NACUBO Advisory Guidance 18-05

Financial Responsibility Standards

Updated April 2019

NACUBO

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Advisory Report 2018-05

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Changes to the Department of Education's Financial Responsibility Standards for Nonprofit Institutions

Independent nonprofit colleges and universities are subject to the Department of Education's financial responsibility standards and should ensure that protocols are in place to report new triggering events (effective October 17, 2018) to ED in a timely manner, generally within 10 days. The department may require a recalculation of an institution's most recent composite score if certain triggering events occur.

Note: Public institutions are exempt from the financial responsibility standards, unless subject to a condition of past performance under 34 CFR 668.174.

Updated Guidance

In March 2019, ED published updated guidance concerning some provisions of the 2016 borrower defense rules. Notably, ED set **May 13, 2019**, as the deadline to notify it of most financial responsibility actions, events, or conditions between July 1, 2017, and the present that must be reported under the rules.

Reporting requirements will continue indefinitely. Time requirements for reporting vary by category of triggering events—some events heretofore need to be reported within 10 days. Readers should reference the electronic announcement to understand the requirement reporting timeframes for various triggering events.

All business officers should familiarize themselves with the March 2019 electronic announcement because **several provisions still affect all institutions**, public and private.

Introduction

After a court battle, Obama-era borrower defense rules went into effect on October 17, 2018, nearly two years after the Department of Education (ED) finalized them. These regulations have significant implications for institutions that participate in federal student aid programs.

In particular, business officers need to know how borrower defense rules change ED's financial responsibility standards. As part of a 2016 rulemaking package focused on borrower defense to repayment—the ability of students to have federal loans cancelled due to closure, fraud, or misrepresentation by the institution they attended—the financial responsibility standards were revised to provide additional protection to ED and to better ensure that it will have financial recourse to cover forgiven loans.

ED's finalized 2016 regulations call for the recalculation of an institution's most recent composite score if certain events occur. If ED's analysis shows that the school's recalculated score is less than 1 (the "passing" grade), the institution will be determined to be "not financially responsible" and will be required to provide additional surety to ED. Schools must notify ED when triggering events occur, generally within 10 days.

This report provides an overview of the changes to the financial responsibility standards in the finalized 2016 rules, which took effect on October 17, 2018 and were further updated with additional guidance in March 2019. **Tables 1** and **2** summarize the provisions relating to automatic and discretionary triggers, respectively. A detailed discussion of how ED plans to recalculate institutions' composite scores is provided in **Appendix A**. **Appendix B** compares the regulatory language of the new rules to the previous financial responsibility standards at 34 CFR §668.171 and §668.175 (no changes were made to the other parts of Subpart L) and the relevant additions to §668.41(i) on reporting and disclosure of information. The November 1, 2016, *Federal Register* notice can be found here; discussion of the financial responsibility standards begins on page 75978.

Take Action

Business officers should take the following steps now that the new regulations are in effect:

- Become familiar with the new triggers and their potential impact on the institution's composite score calculation.
- Establish a campus protocol to monitor and report triggers.
- Begin to consider how to handle possible future public disclosures about triggering events. While not yet required, institutions will be required in the future to disclose information to current and prospective students, both directly and on the institution's homepage.
- Wait for guidance and delay reporting into eZ-Audit for as long as possible.

Background

Borrower Defense

Initially created in response to the sudden closure of Corinthian Colleges and finalized in the last few months of the Obama administration, the original borrower defense rules were slated to take effect on July 1, 2017. However, the Trump administration put the regulations' implementation on hold, stating that the rules were flawed and needed revision. In response, consumer protection advocates and other stakeholders sued the department, alleging that ED's decision to delay the finalized Obama-era guidance was illegal. After a court battle, ED lost this lawsuit and the finalized Obama-era regulations took effect on October 17, 2018.

When the Obama administration's proposed rules were unveiled in 2016, NACUBO argued that the borrower defense rulemaking process was not the appropriate venue to address and change the financial responsibility rules. However, ED persisted in including a major revision of the standards in its effort to protect student loan borrowers and promote greater institutional accountability.

In comments submitted to ED in August of 2016, NACUBO stated, "The proposed regulations go beyond the remedies necessary to establish systems to provide relief to federal student loan borrowers who have been wronged. Abusive practices that prey on students must be curbed. However, the regulatory changes put forth by ED include inappropriate indicators—and generate consequences for institutions and students—that will not reliably address the deceptive, fraudulent practices that motivated this rulemaking effort."

In July 2018, the Trump administration had unveiled its proposed revisions to the borrower defense rules, which were intended to replace the Obama administration's finalized regulations. Under the master calendar provision of the Higher Education Act, ED had until November 1 to finalize the new rules for them to go into effect July 1, 2019. However, ED missed this deadline. Consequently, the Obama-era regulations will remain in effect until new regulations take their place, in July 2020 at the earliest.

