, Iowa 52732
319-242-4023

DATES OF REVIEW: July 20-23, 1999

AWARD YEARS REVIEWED: 1993 To Present
FOCUSED REVIEW : Campus Security Act

OPE ID#: 00188100
EIN: 420745980

TYPE AND CONTROL: Private/4year

ACCREDITATION: North Central Association of Colleges and Schools

REVIEWING ED OFFICIALS: Steve Dorssom, Susan Crim, B. Ann Hageman

FFEL DEFAULT RATE: 1996—10.1% 1995—15.7%

METHOD OF PAYMENT: Advance Payment

SFA PROGRAM PARTICIPATION:

<u>1997-98</u>	
\$331,024	Federal Pell Grant Program
\$2,013,643	Federal Family Educational Loan Program (FFEL)
\$50,679	Federal Supplemental Educational Opportunity Grant Program(FSEOG)

INSTITUTIONAL OFFICIALS CONTACTED:

Dr. James J. Ross, President
Ms. Lisa Kramer, Financial Aid Director
Mr. David Womack, Dean of Student Affairs
Mr. Paul Bookmeyer, CPA, Director of Administrative Services
Mary Lou Mallicoat, Director of Records
Waunita M. Sullivan, Director of Enrollment

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INTRODUCTION

Mount Saint Clare College (MSC or the College) was established in 1918. The college is accredited by the North Central Association of Colleges and Schools and the Iowa State Department of Public Instruction. The college is located on a scenic bluff in Clinton, Iowa near the Mississippi River.

Mount Saint Clare became a four-year college in 1979 with successful accreditation of its first baccalaureate degree program in business administration. Additional four-year programs include: liberal arts, elementary education, general studies and social science, applied science, biology and music education.

The institution participates in the Federal Pell Grant, Federal Supplemental Educational Opportunity Grant, Federal Work Study, Federal Perkins Loan, and Federal Family Education Loan programs. The academic year 1997-98 enrollment totaled 582 students of which 365 received some form of Federal Financial Assistance.

Mount Saint Clare College was selected for review as a result of a parental complaint regarding the institution's compliance with the Campus Security Act requirements. The Department previously corresponded with the College on October 29, 1998 and March 9, 1999. The institution submitted its responses to these letters on November 3, 1998 and April 1, 1999. The Department conducted an on-site review from July 20 to 23, 1999. The review team was composed of Steve Dorssom, Senior Institutional Review Specialist from the Kansas City Case Management Team, Susan Crim, Kansas City Case Management Team adjunct to the Administrative Actions and Appeals Division (AAAD), and B. Ann Hageman, Institutional Review Specialist from the Performance Improvement and Procedures Division (PIPD).

Mount Saint Clare's response to this report is due 30 days from the receipt of this report. As discussed at the exit interview, the findings resulting from this program review could be referred to the Department's Administrative Action and Appeals Division for possible administrative action. Administrative action includes the imposition of fines, or limitation, suspension or termination of the institution's eligibility to participate in the Title IV programs.

SCOPE OF REVIEW

Members of the Kansas City Case Management Team conducted a program review during the week of July 19, 1999. The review examined the school's compliance with administration of the Campus Security Act of 1990. The review team interviewed school officials and reviewed relevant documents. The documents reviewed included: Campus Security Act brochures from 1996 to present; residence hall incident reports from 1993 to present; statistical summaries of campus incidents from 1996 to present, Student Handbook information from 1996 to present; admissions information sent to prospective students; and judicial board/administrative action committee information from 1993 to present. The review team also obtained statistics from the Clinton Police Department regarding reports of the crimes specified in the Campus Security Act.

During the review, some areas of noncompliance were noted. Findings of noncompliance are referenced to the applicable laws, regulations, and policies, and specify the actions to be taken by Mount Saint Clare to bring the operation of the Institution into compliance with regulations and statutes.

Although the review was thorough, it was focused on the institution's compliance with the requirements of the Campus Security Act and, therefore, cannot be assumed to be all-inclusive. The absence of statements in the report concerning Mount Saint Clare's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve Mount Saint Clare College of its obligation to comply with all of the statutes or regulatory provisions governing Title IV programs.

FINDINGS REQUIRING INSTITUTIONAL ACTION

1. Crime Statistics Not Accurately Disclosed – Annual Campus Security Reports

The review team examined MSC's annual campus security reports for each of the years 1994 through 1998 to determine whether the College made all of the required disclosures and whether the disclosed information was accurate. The reviewers also reviewed a 1999 report of crime statistics provided to the State of Iowa and a draft of a campus security report being prepared for distribution to students for the Fall 1999 semester. Because the Department received a complaint about the accuracy of the reported statistics, the reviewers examined the source documents used to prepare the crime statistics. Additionally, the individuals responsible for gathering the statistics and preparing the reports were interviewed. The reviewers also requested statistics from the Clinton Police Department concerning incidents of the specified crimes in the Campus Security Act, for calendar years 1993 to present, which were reported to the police and occurred on the MSC campus. While the institution did publish an annual report for each of the years examined, detailed examination revealed areas where the institution failed to properly report required information.

- a. All crime incidents not reported Based on review and comparison of Clinton police statistics, Mount St. Clare incident reports, Mount St. Clare judicial board/administrative action decisions, and interviews with MSC officials, it appears the institution failed to properly gather/coordinate/report the required crime statistics from all pertinent sources. Institutional officials indicated they do not have a regular process established to obtain required statistics from the Clinton Police Department. This lack of any formalized arrangement prevents MSC from ensuring it is including all crime statistics in its annual campus security report, including incidents reported to the police of which MSC officials may be unaware. The specific discrepancies reviewers discovered are outlined below.

The College was unable to provide any campus incident reports for the 1993-94 academic year. For the 1994-95 academic year, only a detailed incident report summary for August/September 1994 was provided. Reviewers had access to a summary of administrative action cases and judicial board cases from Fall 1996 to Spring 1999. The College provided judicial/administrative action files from 1993 to 1996, but only sketchy information was available for this time period. College officials were unable to provide any type of summary to support the statistics reported before 1996. Except for the 1998-99

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statistics, reviewers were unable to determine which **specific** incidents were included on the reports.

At the time of the on-site visit, record retention requirements required the school to have the 1996, 1997 and 1998 report available. Statistics in the 1996 report were to contain incidents from the calendar years 1993 to 1995.

The following is an analysis of discrepancies/deficiencies for each year covered.

1993-94

The July 31, 1994 MSC campus security report listed one burglary in 1993-94. Clinton Police reported a burglary on December 25, 1993 (incident report #93009399). This burglary was listed on the 1994 campus security report MSC officials gave to reviewers. However, this burglary was not listed for this reporting year on the 1995 or the 1996 report. MSC officials must explain this inconsistency.

1994-95

The July 31, 1995 MSC campus security report lists two aggravated assaults and one weapons arrest in 1994-95. No other crimes or arrests were listed on the report.

The Clinton Police Department reported the following incidents:

- Weapons incident on September 2, 1994 (#94006364)
- Burglary in the residence hall on December 17, 1994 (#95000298)
- Burglary in the MSC business office on February 22, 1995 (#95001165)

The burglaries were not included in the report. Reviewers cannot determine if the September 2, 1994 weapons incident is the weapons arrest referred to in the report. This weapons incident also included a threat of harm, so it might also have been reportable as an aggravated assault.

The judicial board records for this academic year included information regarding a domestic violence incident that occurred on January 20, 1995. There was not an incident report and few details could be located about the nature of the incident. Perhaps this incident would have been

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classified as an aggravated assault. Reviewers cannot determine if this domestic violence incident was included in the campus security report statistics.

The residence hall incident report summary for August/September 1994 lists the following incidents:

- An incident on September 1, 1994 that appears to be the same incident involving the same parties as those included in September 2, 1994 Clinton Police weapons incident report.
- A report of a sexual assault on September 18, 1994

It appears the institution failed to report two burglaries and one sexual assault in its annual campus security report. It is unclear if any of the incidents listed above were the two aggravated assaults and one weapons arrest that were reported.

1995-96

The July 31, 1996 MSC campus security report did not list any crimes or arrests for the 1995-96 academic year. The report did list two aggravated assaults and one weapons possessions arrest for the 1994-95 academic year.

The Clinton Police Department reported the following incidents:

- A forcible sexual offense on September 9, 1995 (#95007900)
- A weapons incident on November 1, 1995. This incident also included a threat of harm to other individuals, so it may also be an aggravated assault (#95008834)
- A burglary in the residence hall on February 8, 1996 (#96000981)

The judicial board/administrative action file indicates an aggravated assault took place on July 26, 1996. One residence hall resident grabbed another resident and threatened him with a knife.

None of these incidents were reported on the annual campus security report. The institution appears to have failed to

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report one forcible sex offense, one burglary, one weapons arrest, and one (or possibly two) aggravated assaults.

1996-97

The July 31, 1997 and the June 1, 1998 MSC campus security reports listed one motor vehicle theft as the only crime for 1996-97. However, the draft 1999 report lists two aggravated assaults for 1996-97 in addition to the motor vehicle theft. These aggravated assaults were listed on the report subsequent to the institution's April 1, 1999 correspondence with the Department. In the College's November 3, 1998 letter to the Department, the Dean of Students indicated that a sexual assault occurred at MSC in 1997. According to the Dean, this was the only incident reported to the College that should have been on the report.

The July 31, 1997 MSC campus security report also listed no crimes or arrests for the 1995-96 academic year. The report listed two aggravated assaults and one weapons arrest for the 1994-95 academic year.

The Clinton Police Department reported the following incidents:

- "Other" incident occurred on October 19, 1996. This appears to be the motor vehicle theft reported on the campus security report (#96008247)
- An aggravated assault on April 17, 1997 (#97002838)
- A theft on May 22, 1997 (#97003901). Unless the incident can be classified as a burglary, it would not be required to be reported on the campus security report.

The judicial board records indicate two incidents (involving the same or partially similar parties) occurred on October 16, 1996. A memo from the judicial board to the Dean of Students on October 25, 1996 indicates that the first incident on October 16, 1996 may have involved an aggravated assault. The second incident may also have been an aggravated assault.