Financial Responsibility

ED originally issued regulations in 1997 that established a new methodology for determining the financial stability of institutions participating in the Title IV federal student financial assistance programs. The rules created a system to assess the financial health of institutions based on three ratios: primary reserve, equity, and net income. An institution's raw scores are adjusted by strength factors and combined into a composite score.

After the 2008 economic downturn, NACUBO and others identified flaws in the administration and calculation of financial responsibility composite scores. Specifically, a task force organized by the National Association of Independent Colleges and Universities (NAICU) raised a number of concerns about how ED treats key elements of the ratio calculations, including total expenses, endowment losses, trustee pledges, long-term debt, and net asset classifications. NACUBO and NAICU have since urged ED to reconsider its interpretations, but problems persist.

Concurrent with the Trump administration's November 2017 borrower defense negotiations, ED appointed a financial responsibility subcommittee to address accounting issues. The specific charge involved revisiting financial responsibility in light of new nonprofit financial reporting guidance (FASB ASU 2016-14), new lease accounting guidance (FASB ASU 2016-02), and post-1997 accounting changes impacted by lease and nonprofit financial reporting guidance. Although consensus with ED facilitators was reached, subcommittee recommendations are on hold until ED chooses to use them.

Final Rules

The final rules set forth two categories of events that would lead to re-evaluation of an institution's financial standing. This report discusses only those triggers, *automatic* and *discretionary*, that apply to nonprofit institutions. Several additional triggers relate only to for-profit schools and are not covered below.

ED has yet to announce how it will implement these rules. NACUBO is actively exploring the implication of their sudden implementation, particularly as it relates to financial responsibility ratios and triggering events. At this time, it is unclear how schools should report a triggering event or check compliance with disclosure requirements.

Triggers

Automatic triggers. The final rules define five types of events or actions that would cause ED to recalculate an institution's composite score, without waiting for the institution's audited financial statements:

1. Debts stemming from a judicial or administrative proceeding or settlement.
2. Borrower defense-related lawsuits.
3. Other litigation.
4. Accrediting agency actions requiring a teach-out plan when an institution is closing or is closing a branch or additional location.
5. Gainful employment programs that could become ineligible for federal aid in the next award year.

The regulations lay out how ED will determine the potential loss to the institution to estimate the possible impact to the institution's score for each trigger (see **Table 1** for specifics). NACUBO is particularly concerned about new composite score recalculations resulting from borrower defense-related lawsuits and other litigation (triggers 1, 2, and 3). ED's formula will increase total expenses and reduce total assets. **Appendix A** and **Figure 1** provide additional information and an illustration.

For potential program, branch, or institutional closures (triggers 4 and 5), ED would presume loss of revenue in the amount of Title IV funds received in the prior year for students in affected programs and would calculate an expense allowance to take into account the potential savings to the institution. Changes to related program assets would not be considered. ED's adjustment formula decreases both unrestricted revenue and total expenses; both decreases will impact total assets. A more detailed discussion of the recalculations, including a spreadsheet illustrating the potential impact on an institution's composite score, is provided in **Appendix A, Figure 2**.

One additional automatic trigger—a cohort default rate (CDR) of 30 percent or higher for two consecutive years—would not involve any recalculation. The school would be placed on provisional certification and would be required to provide surety to ED. Current regulations already allow ED to take these actions if an institution's CDR reaches this level. If a school's CDR is 30 percent or higher for a third year, it loses eligibility to participate in the Pell Grant and Direct Loan programs for two years.

Discretionary triggers. The regulations also include a list of other factors or events that may cause an institution to be judged unable to meet its financial or administrative obligations if ED demonstrates that it is "reasonably likely to have a material adverse effect on the financial condition, business, or results of operations of the institution." The list is open-ended, leaving open the possibility that ED could make such a determination based on another factor that is not mentioned. The following are listed as discretionary triggers:

- Significant fluctuation year-to-year in the amount of Pell Grant and/or Direct Loan funds received by the institution.
- Citation by state licensing or authorizing agency for failing requirements.
- Failing a financial stress test devised or adopted by ED (no such test has been developed or designated to date).
- High annual dropout rates.
- Accreditation status such as probation, show-cause order, or similar action.
- Violation of a provision or requirement in a loan agreement that enables the creditor to increase collateral.
- Pending claims for borrower relief discharge.
- Significant borrower defense claims expected due to a lawsuit, settlement, judgment, or finding.

See **Table 2** for more details on each of these discretionary triggers.

The trigger related to loan agreements is of particular interest to business officers. This is not a new factor in determining financial responsibility. Under the previous rules, one of the general standards of financial responsibility was that the institution was current in its debt payments. An institution was not considered current in its debt payments if it (1) was in violation of any existing loan agreement at its fiscal year end, or (2) had failed to make payments on an obligation for more than 120 days and a creditor had filed suit.