The Dean of Students indicated in interviews during the on-site visit that the student involved in the October 16, 1996 incident was also involved in another incident where he "beat up his girlfriend" or may have "only twisted her arm."

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However, reviewers could find no incident report or other documentation of that incident. The Dean of Students indicated no incident report was filed because the victim did not want to press charges with the police.

Because of the absence of complete school records, the reviewers could not determine if any of the above incidents are the two aggravated assaults reported on the 1999 report for 1996-97.

For 1996-97, it appears the institution did not timely report two aggravated assaults. The institution may have failed to report two additional aggravated assaults.

1997-98

In the June 1, 1998 MSC campus security report the College initially reported no offenses for 1997-98. In the 1999 draft report, the institution reported one sexual offense and one arrest for liquor law violation for the 1997-98 academic year. The only crime or arrest listed on the 1998 report is one motor vehicle theft for the 1996-97 academic year.

The Clinton Police reported no incidents during this time period.

The judicial board summary indicates a sexual harassment incident occurred on December 9, 1997. The charged party was found guilty. However, the files lacked sufficient documentation to determine whether or not the sexual harassment involved a reportable sexual offense.

The administrative action cases indicate a physical assault occurred on September 12, 1997. The assailant was dismissed from MSC because the September 12 incident violated conduct probation imposed as a result of an earlier June 13, 1997 assault on another student. In that June 13 incident, the charged student threatened to hit another student with a broomstick (and may, in fact, have hit him), then tried to attack the other student with a fire extinguisher and a pipe. The charged student was also involved in the October 16, 1996 incident described above. Neither of these aggravated assaults was listed on the campus security report.

Also, the administrative action summary indicates that police arrested a student on February 24, 1998 for public intoxication.

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The Department became aware of a forcible sex offense that occurred on campus in September 1997. In its November 3, 1998 correspondence, MSC acknowledged that a sexual assault did occur and provided supporting documentation. The accused student in this case was charged with third degree sexual abuse. The student was scheduled to go on trial in December 1997, but the victim asked the state's attorney to drop the charges. MSC hired the alleged assailant as a resident assistant for the 1998-99 school year.

It appears that the institution initially failed to report at least one sexual offense, two aggravated assaults and one arrest for a liquor law violation for the 1997-98 academic year.

1998-99

In the June 1, 1999 DRAFT MSC campus security report the institution lists one sexual offense, 23 room burglaries, four auto burglaries, two liquor law arrests and two drug law arrests for the 1998-99 academic year. The draft report lists two aggravated assaults and one motor vehicle theft for the 1996-97 academic year. The report also lists one sexual offense and one liquor law arrest for the 1997-98 academic year.

The Clinton Police Department reported the following incidents:

- A sexual assault on September 13, 1998. (#98006647)
- A theft on September 28, 1998. It may be classified as a burglary. This incident was likely included among the burglary incidents reported in the campus security report (#98007170)
- A report of a sexual assault on October 10, 1998. However, it appears this incident took place in Davenport, Iowa. As a result, it is not required to be listed in the statistics in the campus security report. (#98007372)
- A report of a nonforcible sexual offense on November 7, 1998. (#98008127)
- A report of an aggravated assault on November 12, 1998 (#98008148)
- A report of a burglary on February 1, 1999. It appears this was included among the

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burglary incidents reported in the campus
security report. (#99002397)

It appears the institution failed to report one sexual offense and an aggravated assault from the calendar year 1998 that should have been reported in the 1999 campus security report.

b. **Wrong standard and wrong reporting period used in report**

The College reports its crime statistics using an academic year rather than a calendar year. The Act requires crime statistics to be reported for crimes in 668.47(a)(6) that occurred in the three most recent calendar years preceding the year in which the report is issued. So, the report due by September 1, 1999 would include crime statistics for the 1996, 1997 and 1998 calendar years. Statistics for arrests of the specified crimes in 668.47(a)(8) should be reported for the most recent calendar year preceding the year in which the report is issued. The report due by September 1, 1999 would include arrests for the 1998 calendar year.

Until the institution's 1999 DRAFT campus security report, the standard employed by MSC for reporting occurrences of the specified crimes in the statistical portion of its annual campus security brochure was incorrect. The standard employed before 1999 was that a crime was not considered "reported" unless: (1) the Clinton Police Department investigated an incident and determined a crime occurred; or (2) the Clinton Police Department notified the College that it documented a report of a criminal offense which occurred "on campus" as defined by the Act. Further, in the institution's November 3, 1998 correspondence, the Dean of Students indicated the College "only reported crimes where perpetrator was found guilty." In interviews during the on-site visit, the Dean indicated that unless a student went to the police and pressed charges, an otherwise reportable incident would not appear in the campus security report statistics.

As discussed during the on-site visit, this standard of reporting violates the Campus Security Act requirements. As noted in 34 CFR 668.47(a)(6)(i), the annual campus security report must contain "statistics concerning the occurrence on campus of the [specified] criminal offenses reported to local police agencies or to any official of the institution who has significant responsibility for student and campus activities." (Emphasis added). Furthermore, Dear Colleague Letter GEN 96-11 indicates that "an institution is not relieved of compliance with the reporting requirements of the campus security regulations when

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the institution refers a matter to a disciplinary committee, rather than to the institution's law enforcement unit or directly to the local authorities."

College officials indicated, during the on-site visit, they were relying upon unspecified older information when they applied the stricter standard for reporting campus crime incidents. The Dean of Students indicated he first received training on Campus Security in March 1999. The Dean claims that in preparing the annual campus security report he was not familiar with the regulation containing the report requirements nor did he ask the Department for technical assistance in preparing the annual campus security report.

- c. **Hate crimes** The institution's publications did not address the requirement to disclose whether any reported crimes manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, as prescribed by the Hate Crimes Statistics Act (28 U.S.C. 534). The College is required to make such disclosures under the requirements of 34 CFR 668.47 (a)(6)(ii).

REFERENCE: 34 CFR 668.14 (c)(2) (1995)
34 CFR 668.16 (1995)
34 CFR 668.47 (1995)
Section 485(f) of the Higher Education Act, as amended

REQUIRED ACTIONS: Failure to accurately report occurrences of the Act's specified crimes results in the underreporting of occurrence of crimes and denies students and employees the opportunity to make informed judgments about the relative security of the campus environment and to make personal security decisions. The College must review the requirements of 34 CFR 668.47. It should develop a system for collecting information from all pertinent sources (including the Clinton Police Department) about all occurrences (reports/arrests) of those crimes covered in 34 CFR 668.47(a)(6) and (a)(8). The College must use the proper reporting periods and standard for reporting. Further, the College must also ensure that any reportable crimes that manifest evidence of prejudice as prescribed by the Hate Crimes Statistics Act (28 U.S. C. 534) are properly reported.

In its response to this report, the College is required to describe how it will bring its campus security statistical disclosures into compliance with the law and regulations. The institution's response should address each of the deficiencies noted above and explain how it will take corrective actions to ensure complete reporting in the next annual campus security report. In particular, the institution should review each omitted incident discussed above and state its position as to whether the incident should have been reported. Finally, the institution must revise previously disclosed statistics and report corrected statistics in light of the noted deficiencies.

The Department will review the response to determine the institution's commitment to take corrective action and ensure future compliance.

2. Campus Security Report Information Not Made Available to Prospective Students and Employees

The review team interviewed institutional staff and obtained copies of material sent to prospective students to determine how Mount St. Clare College makes campus security report information available to current and prospective students and employees. It appears that the institution is not in compliance with the Campus Security Act disclosure requirements.

Prospective students and employees are not informed of the campus security report's availability, given a summary of its contents, and afforded the opportunity to request a copy. Admissions staff informed reviewers that students were directed to the Office of Student Affairs for specific questions about campus safety. According to the Director of Admissions, the campus security report is only given to prospective students who **specifically** ask for the report. However, no admissions material provided to prospective students informs students of the availability of the report.

The school distributes its Campus Security Act report to current students at Fall registration. Students who register at other times of the year are not provided with the report. Further, the report is "distributed" at a registration table that may or may not be staffed by institutional personnel. As a result, the institution cannot guarantee that each currently enrolled student receives a copy of the campus security report.

Failure to provide students, prospective students and employees with the campus security report information inhibits the ability of these individuals to make informed choices regarding the institution of postsecondary education where they might choose to attend or work. The goal of the Campus Security Act is to provide individuals with accurate information regarding safety issues at postsecondary educational institutions. Failure to make this information available to prospective students and employees violates the intention of the Act.

REFERENCE: 34 CFR 668.14(c)(2) (1995)
34 CFR 668.16 (1995)
34 CFR 668.47 (1995)
Section 485(f) of the Higher Education Act, as amended

REQUIRED ACTIONS:

Prospective students and employees must be informed of the campus security report's availability and given a summary of its contents, as well as the opportunity to request a copy of the report. Current students and employees must be given a copy of the report by September 1 each year.

In its response, the College must provide a copy of the notification it will provide to prospective students and employees and must indicate how the notification will be made. Also, the institution must outline the procedure by which it intends to ensure distribution of the report to current students and employees.

3. Statements of Policy Omitted or Incomplete

A review of MSC's campus security reports revealed several instances where required statements of policy were omitted.

- a. Timely Warning Information The campus security reports distributed by the College did not include statements of the institution's policies for making timely reports to the campus community regarding the occurrence of the specified crimes. Such reports must be made in a timely manner that will aid in the prevention of similar crimes. 34 CFR 668.47(e). The DRAFT campus security statement given to reviewers on July 20, 1999 (subsequent to the institution's correspondence of April 1, 1999) contained timely warning procedures regarding sexual assaults but did not address timely warning procedures for the Campus Security Act's other enumerated crimes.
- b. Security, Access, Maintenance Concerns Regarding Campus Facilities This information was provided on pages 64-65 of the 1998-99 Student Handbook, but was not included in the Campus Security Act brochure.
- c. Informational Programs The campus security reports omit the descriptions required under 34 CFR 668.47(a)(4) of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and crime prevention.
- d. Sexual assault prevention programs and procedures for reporting a sex offense This information was not included in the campus security report until the DRAFT campus security brochure presented to reviewers on July 20, 1999. Individual brochures and a revised policy concerning sexual assaults were submitted with the institution's correspondence on April 1, 1999. However, it appears no programs/procedures have been published in the campus security reports distributed by MSC.