The new provision is laid out differently and is linked to a monetary or nonmonetary default or delinquency *at any point in the year* if it enables the creditor to impose sanctions on the institution including, but not limited to, an increase in collateral, interest rates, or payments. The trigger is no longer tied to the results at the end of the institution's fiscal year, and the school is required to notify ED any time such a situation occurs. (Reporting requirements are discussed below.)

Reporting

Under the previous rules, nonprofit institutions had nine months from the end of their fiscal year to submit audited financial statements to the Federal Audit Clearinghouse and to ED using the eZ-Audit template and submission process. Unless institutions were subject to heightened monitoring requirements that require earlier reporting, ED's only notification of financial issues came from disclosure in the audited financial statements. Once the financial statements were submitted, it typically took department analysts several months to review the submission and calculate the school's composite score. This delay—and the risk it posed to ED's ability to protect its fiscal interests—is one of the reasons cited by ED to justify the changes to the regulations.

Under the new regime, colleges and universities are required to report to ED when a triggering event occurs, generally within 10 days of a certain point in time (defined for each type of event). For instance, if a school is being sued by a federal or state authority for claims related to making Direct Loans or the provision of educational services, it would have to report it to ED 10 days after the institution is served with the complaint and again 10 days after the suit has been pending for 120 days.

No reporting is required for several triggers, such as failing gainful employment programs and posting high cohort default rates, since ED generates that information itself. Details of the reporting requirements for each trigger are provided in **Tables 1** and **2**.

Institutions need to put systems in place to ensure that potential triggering events are brought to the attention of the person or office charged with reporting to ED in a timely manner. Depending on the school and the type of trigger, this may involve the general counsel, the chief academic officer, the chief business officer, and others.

When reporting a triggering event to ED, institutions may also include an explanation showing that:

- The matter has been resolved and no longer poses a risk.
- The institution has insurance that will cover all or part of the liabilities that might arise from the event.
- For suits by a federal or state agency, the amount claimed is too high and exceeds the potential recovery.
- The creditor has waived the violation of a loan agreement, with details on any other penalties or requirements the creditor imposed.

The likelihood of an event's outcome or financial significance is irrelevant to the reporting requirement. There is no materiality threshold. The institution must still report the triggering event even if it has been resolved in some way before the reporting deadline. If an event occurs, an institution must act in accordance with the regulation.

Updated Guidance

Acknowledging the complexity around the effective date of the 2016 borrower defense rules, the department released additional guidance on certain provisions of the regulations in March 2019. Perhaps most significantly, the electronic announcement set **May 13, 2019**, as the deadline to alert ED of most financial responsibility actions, events, or conditions occurring between July 1, 2017, and the present that institutions are required to report.

Time requirements for notifying ED vary by triggering event. Depending on the event, schools might have to report to the department within as little as 10 days. To understand the requirement reporting timeframes for various triggering events, readers should reference the electronic announcement. **These reporting requirements will continue indefinitely.**

Because **several provisions affect both public and private institutions**, all business officers should acquaint themselves with the updated guidance.

The March guidance explains that the final regulations established a federal standard for borrower defense to repayment applications based upon judgments against institutions, breaches of contract by institutions, and substantial misrepresentations by institutions. ED affirmed that this standard will be applied for borrower defense to repayment claims asserted with respect to loans first disbursed on or after July 1, 2017.

The guidance also acknowledges that some institutions have experienced one or more financial responsibility actions, events, or conditions between July 1, 2017, and the present. However, ED only requires these institutions to submit a separate notification if the triggering event occurred after the fiscal year-end for the most recent annual audit submission submitted to the department.

Further, the guidance highlights the new requirements to submit certain records to ED and prohibits internal dispute resolution, class action bans, and pre-dispute arbitration agreements.

Who to Contact

The March 2019 guidance provides contact information, listed below, for institutions that need to submit required documentation. As a reminder, institutions should always ensure that they maintain an independent record of their reporting and any subsequent interactions with ED related to that reporting.

- **Notifications of Financial Responsibility:** Notifications of financial responsibility actions, events, or conditions should be sent to FSAFRN@ed.gov. For help with notifications, contact Tiffany Hill at Tiffany.Hill@ed.gov.
- **Submission of Arbitral and Judicial Records:** Arbitral and judicial records specified in the 2016 borrower defense rules should be sent to borrowerdefense@ed.gov. For help with submissions, contact Sara Hayhurst at Sara.Hayhurst@ed.gov.

Consequences

Provisional certification. The new regulations added new ways for institutions to fail the financial responsibility standards but made only a few changes to the consequences. An institution that fails the financial responsibility standards may continue to participate in the Title IV programs under provisional certification for three years. To continue to participate in the Title IV programs under provisional certification, an institution will be required to provide surety to ED of 10 percent or more of its previous year's Title IV funding, as determined by ED.