Failure to develop and publish the policies and procedures required to be disclosed under the Campus Security Act is a violation of the Act and denies students and

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employees the opportunity to be fully informed and/or know how to act in personal safety/security matters.

REFERENCE: 34 CFR 668.14(c)(2) (1995)
34 CFR 668.16 (1995)
34 CFR 668.47 (1995)
Section 485(f) of the Higher Education Act, as amended

REQUIRED ACTIONS: Mount St. Clare College must review its campus security reports to ensure that all policy statements, as required under 34 CFR 668.47, are included.

In its response the institution must indicate where additions and modifications are made. This information should be presented in a comparison format or other format that clearly identifies the changes.

4. Equity In Athletics Report Not Prepared

As part of our compliance testing for the Campus Security Act, the review team requested copies of the institution's equity in athletics reports. School officials acknowledged that no reports had been prepared.

Regulations published November 29, 1995 implemented the provision of the Improving America's Schools Act of 1994 titled the Equity in Athletics Disclosure Act (EADA). The EADA is designed to make prospective students aware of the commitments of a school to providing equitable athletic opportunities for its men and women students.

Any coeducational institution of higher education that participates in an SFA Program and has an intercollegiate athletic program must prepare an annual EADA report. The report contains participation rates, financial support, and other information on men's and women's intercollegiate athletic programs.

The EADA requires schools to make this report available upon request to students, potential students, and the public. A school must make the report available to students, prospective students, and the public in easily accessible places. For example, a school may make copies of the report available in intercollegiate athletic offices, admissions offices, libraries, or by providing a copy to every student in his or her electronic mailbox.

In addition, a school must provide the report promptly to anyone who requests the information. For example, a school may not refuse to provide a copy of the report to the news media, and the school may not require an individual requesting the information to come to the school to view the report.

A school must inform all students and prospective students of their right to request the information. For example, the school may publish a notice at least once a year in a school publication, the school catalogue, registration materials, or relevant intercollegiate athletic department publication distributed to all students.

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A school may not charge a fee to students, potential students, parents or coaches who ask for the information; however, schools are not prohibited from charging the general public a fee to cover copying expenses only.

Schools were required to compile and make available its first report by October 1, 1996. Each subsequent report must be compiled and made available by October 15 each year thereafter.

REFERENCE: 34 CFR 668.48
Section 485(g) of the Higher Education Act, as amended

REQUIRED ACTIONS: Prospective students and employees must be informed of the EADA report's availability and given a summary of its contents, as well as the opportunity to request a copy of the report. Current students and employees must be given a copy of the report by October 15 each year.

In its response, the institution must provide a copy of the notification it will provide to prospective students and employees and must indicate how the notification will be made. Also, the institution must outline the procedure by which it intends to ensure distribution of the report to current students and employees.

TECHNICAL ASSISTANCE

The Department recommends that the Director of Security contact other campus law enforcement officials for training/suggestions on how to deal with various campus crime and security issues.

In addition to reading the regulations and statutory provisions surrounding the Campus Security Act, institutional officials should review the guidance presented by the Department. Guidance can be found in Dear Colleague Letter GEN 96-11 and on pages 159 to 167 of the 1999-2000 Federal Student Financial Aid Handbook (Institutional Eligibility and Participation section).

The 1998 Amendments to the Higher Education Act made some changes to the Campus Security Act that were effective on October 7, 1998. Arson and manslaughter were added to the list of crimes for which statistics must be disclosed. The Hate Crime requirements were expanded to include any crime involving bodily injury. Three years of statistics for arrests or persons referred for campus disciplinary action for liquor law violations, drug law violations and illegal weapons possession must now be disclosed annually. Institutions with a campus security department of any kind must now maintain a daily crime log and make the log available for public inspection. Proposed regulations to implement these provisions were published in the Federal Register on August 10, 1999. A copy is enclosed.

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In light of the significant number of aggravated and sexual assaults at your institution, the institution may wish to review and consider revisions and improvements to the various campus security policies, particularly those governing sexual assault programs and disciplinary procedures.

34 CFR Part 668

Tuesday
August 10, 1999

Part IX

**Department of
Education**

**34 CFR Part 668
Student Assistance General Provisions;
Proposed Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845-AA03

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would govern the disclosure of institutional and financial assistance information provided to students under the student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended (Title IV). These programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The proposed regulations implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments).

DATES: We must receive your comments on or before September 15, 1999.

ADDRESSES: Address all comments about these proposed regulations to Paula Husselmann, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026-3272. If you prefer to send your comments through the Internet, use the following address: ifainprm@ed.gov

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Paula Husselmann or Lloyd Horwich. Telephone (202) 708-8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations at Regional Office Building 3, 7th and D Streets, SW, Room 3045, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you can call (202) 205-8113 or (202) 260-9895. If you use a TDD, you may call the Federal Information Relay Service at 1-800-877-8339.

General

These proposed regulations would revise the current Student Assistance General Provisions, 34 CFR part 668, concerning the disclosure of institutional and financial assistance information to students under the financial assistance programs authorized under Title IV. The revisions implement the Higher Education Amendments of 1998, Public Law 105-244, enacted October 7, 1998.

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed

regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the *Federal Register* (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, D.C., Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (<http://ifap.ed.gov>).

We then published a second notice in the *Federal Register* (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over

the course of several months, beginning in January.

The proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of Committee IV. Committee IV was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
 American Association of Community Colleges
 American Association of Cosmetology Schools
 American Association of State Colleges and Universities
 American Council on Education
 Association of American Universities
 Association of Jesuit Colleges and Universities
 Career College Association
 Council for Higher Education Accreditation
 Council of Recognized National Accrediting Agencies
 Council for Regional Accrediting Commissions
 Education Finance Council
 Legal Services Counsel (a coalition)
 National Association of College and University Business Officers
 National Association of Equal Opportunity in Higher Education
 National Association of Independent Colleges and Universities
 National Association of State Student Grant and Aid
 Programs/National Council of Higher Education Loan Programs (a coalition)
 National Association of State Universities and Land-Grant Colleges
 National Association of Student Financial Aid Administrators
 National Direct Student Loan Coalition
 National Women's Law Center
 State Higher Education Executive Officers Association
 The College Board
 The College Fund/United Negro College Fund
 United States Department of Education
 United States Student Association
 US Public Interest Research Group

The following organizations were members of the committee for the purpose of developing proposed regulations relating to the reporting of campus crime only:

American Psychological Association
 International Association of Campus Law Enforcement Administrators
 International Association of Chiefs of Police
 Security on Campus, Inc. (C. & H. Clery)
 Society of Professional Journalists

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Subpart D—Student Consumer Information Services

The proposed regulations would (1) retitle Subpart D as Institutional and Financial Assistance Information for Students, to conform the title to that of section 485 of the HEA, and (2) renumber the sections.

The proposed regulations would remove current § 668.42 and incorporate it into proposed § 668.41. Therefore, the proposed regulations would renumber current §§ 668.43–668.49 as §§ 668.42–668.48. The headings in this section for proposed §§ 668.43–668.48 reflect the proposed renumbering. There is no discussion of proposed § 668.42 (current § 668.43), because there is no proposed change other than the renumbering.

Section 668.41 Reporting and Disclosure of Information

Prior to the 1998 Amendments, section 485(a) of the HEA required an institution to provide specified information about the institution and its administration of the Title IV, HEA programs to all current students, and upon request to prospective students. The 1998 Amendments provided that, instead of providing the information to current students, an institution must provide current students a list of the information to which they are entitled. The 1998 Amendments did not affect an institution's responsibility concerning prospective students.

The proposed regulations would amend § 668.41 to comply with the changes made to the HEA by the 1998 Amendments, to make the information disclosure process more understandable and less burdensome to institutions, and to make the information more accessible to students, parents, employees, and other interested parties. These proposed regulations would move definitions from the various sections under Subpart D and consolidate them into § 668.41. In addition, these proposed regulations repeat many existing provisions for which no changes are proposed, but which are included to provide context for the proposed changes. These changes are discussed in the following paragraphs.

As stated previously, the 1998 Amendments require an institution to provide each enrolled student with a list of the various information that the institution must provide, upon request, to the student. Proposed § 668.41(c) implements this requirement. Proposed § 668.41(c) would require an institution to include with the list a brief description of the required disclosures. The description should be sufficient to allow the student to understand the

nature of the disclosure and make an informed decision whether to request the full disclosure. The following is an example of such a description:

A copy of [name of institution]'s annual security report. This report includes statistics for the previous three years concerning reported crimes that occurred on campus; in certain off-campus buildings or property owned or controlled by [name of institution]; and on public property within, or immediately adjacent to and accessible from, the campus. The report also includes institutional policies concerning campus security, such as policies concerning alcohol and drug use, crime prevention, the reporting of crimes, sexual assault, and other matters. You can obtain a copy of this report by contacting [name of office] or by accessing the following website [address of website].

The proposed regulations would group together an institution's reporting and disclosure obligations, what must be disclosed, and to whom the disclosure must be made. These proposed regulations also would allow an institution to use the Internet or, for current students and current employees, an Intranet website, to make most of the required disclosures under Subpart D. The committee thought that use of the Internet or an Intranet would benefit institutions by reducing their publication costs and benefit individuals interested in the information by making the information more accessible.

However, an institution could not rely on the Internet or an Intranet to disclose to a prospective student-athlete and his or her parents the graduation or completion rate information and, if applicable, transfer-out rate information, required under § 668.48. The HEA requires an institution to provide this information to a student and the student's parents at the time the institution offers the student athletically related student aid.

The Secretary believes that because Congress singled out this group of prospective students and identified a student-specific time when the institution must make the disclosure, it would be inappropriate to allow the institution to use the Internet, a broad distribution medium, to disclose the information. Disclosure of this information as a posting on the Internet would not ensure that the student and his or her parents receive the information at the time the HEA requires. An institution may provide the information in paper form or through electronic mail.