Under the previous rules, the only acceptable form of surety was an irrevocable letter of credit. The new rules provide an alternative, allowing schools to agree to set aside a portion of the Title IV funds they are eligible to receive, prorated over a nine-month period until the required amount has been withheld. ED has also signaled openness to broadening the types of surety that are acceptable in the future.

Schools that fail to meet the financial responsibility standards continue to have the option under §668.175(c) of providing ED with surety in an amount determined by ED of at least 50 percent of their total prior-year Title IV funding. The college or university is then considered to be financially responsible and is not subject to the additional monitoring and reporting requirements attached to provisional certification.

Disclosure to students and prospective students. ED has added a new, as yet ill-defined, requirement to its regulations under §668.41 on reporting and disclosure of information, calling for institutions to disclose information about triggering events to current and prospective students within 30 days of notifying ED about them. The regulations require that the disclosures be hand-delivered or e-mailed to enrolled and prospective students in a dedicated message. The disclosure must also be prominently displayed on the homepage of the institution's website.

In an unusual move, ED left open a definition of which triggering events would need to be disclosed, promising that it would consumer test each of the events (and others that result in schools being required to provide surety to ED) to "determine which of these events are most meaningful to students in their educational decision-making." ED states in the regulations that it will publish a subsequent notice in the *Federal Register,* identifying which triggering events must be disclosed and detailing the form and placement of the disclosure.

Looking Forward

NACUBO continues to monitor developments and advocate for nonprofit institutions concerning ED's financial responsibility standards. Updates from ED will be shared as they become available. Due to lack of guidance, **NACUBO advises schools to delay reporting into eZ-Audit for as long as possible**. Concerning financial responsibility, NACUBO has asked ED to convene accounting experts to improve the borrower defense guidance, with the objective to:

1. Address a flawed eZ-Audit crosswalk of current to new financial statement attributes–released by ED in August 2018–that private colleges will be required to use when FASB ASU 2016-14 (NFP financial reporting) is implemented.

2. Finalize updated financial responsibility recommendations, made earlier in 2018, that conform to ASUs 2016-14 and 2016-02, not-for-profit financial reporting and leases, respectively. These recommendations were made by an appointed subcommittee during the Trump administration's negotiated rulemaking process for borrower defense.

If ED does not use the work of the financial responsibility subcommittee from the 2017 negotiated rulemaking, both nonprofit and for-profit institutions will be in danger of false financial responsibility failures, which will be worse for schools if borrower defense trigger adjustments need to be used.

For more information or to discuss ramifications of the regulatory changes, please contact Sue Menditto, director of accounting policy (202.861.2542, sue.menditto@nacubo.org), or Liz Clark, senior director for federal affairs (202.861.2553, lclark@nacubo.org). NACUBO would like to thank Kat Masterson, policy analyst, and Anne Gross for their contributions to this advisory report. Anne, formerly vice president, regulatory affairs, retired in April 2018.

Table 1. AUTOMATIC TRIGGERS for Nonprofit Institutions

Debts and Borrower Defense–Related Lawsuits		**34 CFR 668.171 Reference**
Event	(A) The institution is required to pay any debt or incur any liability arising from a final judgment in a judicial proceeding or from an administrative proceeding or determination, or from a settlement, or (B) The institution is being sued (in an action brought on or after July 1, 2017) by a federal or state authority for financial relief on claims related to the making of Direct Loans for enrollment or the provision of educational services, and the suit has been pending for 120 days.	(c)(1)(i)
Notify ED no later than—	(A) For debts arising from lawsuits and for other actions or events, 10 days after a payment was required or a liability was incurred. (B) For lawsuits, 10 days after the institution is served with the complaint and 10 days after the suit has been pending for 120 days.	(h)(1)(i)
Composite score recalculation	Amount of loss is— (A) The amount of debt. (B) For a suit, the amount set by a court ruling, or, in the absence of a court ruling— (1) The amount of relief claimed in the complaint. (2) If the complaint demands no specific amount of relief, the amount stated in any final written demand issued by the agency to the institution prior to the suit, or a lesser amount that the agency offers to accept in settlement of any financial demand in the suit, or (3) If the agency stated no specific demand in the complaint, in a pre-filing demand, or in a written offer of settlement, the amount of tuition and fees received by the institution during the period, and for the program or location, described in the allegations in the complaint.	(c)(2)(ii)
Adjusting entries	DEBIT Total expenses (unrestricted)	CREDIT Total assets