An institution that chooses to use an Internet website, or an Intranet website, to make a required disclosure would be required to provide a notice, to each

person to whom the institution must disclose information, that the required information is available on the website. The proposed regulations would require that this notice (1) identify the information required to be disclosed, (2) provide the exact electronic website address for accessing the information, and (3) state that the person is entitled to a paper copy of the information, upon request.

The proposed regulations also state that a notice must be provided directly to each person to whom notice must be given. For example, the notice could be a paper document that is handed or mailed to each person, or it could be electronically mailed. It would not be sufficient for an institution simply to post the notice (as opposed to the actual disclosures, which in most cases may be posted on a website) on its Internet website or to make the notice available at electronic information kiosks. The notice requirements would also apply to the list of information that the 1998 Amendments require an institution to provide to all enrolled students.

Where an institution must make a disclosure upon request, it may not require that the request be in writing. The Secretary believes that requiring an otherwise properly directed request to be made in writing runs counter to the purpose of ensuring easy access to the information that must be disclosed.

Section 668.42 Preparation and Dissemination of Materials

The proposed regulations would remove current § 668.42 and incorporate it into proposed § 668.41, as discussed.

Section 668.43 Institutional Information

The statute requires and, therefore these proposed regulations require, that an institution disclose the requirements for a student's officially withdrawing from the institution. This proposed regulatory provision also makes other minor wording changes.

Section 668.45 Information on Completion or Graduation Rates

The proposed regulations would amend provisions relating to an institution's disclosure of its completion or graduation rate and, if applicable, transfer-out rate to comply with changes made to the HEA by the 1998 Amendments and by Public Law 105-18, the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, including Those in Bosnia.

An institution will continue to be able to comply with all requirements

concerning disclosure of its completion or graduation rate, and if applicable, transfer-out rate, by completing the National Center for Education Statistics' Graduation Rate Survey (GRS).

Cohort Changes

These proposed regulations incorporate changes made by Section 60001 of Public Law 105-18 which changed the beginning of the required cohort period used to calculate an institution's completion/graduation rate and, if applicable, transfer-out rate. This change requires an institution to establish a cohort beginning September 1 of each year, instead of July 1 of each year. The new cohort for calculating these rates is for students who enter an institution on or after September 1, 1998. The Secretary informed institutions of these changes in a June 1998 Dear Colleague Letter (GEN-98-11). An institution that established cohorts beginning on September 1 for students who entered the institution between September 1, 1996 and August 31, 1998 for purposes of the GRS survey may continue to report rates based on those cohorts.

Transfer-Out Rate

The proposed regulations implement the new statutory provisions pertaining to students who transfer from one institution to another. Under current regulations, an institution must disclose a transfer-out rate for students who subsequently enroll in any program of an eligible institution for which the program of the prior institution provided substantial preparation. This requirement has applied equally to institutions such as community colleges that prepare students in significant numbers for transfer to other institutions, as well as to traditional four-year institutions that have only a small, incidental number of transfers.

Under proposed § 668.45(a)(2), a transfer-out rate would be required only of institutions that determine that their mission includes providing substantial preparation for their students to transfer-out, such as community colleges. The proposed regulations would allow an institution to determine for itself if it provides substantial preparation for its students for transfer to a program at another eligible institution. Substantial preparation does not include preparation for a student to enroll in a graduate or professional program after the student completes an undergraduate program. The Secretary anticipates that the required transfer-out rate will not apply to most four-year institutions, although any institution

may disclose a transfer-out rate pursuant to proposed § 668.45(f)(3).

Disclosure Date

Under current regulations, an institution is required to disclose its completion/graduation and transfer-out rates no later than January 1 following 150% of the normal time for completion/graduation from its programs. For example, an institution that offers four-year programs only, must disclose its rates for a cohort of students no later than the January 1 following six years from the date that the cohort began the program. The 1998 Amendments changed the disclosure date from January 1 to July 1 for any rate that an institution discloses on or after October 1, 1998, regardless of when the institution established the cohort.

Establishing the Cohort

Under current regulations, an institution that does not operate on a term basis must include in the cohort any first-time, full-time, certificate or degree-seeking student who attended at least one day of class. In an effort to achieve greater consistency between term and non-term institutions, for programs less than or equal to one academic year in length, the proposed regulations would include in the cohort only students who attend at least fifteen days of class. For programs that are longer than one academic year, the proposed regulations would include in the cohort only students who attend at least thirty days of class. The Secretary requests comments on whether these proposed timeframes are appropriate, in light of their potential impact on the completion or graduation and transfer-out rates.

Optional Disclosures

Current regulations provide that an institution may disclose a separate completion/graduation rate for students who transfer into the institution. Pursuant to the 1998 Amendments, the proposed regulations would give institutions the option of disclosing two additional rates. The first optional rate is a completion/graduation and transfer-out rate of students who have left school for the following reasons: to serve in the Armed Forces, to serve on official church missions, to serve with a foreign aid service of the Federal Government (e.g., the Peace Corps), because they are totally and permanently disabled, or because they are deceased. The second optional rate is a transfer-out rate even when the institution's mission does not include providing substantial preparation for its students to enroll in a program at another eligible institution.

Section 668.46 Institutional Security Policies and Crime Statistics

The proposed regulations would amend requirements relating to an institution's disclosure of its annual security report to current and prospective students and employees to comply with changes made by the 1998 Amendments and to improve the administration of the campus security regulations. The Secretary also proposes to reorganize this section so that the various requirements are more clearly presented.

Definitions—§ 668.46(a)

Business day. The proposed regulations would define a business day to mean Monday through Friday, excluding any day when the institution is closed. The 1998 Amendments require an institution that has a campus police or campus security department to establish a crime log and to enter or update information in the crime log within two business days after the campus police or campus security department receives the information.

Campus, noncampus building or property, and public property. The 1998 Amendments revised the definition of a campus and added definitions of noncampus building or property and public property for an institution to follow in complying with the campus security requirements. The proposed regulations would reflect those changes. Previously, the HEA defined campus to mean property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution for its educational purposes, as well as any property owned or controlled by a student organization recognized by the institution, or any property owned by a third-party but controlled by the institution.

a. Campus. The first part of the proposed definition of "campus" remains the same: property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution for its educational purposes. However, the new definition specifically includes residence halls. The second part of the proposed definition is property that is within or reasonably contiguous to the area described in the first part of the definition, that is owned by the institution and controlled by another person, that is frequently used by students, and that supports institutional purposes such as a food or other retail vendor.

b. Noncampus building or property. The first part of the definition of

"noncampus building or property" is not significantly different from what is in the current regulatory definition of campus: any building or property owned or controlled by a student organization recognized by the institution. The proposed regulations would define recognition to mean official recognition because it may be difficult for an institution to know about organizations that it does not officially recognize. The second part of the definition is a building or property owned or controlled by the institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution. Under this provision, an institution would pay particular attention to whether students frequently use the site to determine if a location qualifies as a noncampus building or property site for campus security purposes. If students do not frequently use a site, the proposed regulations would exclude that site from noncampus buildings or property. For example, if students do not frequently go to a cooperative extension site of a land-grant institution, the institution would not consider that site a noncampus building or property.

c. Public property. The 1998 Amendments require the reporting of crime statistics on public property as part of an institution's annual security report. The proposed regulations would define public property to be all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus or immediately adjacent to and accessible from the campus. This definition reflects statutory changes and the committee's agreement that public property be limited to property accessible from the campus. The definition would not require an institution to include in its annual security report statistics of crimes committed on, for example, highways that are adjacent to the campus, but which are separated from the campus by a fence or other man-made barrier.

Campus security authority. These proposed regulations would modify the definition of a "campus security authority" in the current regulations. Under current regulations, this definition serves to identify which campus officials are responsible for making timely warning reports. The proposed definition would also apply to the statistical reporting requirements.

The proposed definition would include (1) a campus police department or a campus security department of an

institution (previously a campus law enforcement unit), (2) an individual who has responsibility for campus security, but who is not part of a campus police department or a campus security department (for example, a person who only monitors the entrance to institutional property), (3) any individual specified by the institution to receive reports of offenses, and (4) any official of the institution who has significant responsibility for student and campus activities, such as student housing, student discipline, and campus judicial proceedings.

Current regulations exclude persons with significant counseling responsibilities from the definition of a "campus security authority." The proposed regulations would exclude only pastoral counselors and professional counselors. The committee agreed to propose this change to ensure that crime victims and others have full access to the services of pastoral and professional counselors, but also to avoid situations where an expansive definition of counselor might be used to evade statistical reporting. These regulations propose to define a "pastoral counselor" as an employee of an institution who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. The proposed regulations would define a "professional counselor" as an employee of an institution whose official responsibilities include providing psychological counseling to members of the institution's community and who is functioning within the scope of his or her license or certification. The Secretary requests comments on these proposed exclusions from the definition of a campus security authority.

The proposed regulations would include as a campus security authority, for purposes of reporting crime statistics in the institution's annual security report, an individual who has responsibility for campus security but who does not constitute a campus police department (for example, an access monitor who checks student identification at a building entrance). However, since this individual is separately defined from a campus police department, this individual would not be responsible for maintaining a crime log under proposed § 668.46(f).

Referred for campus disciplinary action. The 1998 Amendments require an institution to disclose in its crime statistics the number of persons referred for campus disciplinary action for

law, drug-law, and weapons possession violations. The proposed regulations would define the term "disciplinary action" to mean the referral of any student to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

Annual Security Report—§ 668.46(b)

Current regulations list various categories of information and required disclosures that an institution must include in the annual security report required by § 668.46. In conjunction with the proposal described below to revise the professional and pastoral counselors from the statistical reporting requirements, these proposed regulations would change the annual security report to improve and encourage voluntary reporting by institutions. The proposed regulations would include in the list of required disclosures:

- A description of the institution's procedures for preparing the annual disclosure of crime statistics. Currently, an institution must include a description of its procedures for making security warning reports. The proposed regulations would require that an institution also include a description of its procedures for preparing the annual disclosure of crime statistics, in recognition of the need for students and employees to know when and how the crime statistics are gathered and disseminated by an institution.