Other Litigation			**34 CFR 668.171 Reference**
Event	The institution is being sued (in an action brought on or after July 1, 2017) that is not described above and— (A) The institution has filed a motion for summary judgment or summary disposition and that motion has been denied, or the court has issued an order reserving judgment on the motion. (B) The institution has not filed a motion for summary judgment or summary disposition by the deadline set for such motions by the court or agreement of the parties, or (C) If the court did not set a deadline for filing a motion for summary judgment and the institution did not file such a motion, the court has set a pretrial conference date or trial date and the case is pending on the earlier of those two dates.		(c)(1)(ii)
Notify ED no later than—	(A) 10 days after the institution is served with the complaint. (B) 10 days after the court sets the dates for the earliest of the events described in paragraph (c)(1)(ii) of this section, provided that, if the deadline is set by procedural rules, notice of the applicable deadline must be included with notice of the service of the complaint, and (C) 10 days after the earliest of the applicable events occurs.		(h)(1)(ii)
Composite score recalculation	Amount of loss is the amount set by a court ruling, or, in the absence of a court ruling— (A) The amount of relief claimed in the complaint. (B) If the complaint demands no specific amount of relief, the amount stated in any final written demand by the claimant to the institution prior to the suit or a lesser amount that the plaintiff offers to accept in settlement of any financial demand in the suit, or (C) If the complainant stated no specific demand in the complaint, in a pre-filing demand, or in a written offer of settlement, the amount of the claim as stated in a response to a discovery request, including an expert witness report.		(c)(2)(iii)
Adjusting entries	DEBIT Total expenses (unrestricted)	CREDIT Total assets	

<table>
<tr><th colspan="4">Accrediting Agency Actions</th><th>34 CFR 668.171 Reference</th></tr>
<tr><td>Event</td><td colspan="3">The institution was required by its accrediting agency to submit a teach-out plan, for a reason described in §602.24(c)(1), that covers the closing of the institution or any of its branches or additional locations.</td><td>(c)(1)(iii)</td></tr>
<tr><td>Notify ED no later than—</td><td colspan="3">10 days after the institution is notified by its accrediting agency that it must submit a teach-out plan.</td><td>(h)(1)(iii)</td></tr>
<tr><td>Composite score recalculation</td><td colspan="3">Amount of loss is the amount of Title IV, HEA program funds the institution received in its most recently completed fiscal year for that location or institution, or for those GE programs.
An expense allowance is calculated as (operating expenses/tuition & fees) x amount of loss. This is to account for lower expenses if a program or location is closed.</td><td>(c)(2)(iv)
App. C to Subpart L</td></tr>
<tr><td rowspan="2">Adjusting entries</td><td>DEBIT
First entry (amount of loss)</td><td>Total revenue (unrestricted)</td><td colspan="2">CREDIT
Total assets</td></tr>
<tr><td>Second entry (expense allowance)</td><td>Total assets</td><td colspan="2">Total expenses</td></tr>
</table>

<table>
<tr><th colspan="4">Gainful Employment</th><th>34 CFR 668.171 Reference</th></tr>
<tr><td>Event</td><td colspan="3">As determined annually by the secretary of education, the institution has gainful employment programs that, under §668.403, could become ineligible based on their final debt/earnings rates for the next award year.</td><td>(c)(1)(iv)</td></tr>
<tr><td>Notify ED no later than—</td><td colspan="3">No reporting requirement [ED generates data].</td><td></td></tr>
<tr><td>Composite score recalculation</td><td colspan="3">Amount of loss is the amount of Title IV funds the institution received in its most recently completed fiscal year for that location or institution, or for those GE programs.
An expense allowance is calculated as (operating expenses/tuition & fees) x amount of loss. This is to account for lower expenses if a program or location is closed.</td><td>(c)(2)(iv)
App. C to Subpart L</td></tr>
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<tr><td>Second entry (expense allowance)</td><td>Total assets</td><td colspan="2">Total expenses</td></tr>
</table>

Cohort Default Rates		**34 CFR 668.171 Reference**
Event	The institution's two most recent cohort default rates are 30 percent or greater, as determined under Subpart N, unless— (A) The institution files a challenge, request for adjustment, or appeal for one or both years, and (B) The challenge is pending, results in reducing the rate below 30 percent for either or both years, or precludes the rates from resulting in a loss of eligibility or provisional certification.	(f)
Notify ED no later than—	No reporting requirement [ED generates data].	
Composite score recalculation	No recalculation of composite score; institution is deemed not to meet its financial or administrative obligations.	