- A statement that discloses whether the institution has any policies or procedures that allow victims or employees to report crimes on a voluntary, confidential basis, and, if the institution has such a policy, a description of the policy and relevant procedures. The regulations propose a statement in an effort to encourage the voluntary reporting of crime statistics by a victim or witness.

- A statement that discloses whether the institution has a policy encouraging pastoral or professional counselors employed by the institution, if and when the counselor deems it appropriate, to inform the person being counseled of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. The committee agreed to propose this statement in an effort to encourage the reporting of crime statistics. Many negotiators felt strongly that the decision whether and when to provide this information to the person being counseled must remain entirely within the counselor's professional discretion. The Secretary agrees, and

these proposed regulations would not interfere with that discretion.

- A statement of the institution's policy concerning the monitoring and recording (through local police agencies) of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by an institution.

Change In Statutory Reference

To conform to the 1998 Amendments, the proposed regulations would change the reference in § 668.46(b)(10) from Section 1213 to Section 120(a)-(d) of the HEA.

Report of Statistics—§ 668.46(c)

New Crime Disclosures

The 1998 Amendments changed the list of crimes that an institution must disclose in its annual security report. Current regulations require that the statistical report include a murder category; the 1998 Amendments added an additional category of manslaughter. Under the standard definitions used by the Uniform Crime Reporting System (UCR) of the Federal Bureau of Investigation (FBI), manslaughter is broken into two categories: nonnegligent manslaughter, and negligent manslaughter. Under UCR, the former is reported together with murder under a single category; negligent manslaughter is separately reported. Murder and nonnegligent manslaughter is the willful (nonnegligent) killing of one human being by another. Manslaughter by negligence is the killing of another person through gross negligence.

The proposed regulations would incorporate manslaughter into the regulations by adding nonnegligent manslaughter to the current murder category and adding a new negligent manslaughter category. Collectively the two categories would be referred to as "criminal homicide" consistent with the FBI's definitions.

The 1998 Amendments also added the category of arson to the crime disclosure list. Arson is defined in the UCR as any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

The proposed regulations would amend Appendix E to Part 668 of the Student Assistance General Provisions to include the definitions of criminal homicide and arson, as provided in the UCR.

Current regulations require an institution to disclose the number of arrests for the most recent calendar year for liquor-law, drug-law, and weapons

possession violations. The 1998 Amendments changed the period for which these violations must be disclosed from the most recent calendar year to the most recent three calendar years to be consistent with the three calendar-year requirement for other crimes. The 1998 Amendments also require that institutions disclose not only the number of arrests for liquor-law, drug-law, and weapons possessions violations, but also the number of persons who were referred for campus disciplinary action for these activities. If a student was both arrested and referred for campus disciplinary action for the same violation, the proposed regulations would require that the institution report the statistic only under arrests.

Hate Crime Disclosure

Current regulations require an institution to disclose the number of hate crimes only among the statistics it reports for murder, forcible rape, and aggravated assault. A hate crime is one in which the victim is selected intentionally because of his or her actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability. The 1998 Amendments expanded the hate crime disclosure requirements. The 1998 Amendments require an institution to disclose, by category of prejudice, the number of hate crimes among:

- (1) all the crimes that it is required to report (excluding arrests for and persons referred for campus disciplinary action for liquor-law, drug-law, or weapons-law violations); and
- (2) any other crimes involving bodily injury reported to a local police agency or a campus security authority.

The proposed regulations would implement that change, and would require that an institution use the UCR standard of evidence of prejudice to assist in determining if a hate crime occurred. Under this standard, an incident must manifest evidence that the perpetrator selected the victim on the basis of prejudice in order to be considered a hate crime.

Disclosure of Location of Crime

The 1998 Amendments require an institution to provide a geographic breakdown for the required crime statistics according to the following categories: (1) On campus, (2) noncampus building or property, (3) public property, and (4) dormitories or other residential facilities for students on campus. The proposed regulations would incorporate these categories and clarify that the dormitory and residential facility category is a subset of the campus category.

Hate Crime Is Recorded

Currently, the Secretary requires an institution to report a crime statistic for the calendar year in which the crime occurred. The proposed regulations do not address this matter specifically. In response to discussions during negotiated rulemaking, the Secretary requests comments as to whether the final regulations should require an institution to report a crime statistic for the calendar year in which the crime was reported to the institution, rather than for the calendar year in which it occurred.

Protecting Identity

The proposed regulations include the provision of the 1998 Amendments that specifically prohibits an institution from identifying the victim or the alleged perpetrator of the crime in the institution's disclosure of its crime statistics.

Time Period for Statistics and Transition to New Requirements

The HEA requires an institution to disclose the previous three calendar years' crime statistics for the required statistical disclosures. For example, an institution must include in its annual security report for 1999, crime statistics for calendar years 1996, 1997, and 1998. As discussed under the sections titled "New crime disclosures," "Hate crime disclosure," and "Disclosure of location of crime," the 1998 Amendments changed the required statistical disclosures and the geographic areas for which the statistics must be reported; the changes were effective October 1, 1998.

Because the HEA requires the statistical disclosures to be reported on a calendar-year basis, the Secretary interprets the HEA to require that the changes concerning the collection and disclosure of crime statistics take effect at the beginning of the calendar year immediately following passage of the 1998 Amendments. Therefore, an institution must begin collecting statistics using the new categories, effective for calendar year 1999. An institution's 2000 report—which will include statistics for calendar years 1997, 1998, and 1999—must include statistics for calendar year 1999 using the new categories. An institution may continue to report statistics for calendar years 1997 and 1998 using the previously applicable categories, except that an institution may use the new categories for 1997 and 1998 if it wants to do so.

Access to Counseling

The proposed regulations would make clear that an institution is not required to report statistics relating to crimes that are reported to a pastoral counselor or a professional counselor who is functioning within the scope of his or her license or certification. These regulations are proposed in response to the counseling community's strongly held belief, expressed during the negotiated rulemaking sessions, that required reporting from counselors has had a chilling effect on victims and others' seeking counseling, particularly where counselors felt compelled under their professional ethical codes to notify individuals of the reporting requirement.

The proposed rule agreed to by the committee is intended to ensure that crime victims and others are not deterred from seeking appropriate psychological or pastoral care. The committee was of the opinion that the proposed changes to the regulation would encourage other confidential reporting options so that statistical data can be obtained without infringing on the individual's expectation of confidentiality.

Compilation of Crimes

Under existing regulations, an institution must use the definitions of crimes provided by the UCR System and the Hate Crime Collection Guidelines published by the FBI. For the application of these definitions and classification of crime, an institution may use either the UCR Reporting Handbook or the UCR Reporting Handbook: National Incident-Based Reporting System (NIBRS) EDITION, except in determining how to report a single incident involving multiple criminal offenses. If an institution reports a crime involving multiple offenses, the institution must use the UCR Reporting Handbook, including the FBI's Hierarchy Rule.

Use of a Map

The proposed regulations would add a provision to encourage an institution to use a map to aid in the disclosure of its crime statistics. The purpose of a map is to clearly depict and disclose the areas for which the institution will be reporting crime statistics; that is, its campus, noncampus buildings or property, and public property. If an institution chooses to use a map to depict these areas, the institution may limit its reporting of crime statistics to crimes committed in those areas, as long as the map accurately depicts these areas as defined by regulation. If an

institution has separate campuses and chooses to use a map to depict the appropriate geographic areas, the proposed regulations would require that the institution use separate maps for separate campuses.

Obtaining Statistics From Local and State Police Agencies

The Secretary proposes to clarify that an institution may rely on statistical information supplied by local and State police agencies, as long as the institution makes a reasonable, good faith effort to obtain these statistics. The Secretary encourages an institution to document its efforts to obtain these data, including its success or lack of success in obtaining the data.

Disclosure Date for Annual Security Report

The committee agreed to change the date by which an institution must disclose its annual security report from September 1 to October 1 of each year because many institutions do not begin fall enrollment until after September 1.

Timely Warning—§ 668.46(e)

The 1998 Amendments did not change the requirement that an institution make a timely warning report to the campus community when a crime that the institution considers to be a threat to students and employees is reported to a campus security authority or a local police agency. Proposed § 668.46(a) would broaden the definition of a campus security authority, by excluding only pastoral counselors and professional counselors as defined in the regulation, as opposed to the current exclusion of any individual with significant counseling responsibilities. Therefore, the timely warning requirement still would not apply for crimes reported to pastoral and professional counselors. However, the timely warning requirement would apply for crimes reported to any campus security authority, including those who have significant counseling responsibilities but are not a pastoral or professional counselor.

Crime Log Requirements—§ 668.46(f)

The 1998 Amendments introduced a requirement that an institution with a campus police or campus security department of any kind maintain a daily, written crime log of any crime reported to that department that occurred on campus, in or on a noncampus building or property, or on public property. It is the Secretary's view that this provision includes an institution that contracts out its security

services. The institution must make this log available for public inspection.

Entries into the crime log must include the nature, date, time, and general location of each crime, and the disposition of the complaint, if known. The log must be written and easily understood. The proposed regulations would require that each crime be entered into the log based on the date the crime was reported, rather than the date the crime occurred. The 1998 Amendments require an institution to make an entry or addition to an entry in the log within two business days of the report of the crime, or the report of additional information, to the campus police or campus security department, unless disclosing the information is prohibited by law or would jeopardize the confidentiality of the victim. The 1998 Amendments also permit an institution to withhold crime log information if release of the information would jeopardize an ongoing criminal investigation or jeopardize the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence. However, once the adverse effect of disclosing the crime log information is no longer likely to occur, the institution must disclose the information. The Secretary wishes to emphasize that an institution may withhold only the specific information that would have an adverse effect described previously; an institution may not automatically withhold all of the log information relating to such a crime. The proposed regulations would permit an institution to archive crime log information after 60 days, as long as the institution makes archived material available for public inspection within two business days of a request. The committee recognizes that some institutions are already required by State law to maintain a crime log; the proposal does not require maintenance of a separate Federal log. An institution may use a State log to comply with the requirements of these regulations, as long as that log includes all of the information and procedures required under this proposal.