Table 2. DISCRETIONARY TRIGGERS for Nonprofit Institutions

Reporting Required		**34 CFR 668.171 reference**
Violation of Loan Agreement (i) The institution violated a provision or requirement in a loan agreement, and (ii) As provided under the terms of a security or loan agreement between the institution and the creditor, a monetary or nonmonetary default or delinquency event occurs, or other events occur, that trigger, or enable the creditor to require or impose on the institution, an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees.		(g)(6)
Notify ED no later than—	10 days after a loan violation occurs, the creditor waives the violation, or the creditor imposes sanctions or penalties in exchange or as a result of the waiver.	
State Licensing or Authorizing Agency Citation The institution is cited by a state licensing or authorizing agency for failing state or agency requirements.		(g)(2)
Notify ED no later than—	10 days after the institution is cited for violating a state or agency requirement.	
Accreditation Status The institution is or was placed on probation or issued a show-cause order, or placed on an accreditation status that poses an equivalent or greater risk to its accreditation, by its accrediting agency for failing to meet one or more of the agency's standards.		(g)(5)
Notify ED no later than—	10 days after the institution's accrediting agency places the institution on that status.	
No Reporting Necessary		**34 CFR 668.171 reference**
Financial Stress Test The institution fails a financial stress test developed or adopted by the secretary of education, to evaluate whether the institution has sufficient capital to absorb losses that may be incurred as a result of adverse conditions and to continue to meet its financial obligations to the Secretary and students.		(g)(3)
Dropout Rates As calculated by the secretary of education, , the institution has high annual dropout rates.		(g)(4)
Borrower Discharge Claims The institution has pending claims for borrower relief discharge under §685.206 or §685.222.		(g)(7)
Borrower Discharge Lawsuits and Settlements ED expects to receive a significant number of claims for borrower relief discharge under §685.206 or §685.222 as a result of a lawsuit, settlement, judgment, or finding from a state or federal administrative proceeding.		(g)(8)

Appendix A. Recalculating the Composite Score

ED explains how it will recalculate an institution's composite score in response to a triggering event in the text of the regulation and provides more detail in an accompanying table codified in a new Appendix C to the financial responsibility standards in Subpart L of 34 CFR 668. The second chart, reproduced below, applies to nonprofit colleges and universities.

76078 **Federal Register** / Vol. 81, No. 211 / Tuesday, November 1, 2016 / Rules and Regulations

Section 2: Non-profit Institutions								
Event	Borrower-defense related lawsuits and other debts. §668.171 (c)(1)(i)		Other Litigation. §668.171 (c)(1)(ii)		Accrediting Agency Requires Teach-out Plan for Closed Location, §668.171 (c)(1)(iii)		Gainful Employment Programs, Loss of Eligibility, §668.171 (c)(1)(iv)	
Amount of Loss	Debt, relief claimed, or other amount as determined under §668.171 (c)(2)(ii)		Relief claimed, or other amount as determined under §668.171 (c)(2)(iii)		Title IV funds received by the closed institution or location during the most recently completed fiscal year, §668.171 (c)(2)(iv)		Title IV funds received during the most recently completed fiscal year by GE programs in jeopardy of losing eligibility, §668.171 (c)(2)(iv)	
Allowance for Expenses	Not applicable				Operating expenses (#32) / Tuition & Fees (#27) multiplied by Amount of Loss			
	Entries for Losses Line item from Section 2, Appendix B				**Entries for Loss and Expenses** Line item from Section 2, Appendix B			
	Debit	Credit	Debit	Credit	Debit	Credit	Debit	Credit
Adjusting Entries	#38b, Total Expenses (Unrestricted)		#38b, Total Expenses (Unrestricted)		#31b, Total Revenue (Unrestricted)		#31b, Total Revenue (Unrestricted)	
		#12, Total Assets		#12, Total Assets		#12, Total Assets		#12, Total Assets
	NA		NA		#12, Total Assets (expense allowance)		#12, Total Assets (expense allowance)	
		NA		NA		#38b, Total Expenses (expense allowance)		#38b, Total Expenses (expense allowance)
Note that based on the changes to #31b Total Revenue (Unrestricted) and #38b Total Expenses (Unrestricted), the following items may be recalculated: #39b Change in (Unrestricted) Net Assets, #41b (Unrestricted) Net Assets at end of year (will be same as #20 Unrestricted Net Assets), #25 Total Net Assets, #26 Total Liabilities & Net Assets.								

The Balance Sheet (BS) and Statement of Activities (SOA) line items in the chart reference an illustrative example of how to calculate a school's composite score provided in the existing Appendix B to Subpart L. NACUBO has prepared two spreadsheets to illustrate the journal entries required for the recalculation using ED's example. **Figure 1** shows recalculations for the triggers for borrower defense-related lawsuits or actions or other litigation (triggers 1, 2, and 3 in the advisory report). **Figure 2** addresses the triggers involving potential closing of locations or programs (triggers 4 and 5).

NACUBO encourages members to stress test their ratios and composite scores and assess the loss thresholds that may result in a failing composite score. Business officers may download the spreadsheets by visiting NACUBO's Borrower Defense web page, downloading the Excel file listed under NACUBO Tools, and then inputting their own data.

Note on Appendix A. ED acknowledges that the adjusting journal entries will directly impact BS and SOA line items. However, the footnote to the chart is confusing because it indicates that related BS and SOA line items "may" be recalculated. Under generally accepted accounting principles, these adjustments would also affect total assets, total net assets, changes to net assets, and total liabilities and net assets. NACUBO is not sure if ED intends all of these financial statement categories to change or if ED will simply recalculate the ratios and the composite score using only the adjusted value of the line items. It is not clear whether the use of the word "may" indicates that ED will use discretion in determining whether to make additional adjustments to financial statements based on trigger frequency or severity or some other factors. NACUBO has asked ED for clarification.

Figures 1 and 2 display the impact of ED's adjustments two ways: to the specified line items only (in red) and to all related financial statement categories (in blue).

Borrower Defense / Financial Responsibility
Figure 1. Triggers 1 - 3 Loss Adjustments: Litigation
Illustrative Example: ABC College

1. Debts stemming from a judicial or administrative proceeding or settlement.
2. Borrower defense related lawsuits.
3. Other litigation.

ILLUSTRATIVE EXAMPLE ASSUMPTIONS:	
Triggers 1 - 3 loss estimate	2,500,000

ADJUSTING JOURNAL ENTRY:		DR	CR
Record loss estimate:			
38 b	Total expense	2,500,000	
12	Total assets		2,500,000

STATEMENT SOURCE: 34 CFR 668, Subpart L, Appendix B (referenced at 81 FR 76078)

BLACK: Reported balances per audited financial statements and G/L
RED: Loss adjustments (81 FR 76078) - aggregate for Triggers 1 - 3
BLUE: Balances that may be impacted per 81 FR 76078 Footnote

BALANCE SHEET

Line		Total	AJE(s)	Adjusted
1	Cash and cash equivalents	$ 1,000,000		
2	Accounts receivable	6,000,000		
3	Prepaid expenses	1,500,000		
4	Inventories	500,000		
5	Contributions receivable	2,000,000		
6	Student loans receivable	8,000,000		
7	Investments	6,000,000		
8	Property and equipment, net	50,000,000		
9	Bond insurance proceeds	720,000		
10	Goodwill	500,000		
11	Deposits	20,000		
12	**Total Assets**	**76,240,000**	**(2,500,000)**	**73,740,000**
13	Line of credit	500,000		
14	Accounts payable	2,000,000		
15	Accrued expenses	3,500,000		
16	Deferred revenue	650,000		
17	Post-retirement benefits liability	6,600,000		
18	Bonds payable	36,000,000		
19	**Total Liabilities**	**49,250,000**		
20	**Unrestricted Net Assets**	**15,190,000**		**12,690,000**
21	Annuities	300,000		
22	John Doe scholarship fund	2,500,000		
23	**Temporarily Restricted Net Assets**	**2,800,000**		
24	**Permanently Restricted Net Assets**	**9,000,000**		
25	**Total Net Assets**	**26,990,000**		**24,490,000**
26	**Total Liabilities and Net Assets**	**$ 76,240,000**		**$ 73,740,000**

Borrower Defense / Financial Responsibility
Figure 1. Triggers 1 - 3 Loss Adjustments: Litigation
Illustrative Example: ABC College

STATEMENT OF ACTIVITIES

Line	Column a	b Unrestricted	c Temporarily Restricted	d Permanently Restricted	Total	b AJE(s)	b Adjusted
27	Tuition and fees	$ 45,000,000			$ 45,000,000		
28	Contributions	1,200,000	300,000	120,000	1,620,000		
29	Auxiliary enterprises	5,500,000			5,500,000		
30	Net assets released from restriction	200,000	(200,000)		0		
31	**Total Revenue**	**51,900,000**	**100,000**	**120,000**	52,120,000		
32	Operating expenses	38,000,000			38,000,000		
33	Depreciation	5,000,000			5,000,000		
34	Interest expense	2,880,000			2,880,000		
35	Auxiliary enterprises	5,200,000			5,200,000		
36	Non-operating expenses	900,000			900,000		
37	Net assets released from restriction				0		
38	**Total Expenses**	**51,980,000**			**51,980,000**	**2,500,000**	**54,480,000**
39	**Change in Net Assets**	**(80,000)**	**100,000**	**120,000**	**140,000**		**(2,360,000)**
40	**Net Assets at Beginning of Year**	**15,270,000**	**2,700,000**	**8,880,000**	**26,850,000**		
41	**Net Assets at End of Year**	**$ 15,190,000**	**$ 2,800,000**	**$ 9,000,000**	**$ 26,990,000**		**$ 12,690,000**
	Net Assets at End of Year						**$ 24,490,000**

		Reported	Adjusted: Total expenses & total assets	Adjusted: All impacted balances
Primary Reserve Ratio = (Lines)	**20+23-21-10-8+18+17**	**9,790,000**	**9,790,000**	**7,290,000**
Expendable net assets / Total expenses	**38 b**	**51,980,000**	**54,480,000**	**54,480,000**
Net Income Ratio = (lines)	**39 b**	**(80,000)**	**(80,000)**	**(2,360,000)**
Change in URNA / Total unrestricted revenue	**31 b**	**51,900,000**	**51,900,000**	**51,900,000**
Equity Ratio = (lines)	**25 - 10**	**26,490,000**	**26,490,000**	**23,990,000**
Modified net assets / Modified assets	**12 - 10**	**75,740,000**	**73,240,000**	**73,240,000**