Report to the Secretary

The 1998 Amendments require each institution to submit annually the statistical section of its security report to the Secretary. The Secretary will make a form available to institutions for the reporting of this information and will notify institutions when and how to submit their crime statistics. There is no requirement that an institution submit statistical information in the institution's crime log to the Secretary.

Recordkeeping Requirements

Section 668.24 of the Student Assistance General Provisions provides the recordkeeping requirements for an institution to administer the student financial assistance programs under Title IV of the HEA. Generally, an institution must retain records for three years.

An institution is required to maintain campus security records to document the information it must include in its annual security report, which must include information covering the previous three calendar years. An institution must keep campus security records for three years following the last year the information is included in its annual security report.

For example, an institution must include campus security information for the 1997 calendar year in its 1998, 1999, and 2000 annual security reports. Under proposed § 668.41(e), the report must be distributed annually by October 1. Therefore, an institution would be required to maintain its 1997 campus security records until October 1, 2003.

Section 668.47 Report on Athletic Program Participation Rates and Financial Support Data

The 1998 Amendments amended section 485(g) of the HEA (the Equity in Athletics Disclosure Act, or EADA) to require institutions to disclose additional data about revenues and expenses attributable to their intercollegiate athletic activities and to require institutions to submit their annual EADA report to the Secretary.

The proposed regulations would implement the changes made by the 1998 Amendments and reflect the committee's agreement to provide greater specificity in the definitions and in the disclosure requirements.

The primary change to the EADA made by the 1998 Amendments was the relocation of disclosure requirements concerning revenues and expenses attributable to an institution's intercollegiate athletic activities from section 487(a) (Program Participation Agreements), to section 485(g). In addition, the audit requirement under section 487(a), which applied only to institutions that awarded athletically related student aid, was repealed by the 1998 Amendments.

Previously, the EADA required an institution to disclose its operating expenses for each varsity team, its combined revenues from all men's sports, and its combined revenues from all women's sports. The amended statute requires the following additional breakdowns of revenues and expenses:

(1) total revenues and expenses attributable to an institution's intercollegiate athletic activities; and (2) revenues and expenses attributable to football, men's basketball, women's basketball, all men's sports combined except football and basketball, and all women's sports combined except basketball.

The committee agreed to propose additional clarifications to § 668.47. The proposed regulations would include in the definitions of revenues and expenses examples of revenues and expenses that would be included in an institution's EADA report. The examples would not expand the statutory definitions of revenues and expenses. The basis for determining whether a revenue or expense should be included in an institution's EADA report is simply whether the item was attributable to the institution's intercollegiate athletic activities. The examples are meant merely to provide guidance on revenues and expenses that frequently will be attributable to intercollegiate athletic activities. Clarifying language also has been added to the definitions of operating expenses and recruiting expenses.

Several negotiators noted that some individuals have used EADA to gauge whether an institution is in compliance with Title IX of the Education Amendments of 1972 and that, in some cases a misunderstanding of how the EADA dealt with the counting of athletes who participated on more than one varsity team caused an institution to appear to be out of compliance with the athletic financial aid provisions of Title IX. Under Title IX, for purposes of counting participation opportunities provided to male and female athletes, an athlete is counted as a participant for each sport he or she plays. However, for purposes of calculating the equitable distribution of athletic financial aid under Title IX, a scholarship athlete who plays on more than one team is counted as a participant only once because he or she receives only one scholarship.

Therefore, these proposed regulations would add a requirement that in addition to listing the number of participants for each varsity team, an institution provide an unduplicated head count of individuals who participated on at least one varsity team. The committee believes additional reporting requirements should correct the confusion concerning the number of individuals participating on varsity teams.

The Secretary notes that the EADA and Title IX were enacted for different, but complementary, purposes. The

EADA is designed to make students, prospective students, and others aware of an institution's participation rates, staffing, and financial support for its men's and women's intercollegiate athletic programs. Title IX prohibits discrimination based on gender in education programs. Title IX does not require identical programs for men and women. Therefore, differences between men's and women's athletic programs reflected in an institution's EADA report do not necessarily reflect that the institution is or is not in compliance with Title IX (the Secretary has published Title IX definitions and requirements at 34 CFR part 106 and 44 FR 71413 (Dec. 11, 1979)).

The committee agreed to propose a modification of the requirement that institutions report whether their head and assistant coaches are full-time or part-time. The current regulations require an institution to report whether a coach is assigned to a team full-time or part-time. The proposed change would require an institution to indicate whether a coach is assigned to a team full-time or part-time, and if, part-time, whether the coach is a full-time or part-time employee of the institution. This change would better enable prospective student athletes and others to understand a coach's status.

For example, the committee noted that most coaches at National Collegiate Athletic Association Division III institutions are part-time. However, many of those coaches are full-time employees of their institutions, and therefore are effectively as accessible to their student-athletes as are full-time coaches at other institutions. The Secretary believes that providing for institutions to provide this information would benefit both institutions and students.

The Secretary does not consider cheerleading a sport for purposes of the EADA. To be considered a sport under the EADA, an activity's primary purpose must be to engage in intercollegiate competition.

Section 668.48 Report on Completion or Graduation Rates for Student-Athletes

Proposed § 668.48 simply reflects the previous discussion of transfer-out rates in § 668.45, by indicating that a transfer-out rate need only be disclosed by an institution to which the required transfer-out rate is applicable (that is, an institution that determines that its mission includes providing substantial preparation for students to enroll in a program at another eligible institution).

Section 668.48(a)(1)(ii), (iv) and (vi) requires an institution to disclose a

completion or graduation rate and, if applicable, a transfer-out rate for students in specified cohorts who received athletically related student aid. The Secretary wishes to clarify that an institution that offers a predominant number of programs based on semesters, trimesters, or quarters only must include in the rates required by § 668.48(a)(1)(ii), (iv) and (vi) students who received athletically-related student aid by October 15 or the end of the institution's drop-add period for the relevant academic year.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this SUPPLEMENTARY INFORMATION section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 668.41 *Reporting and disclosure of information*.)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in

making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the ADDRESSES section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these proposed regulations are institutions of higher education that participate in the Title IV, HEA programs. These institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of \$5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. These proposed regulations would minimize administrative and regulatory burden on institutions by permitting an institution to use Internet or Intranet websites to comply with the statutory requirement to make campus security information available to current or prospective employees and students.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Proposed §§ 668.41, 668.43, 668.45, 668.46, 668.47, and 668.48 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Institutional and Financial Assistance Information

These regulations affect the following types of entities eligible to participate in the Title IV, HEA programs: Public educational institutions, private nonprofit educational institutions, and private for-profit educational institutions.

The information to be collected is institutional and financial assistance information concerning each institution. Each institution annually must make the information available to enrolled and prospective students, and must submit certain information to the Secretary.

Higher education institutions that participate in Title IV, HEA programs must submit this information to satisfy the requirements for participation set forth in section 485 of the HEA. Each institution annually must submit to the Secretary the data required by §§ 668.45 through 668.48. The Secretary will use this information to prepare reports concerning graduation rates, campus crime, and gender equity in athletics and will make this information publicly available.

Annual public reporting and recordkeeping burden is estimated to average 3 hours for each response for 1800 respondents, and an additional .5 hour for 1800 respondents, for Sec. 668.45; 5 hour for each response for 8500 respondents for Sec. 668.43; 20 hours for each response for 8500 respondents for Sec. 668.45; 29 hours for each response for 8500 respondents for Sec. 668.46; 5.5 hours for each response for 1800 respondents for Sec. 668.47; and 20 hours for each response for 8500 respondents for Sec. 668.48. These hours include the time needed for searching existing data sources, and gathering, maintaining, and disclosing the data.

Organizations and individuals wishing to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the ADDRESSES section of this preamble.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the collection of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR Part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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<http://ocfo.ed.gov/fedreg.htm>
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To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC area, at (202) 512-1530.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

List of Subjects in 34 CFR Part 668

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

Dated: August 2, 1999.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend 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 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1094, 1099c and 1141, unless otherwise noted.

2. The title of subpart D is revised to read as follows:

Subpart D—Institutional and Financial Assistance Information for Students

3. Section 668.41 is revised to read as follows:

§ 668.41 Reporting and disclosure of information.

(a) *Definitions.* The following definitions apply to this subpart:

Athletically related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student-athlete simply happens to be the recipient, is not athletically related student aid.

Certificate or degree-seeking student means a student enrolled in a course of credit who is recognized by the institution as seeking a degree or certificate.

First-time freshman student means an entering freshman who has never attended any institution of higher education. It includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced standing (college credit earned before graduation from high school).

Normal time is the amount of time necessary for a student to complete all requirements for a degree or certificate according to the institution's catalog. This is typically four years for a bachelor's degree in a standard term-based institution, two years for an associate degree in a standard term-based institution, and the various scheduled times for certificate programs.

Notice means information provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing

through the U.S. Postal Service, campus mail, electronic mail, Posting on an Internet website or an Intranet website does not constitute a notice.

Prospective student means an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Undergraduate students, for purposes of §§ 668.45 and 668.48 only, means students enrolled in a bachelor's degree program, an associate degree program, or a vocational or technical program below the baccalaureate.

(b) Disclosure through Internet or Intranet websites. Subject to paragraphs (c)(2)(i) and (ii), (e)(2) and (3), or (g)(1)(i) of this section, as appropriate, an institution may satisfy any disclosure requirement under paragraph (d), (e), or (g) of this section for—

(1) Enrolled students or current employees by posting the disclosure on an Internet website or an Intranet website that is reasonably accessible to the individuals to whom the disclosure is requested; and

(2) Prospective students or prospective employees by posting the disclosure on an Internet website.

(c) Notice to enrolled students. (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to § 99.7. The notice must list and briefly describe the disclosures and inform the student how to obtain the disclosures.

(2) An institution that makes a disclosure to enrolled students required under paragraph (d), (e), or (g) of this section by posting the disclosure on an Internet website or an Intranet website must include in the notice described in paragraph (c)(1) of this section—

(i) The exact electronic address at which that disclosure is posted; and

(ii) A statement that the institution will provide a paper copy of that disclosure on request.

(d) General disclosures for enrolled or prospective students. An institution must make available to any enrolled student or prospective student, on request, through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42);

(2) The institution (pursuant to § 668.43);

(3) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a

prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation; and

(4) The terms and conditions under which students receiving Federal Family Education Loan or William D. Ford Federal Direct Loan assistance may obtain deferral of the repayment of the principal and interest of the loan for—

(i) Service under the Peace Corps Act (22 U.S.C. 2501);

(ii) Service under the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951); or

(iii) Comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service.

(e) Annual security report. (1) Enrolled students and current employees—annual security report. By October 1 of each year, an institution must distribute, to all enrolled students and current employees, its annual security report described in § 668.46(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet website or an Intranet website, subject to paragraphs (e)(2) and (3) of this section.

(2) **Enrolled students—annual security report.** If an institution chooses to distribute its annual security report to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) **Current employees—annual security report.** If an institution chooses to distribute its annual security report to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) **Prospective students and prospective employees—annual security report.** The institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report, upon request, to a

prospective student or prospective employee. If the institution chooses to provide its annual security report to prospective students and prospective employees by posting the disclosure on an Internet website, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(f) **Prospective student-athletes and their parents, high school coach and guidance counselor—report on completion or graduation rates for student-athletes.**

(1)(i) Except under the circumstances described in paragraph (f)(1)(ii) of this section, an institution that is attended by students receiving athletically related student aid, when it offers a prospective student-athlete athletically related student aid, must provide to the prospective student-athlete, and his or her parents, high school coach, and guidance counselor, the report produced pursuant to § 668.48(a).

(ii) An institution's responsibility under paragraph (f)(1)(i) of this section with reference to a prospective student athlete's high school coach and guidance counselor is satisfied if—

(A) The institution is a member of a national collegiate athletic association;

(B) The association compiles data on behalf of its member institutions, which data the Secretary determines are substantially comparable to those required by § 668.48(a); and

(C) The association distributes the compilation to all secondary schools in the United States.

(2) By July 1 of each year, an institution must submit to the Secretary the report produced pursuant to § 668.48.

(g) **Enrolled students, prospective students, and the public—report on athletic program participation rates and financial support data.**

(1)(i) An institution of higher education subject to § 668.47 must, not later than October 15 of each year, make available on request to enrolled students, prospective students, and the public, the report produced pursuant to § 668.47(c). The institution must make the report easily accessible to students, prospective students, and the public and must provide the report promptly to anyone who requests it.

(ii) The institution must provide notice to all enrolled students, pursuant to paragraph (c)(1) of this section, and prospective students of their right to request the report described in paragraph (g)(1) of this section. If the institution chooses to make the report

posting the disclosure on the website or an Intranet must provide in the notice the electronic address at which the notice is posted, a brief description of the notice, and a statement that the institution will provide a paper copy of the notice upon request. For prospective students, the institution may not use an electronic address for this purpose. The institution must submit the information described in paragraph (g)(1)(i) of this section to the Secretary within 15 days of making it available to students, prospective students, and the public.

Proposed]

Section 668.42 is removed, and sections 668.43 through 668.49 are redesignated as §§ 668.42 through 668.48, respectively. Section 668.43 is redesignated as follows:

Proposed Institutional information.

Institutional information that the institution must make readily available upon request to enrolled and prospective students under this subpart includes, but is not limited to—

- (i) The cost of attending the institution, including—
 - (A) Tuition and fees charged to full- and part-time students;
 - (B) Estimates of costs for necessary books and supplies;
 - (C) Estimates of typical charges for meal and board;
 - (D) Estimates of transportation costs for students; and
 - (E) Any additional cost of a program in which a student is enrolled or expresses a specific interest;
- (ii) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;
- (iii) The requirements for officially withdrawing from the institution;
- (iv) A summary of the requirements under § 668.22 for the return of title IV grant or loan assistance;
- (v) The academic program of the institution, including—
 - (A) The current degree programs and other educational and training programs;
 - (B) The instructional, laboratory, and other physical facilities which relate to the academic program; and
 - (C) The institution's faculty and other instructional personnel;
- (vi) The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents

describing that activity may be reviewed under paragraph (b) of this section;

(7) A description of any special facilities and services available to disabled students;

(8) The titles of persons designated under § 668.44 and information regarding how and where those persons may be contacted; and

(9) A statement that a student's enrollment in a program of study abroad approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs.

(b) The institution must make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(Authority: 20 U.S.C. 1092)

6. Newly redesignated § 668.45 is revised to read as follows:

§ 668.45 Information on completion or graduation rates.

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, full-time undergraduate students who enter the institution on or after September 1, 1998, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, full-time undergraduate students who enter the institution on or after September 1, 1998, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of programs based on semesters, trimesters, or quarters must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the group of certificate- or degree-seeking, full-time undergraduate students who enter the institution during the fall term.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate and, if applicable, transfer-out rate calculations, on the group of certificate -or degree-seeking, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(iii) For purposes of the completion or graduation rate and, if applicable, transfer-out rate calculations required in paragraph (a) of this section, an

institution must count as entering students only first-time freshman students, as defined in § 668.41(a).

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time freshman student who is enrolled as of October 15, or the end of the institution's drop-add period.

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time freshman student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) Beginning with the group of students who enter the institution between September 1, 1998 and August 31, 1999, and for groups of students who enter during succeeding September 1 through August 31 time periods, an institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the point in time that 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated within 150% of the normal time for completion or graduation from their program; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, within 150% of normal time for completion from that program.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who, within 150% of the normal time for completion or graduation from the program in which they were enrolled, have not completed or graduated and subsequently enroll in any program of an eligible institution for which its program provides substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may exclude students who—

(1) Have left school to serve in the Armed Forces;

(2) Have left school to serve on official church missions;

- (3) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;
- (4) Are totally and permanently disabled; or
- (5) Are deceased.

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

- (1) Calculate a completion or graduation rate for students who transfer into the institution;
- (2) Calculate a completion or graduation rate and transfer-out rate for students described in paragraph (d) of this section; and
- (3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Authority: 20 U.S.C. 1092)

7. Newly redesignated § 668.46 is revised to read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) *Additional definitions that apply to this section.*

Business Day: Monday through Friday, excluding any day when the institution is closed.

Campus: (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(2) Any building or property that is within or reasonably contiguous to the

area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

Campus security authority: (1) A campus police department or a campus security department of an institution.

(2) An individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (1) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

(3) An individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.

(4) An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. A pastoral counselor or professional counselor, when acting as such, is not considered a campus security authority.

Noncampus building or property: (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

(2) Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

Pastoral counselor: An employee of an institution who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

Professional counselor: An employee of an institution whose official responsibilities include providing psychological counseling to members of the institution's community and who is functioning within the scope of his or her license or certification.

Prospective employee: An individual who has contacted an institution for the purpose of requesting information concerning employment with the institution.

Public property: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately

adjacent to and accessible from the campus.

Referred for campus disciplinary action: The referral of any student to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

(b) *Annual Security Report.* An institution must prepare an annual security report that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c).

(2) A statement of current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This statement must include the institution's policies concerning its response to these reports, including—

(i) Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in paragraph (c)(1) of this section;

(ii) Policies for preparing the annual disclosure of crime statistics; and

(iii) A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in paragraph (c)(1) of this section for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and if so, a description of those policies and procedures.

(3) A statement of current policies concerning security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(4) A statement of current policies concerning campus law enforcement that—

(i) Addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals;

(ii) Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies; and

(iii) Describe procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for

inclusion in the annual disclosure of crime statistics.

(5) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(6) A description of programs designed to inform students and employees about the prevention of crimes.

(7) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the institution, including student organizations with off-campus housing facilities.

(8) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws.

(9) A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.

(10) A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. For the purpose of meeting this requirement, an institution may cross-reference the materials the institution uses to comply with section 120(a) through (d) of the HEA.

(11) A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include—

(i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and nonforcible sex offenses;

(ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;

(iii) Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;

(iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;

(v) Notification to students that the institution will change a victim's academic and living situations after an

alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;

(vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—

(A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and

(B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.

Compliance with this paragraph does not constitute a violation of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g). For the purpose of this paragraph, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex offense and any sanction that is imposed against the accused; and

(vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or nonforcible sex offenses.

(c) *Crime statistics.* (1) *Crimes that must be reported.* An institution must report statistics for the three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of the following offenses reported to local police agencies or to a campus security authority:

(i) Criminal Homicide:

(A) Murder and Nonnegligent Manslaughter.

(B) Negligent Manslaughter.

(ii) Sex Offenses:

(A) Forcible Sex Offenses.

(B) Nonforcible Sex Offenses.

(iii) Robbery.

(iv) Aggravated assault.

(v) Burglary.

(vi) Motor vehicle theft.

(vii) Arson.

(viii)(A) Arrests for liquor law violations, drug law violations, and illegal weapons possession.

(B) Persons not included in paragraph (c)(1)(viii)(A) of this section, who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession.

(2) *Reported Crimes if a Hate Crime:*

An institution must report, by category of prejudice, any crime it reports pursuant to paragraphs (c)(1)(i) through (vii) of this section, and any other crime involving bodily injury reported to local police agencies or to a campus security

authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

(3) *Crimes by location.* The institution must provide a geographic breakdown of the statistics reported under paragraphs (c)(1) and (2) of this section according to the following categories:

(i) On campus.

(ii) Of the crimes in paragraph (c)(3)(i) of this section, the number of crimes that took place in dormitories or other residential facilities for students on campus.

(iii) In or on a noncampus building or property.

(iv) On public property.

(4) *Identification of the victim.* The statistics required under paragraphs (c)(1) and (2) of this section may not include the identification of the victim or the person accused of committing the crime.

(5) *Pastoral and professional counselor.* An institution is not required to report statistics under paragraphs (c)(1) and (2) of this section for crimes reported to a pastoral or professional counselor.

(6) *UCR definitions.* An institution must compile the crime statistics required under paragraphs (c)(1) and (2) of this section using the definitions of crimes provided in Appendix E to this Part, and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS EDITION, except that in determining how to report crimes committed in a multiple-offense situation an institution must use the UCR Reporting Handbook. Copies of the UCR publications referenced in this paragraph are available from: FBI, Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306; (304-625-2823).

(7) *Use of a map.* In complying with the statistical reporting requirements under paragraphs (c)(1) and (2) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas, and may limit its reporting of crime statistics to crimes committed in those areas, if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(8) *Statistics from police agencies.* In complying with the statistical reporting

under paragraphs (c)(1) through (3) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

(f) *Separate campus.* An institution must comply with the requirements of this section for each separate campus.

(g) *Timely warning.* (1) An institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes that are—

(i) Described in paragraph (c)(1) of this section;

(ii) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (f)(1) of this section or local police agencies; and

(iii) Considered by the institution to represent a threat to students and employees.

(2) An institution is not required to provide a timely warning with respect to crimes reported to a pastoral or professional counselor.

(h) *Crime log.* (1) An institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

(3)(i) An institution may withhold information required under paragraphs (f)(1) and (2) of this section if there is clear and convincing evidence that the release of the information would—

(A) Jeopardize an ongoing criminal investigation or the safety of an individual;

(B) Cause a suspect to flee or evade detection; or

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse effect described in that paragraph is no longer likely to occur.

(4) An institution may withhold under paragraphs (f)(2) and (3) of this section only that information that would cause the adverse effects described in those paragraphs.

(5) The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(g) *Report to the Secretary.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by paragraph (c) of this section to the Secretary. (Authority: 20 U.S.C. 1092)

8. Newly redesignated § 668.47 is revised to read as follows:

§ 668.47 Report on athletic program participation rates and financial support data.

(a) *Applicability.* This section applies to a co-educational institution of higher education that—

(1) Participates in any title IV, HEA program; and

(2) Has an intercollegiate athletic program.

(b) *Definitions.* The following definitions apply for purposes of this section only.

(1) *Expenses.*

(i) *Expenses* means expenses attributable to intercollegiate athletic activities. This includes appearance guarantees and options, athletically related student aid, contract services, equipment, fundraising activities, operating expenses, promotional activities, recruiting expenses, salaries and benefits, supplies, travel, and any other expenses attributable to intercollegiate athletic activities.

(ii) *Operating expenses* means all expenses an institution incurs attributable to home, away, and neutral-site intercollegiate athletic contests (commonly known as "game-day expenses"), for—

(A) Lodging, meals, transportation, uniforms, and equipment for coaches, team members, support staff (including, but not limited to team managers and trainers), and others; and

(B) Officials.

(iii) *Recruiting expenses* means all expenses an institution incurs

attributable to recruiting activities. This includes, but is not limited to, expenses for lodging, meals, telephone use, and transportation (including vehicles used for recruiting purposes) for both recruits and personnel engaged in recruiting, any other expenses for official and unofficial visits, and all other expenses related to recruiting.

(2) *Institutional salary* means all wages and bonuses an institution pays a coach as compensation attributable to coaching.

(3)(i) *Participants* means students who, as of the day of a varsity team's first scheduled contest—

(A) Are listed by the institution on the varsity team's roster;

(B) Receive athletically related student aid; or

(C) Practice with the varsity team and receive coaching from one or more varsity coaches.

(ii) Any student who satisfies one or more of the criteria in paragraphs (b)(3)(i)(A) through (C) of this section is a participant, including a student on a team the institution designates or defines as junior varsity, freshman, or novice, or a student withheld from competition to preserve eligibility (i.e., a redshirt), or for academic, medical, or other reasons.

(4) *Reporting year* means a consecutive twelve-month period of time designated by the institution for the purposes of this section.

(5) *Revenues* means revenues attributable to intercollegiate athletic activities. This includes revenues from appearance guarantees and options, an athletic conference, tournament or bowl games, concessions, contributions from alumni and others, institutional support, program advertising and sales, radio and television, royalties, signage and other sponsorships, sports camps, State or other government support, student activity fees, ticket and luxury box sales, and any other revenues attributable to intercollegiate athletic activities.

(6) *Undergraduate students* means students who are consistently designated as such by the institution.

(7) *Varsity team* means a team that—

(i) Is designated or defined by its institution or an athletic association as a varsity team; or

(ii) Primarily competes against other teams that are designated or defined by their institutions or athletic associations as varsity teams.

(c) *Report.* An institution described in paragraph (a) of this section must annually, for the preceding reporting year, prepare a report that contains the following information:

(1) The number of male and the number of female full-time undergraduate students that attended the institution.

(2) A listing of the varsity teams that competed in intercollegiate athletic competition and for each team the following data:

(i) The total number of participants as of the day of its first scheduled contest of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated.

(ii) Total operating expenses attributable to the team, except that an institution may report combined operating expenses for closely related teams, such as track and field or swimming and diving, but such combinations must be reported separately for men's and women's teams.

(iii) In addition to the data required by paragraph (c)(2)(i) of this section, an institution may report operating expenses attributable to the team on a per-participant basis.

(iv)(A) Whether the head coach was male or female, was assigned to the team on a full-time or part-time basis, and if assigned on a part-time basis, whether the head coach was a full-time or part-time employee of the institution.

(B) The institution must consider graduate assistants and volunteers who served as head coaches to be head coaches for the purposes of this report.

(v)(A) The number of assistant coaches who were male and the number of assistant coaches who were female, and within each category, the number who were assigned to the team on a full-time or part-time basis, and of those assigned on a part-time basis, the number who were full-time and part-time employees of the institution.

(B) The institution must consider graduate assistants and volunteers who served as assistant coaches to be assistant coaches for purposes of this report.

(3) The unduplicated head count of the individuals who were listed under paragraph (c)(2)(i) of this section as a participant on at least one varsity team, by gender.

(4)(i) Revenues derived by the institution according to the following categories (Revenues not attributable to a particular sport or sports must be included only in the total revenues attributable to intercollegiate athletic activities, and if appropriate, revenues attributable to men's sports combined or women's sports combined. Those revenues include, but are not limited to, alumni contributions to the athletic

department not targeted to a particular sport or sports, investment interest income, and student activity fees):

(A) Total revenues attributable to its intercollegiate athletic activities.

(B) Revenues attributable to all men's sports combined.

(C) Revenues attributable to all women's sports combined.

(D) Revenues attributable to football.

(E) Revenues attributable to men's basketball.

(F) Revenues attributable to women's basketball.

(G) Revenues attributable to all men's sports except football and basketball, combined.

(H) Revenues attributable to all women's sports except basketball, combined.

(ii) In addition to the data required by paragraph (c)(4)(i) of this section, an institution may report revenues attributable to the remainder of the teams, by team.

(5) Expenses incurred by the institution, according to the following categories (Expenses not attributable to a particular sport, such as general and administrative overhead, must be included only in the total expenses attributable to intercollegiate athletic activities):

(i) Total expenses attributable to intercollegiate athletic activities.

(ii) Expenses attributable to football.

(iii) Expenses attributable to men's basketball.

(iv) Expenses attributable to women's basketball.

(v) Expenses attributable to all men's sports except football and basketball, combined.

(vi) Expenses attributable to all women's sports except basketball, combined.

(6) The total amount of money spent on athletically related student aid, including the value of waivers of educational expenses, aggregately for men's teams, and aggregately for women's teams.

(7) The ratio of athletically related student aid awarded male athletes to athletically related student aid awarded female athletes.

(8) The total amount of recruiting expenses incurred, aggregately for all men's teams, and aggregately for all women's teams.

(9)(i) The average annual institutional salary of the non-volunteer head coaches of all men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer head coaches of all women's teams, across all offered sports, on a per person and a per full-time equivalent position basis. These data must include the

number of persons and full-time equivalent positions used to calculate each average.

(ii) If a head coach has responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(10)(i) The average annual institutional salary of the non-volunteer assistant coaches of men's teams, across all offered sports, and the average annual institutional salary of the non-volunteer assistant coaches of women's teams, across all offered sports, on a per person and a full-time equivalent position basis. These data must include the number of persons and full-time equivalent positions used to calculate each average.

(ii) If an assistant coach had responsibilities for more than one team and the institution does not allocate that coach's salary by team, the institution must divide the salary by the number of teams for which the coach has responsibility and allocate the salary among the teams on a basis consistent with the coach's responsibilities for the different teams.

(Authority: 20 U.S.C. 1092)

9. Newly redesignated § 668.48 is amended as follows:

A. In paragraph (a)(1), by removing "By July 1, 1997, and by every July 1 every year thereafter, each" and adding, in its place, "Annually, by July 1, an"; by removing "shall" and adding in its place "must"; and by removing "an annual" and adding, in its place "a".

B. In paragraph (a)(1)(iii), by adding, if applicable, "before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)".

C. In paragraph (a)(1)(iv), by adding, if applicable, "before "transfer-out"; and by removing "§ 668.46(a)(1), (2), (3) and (4)" and adding, in its place, "§ 668.45(a)(1)".

D. In paragraph (a)(1)(v), by adding, if applicable, "before "transfer-out" both times it appears; by removing "§ 668.46(a)(2), (3), and (4)" and adding, in its place, "§ 668.45(a)(1)"; and by removing "shall" and adding, in its place, "must".

E. In paragraph (a)(1)(vi), by adding, if applicable, "before "transfer-out" both times it appears; by adding after "recent," "completing or graduating"; by removing "§ 668.46(a)(2), (3), and (4)" and adding in its place

"§ 668.45(a)(1)"; and by removing "shall" and adding in its place "must"; and

F. In paragraph (b), by removing "§ 668.46" and adding in its place "§ 668.45"; by removing "(a)(1)(iii), (a)(1)(iv), and (a)(1)(v)" and adding in their place "(a)(1)(iii) through (vi)"; and by adding ", if applicable," before "transfer-out."

10. Appendix E is amended by removing the definition of "Murder," and by adding the following definitions before the definition of "robbery:"

Appendix E to Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program

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Crime Definitions From the Uniform Crime Reporting Handbook

Arson

Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

The willful (nonnegligent) killing of one human being by another.

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