Borrower Defense / Financial Responsibility
Figure 1. Triggers 1 - 3 Loss Adjustments: Litigation
Illustrative Example: ABC College

ABC COLLEGE: Composite Score Calculations

COMPOSITE SCORE: AS REPORTED / UNADJUSTED
COMPOSITE SCORE: LOSS ADJUSTMENTS TO TOTAL ASSETS AND TOTAL EXPENSES
COMPOSITE SCORE: LOSS ADJUSTMENTS - TOTAL ASSETS AND TOTAL EXPENSES AND CHANGE IN URNA, TOTAL URNA, TOTAL NET ASSETS AND TOTAL ASSETS AND LIABILITIES

Scale		
	Fail	-1 to .9
	Zone	1.0 to 1.4
	Pass	1.5 to 3.0

ABC COLLEGE: Composite Score Calculations
Department of Education Composite Score
Original Composite Score

RATIO	Computation results	Income algorithm	Strength factor	Weight factor	Composite scores
Primary Reserve Ratio	0.1883		1.88	40%	0.75
Net Income Ratio	(0.0015)	0.9615	0.96	20%	0.19
Equity Ratio	0.3497		2.10	40%	0.84
TOTAL Composite Score					**1.79**

ABC COLLEGE: Composite Score Calculations
Department of Education Adjusted Composite Score
Loss Adjustments to Total Assets and Total Expenses - ONLY

RATIO	Computation results	Income algorithm	Strength factor	Weight factor	Composite scores
Primary Reserve Ratio	0.1797		1.80	40%	0.72
Net Income Ratio	(0.0015)	0.9615	0.96	20%	0.19
Equity Ratio	0.3617		2.17	40%	0.87
TOTAL Composite Score					**1.78**

ABC COLLEGE: Composite Score Calculations
Department of Education Adjusted Composite Score

Loss Adjustments - Total assets / Total expenses and full B/S and SOA Impact : Change in Net assets, URNA, Total Net Assets, Total Assets and Liabilities

RATIO	Computation results	Income algorithm	Strength factor	Weight factor	Composite scores
Primary Reserve Ratio	0.1338		1.34	40%	0.54
Net Income Ratio	(0.0455)	(0.1368)	(0.14)	20%	(0.03)
Equity Ratio	0.3276		1.97	40%	0.79
TOTAL Composite Score					**1.29**

Borrower Defense / Financial Responsibility
Figure 2. Triggers 4 - 5 Loss Adjustments: Closures
Illustrative Example: ABC College

4. Accrediting agency requires a teach-out plan when an institution is closing, or is closing a branch or additional location
5. Gainful employment programs which become ineligible for federal aid in the next award year

ILLUSTRATIVE EXAMPLE ASSUMPTIONS:

Triggers 4 - 5 loss estimate	**2,500,000**

Expense allowance = Loss multiplied by (Operating expenses (#32) / Tuition and fees (#27))

Expense allowance =	**2,111,111**

ADJUSTING JOURNAL ENTRIES

		DR	CR
Record loss estimate:		**DR**	**CR**
31 b	Total revenue	2,500,000	
12	Total assets		2,500,000
Record expense allowance:		**DR**	**CR**
12	Total assets	2,111,111	
38b	Total expenses		2,111,111

STATEMENT SOURCE: 34 CFR 668, Subpart L, Appendix B (referenced at 81 FR 76078)

BLACK: Reported balances per audited financial statements and G/L
RED: Loss adjustments (81 FR 76078) - aggregate for Triggers 4 - 5
BLUE: Balances that may be impacted per 81 FR 76078 Footnote

BALANCE SHEET

Line		Total	AJE(s)	Adjusted
1	Cash and cash equivalents	$ 1,000,000		
2	Accounts receivable	6,000,000		
3	Prepaid expenses	1,500,000		
4	Inventories	500,000		
5	Contributions receivable	2,000,000		
6	Student loans receivable	8,000,000		
7	Investments	6,000,000		
8	Property and equipment, net	50,000,000		
9	Bond insurance proceeds	720,000		
10	Goodwill	500,000		
11	Deposits	20,000		
			2,111,111	
12	**Total Assets**	**76,240,000**	**(2,500,000)**	**75,851,111**
13	Line of credit	500,000		
14	Accounts payable	2,000,000		
15	Accrued expenses	3,500,000		
16	Deferred revenue	650,000		
17	Post-retirement benefits liability	6,600,000		
18	Bonds payable	36,000,000		
19	**Total Liabilities**	**49,250,000**		
20	**Unrestricted Net Assets**	**15,190,000**		**14,801,111**
21	Annuities	300,000		
22	John Doe scholarship fund	2,500,000		
23	**Temporarily Restricted Net Assets**	**2,800,000**		
24	**Permanently Restricted Net Assets**	**9,000,000**		
25	**Total Net Assets**	**26,990,000**		**26,601,111**
26	**Total Liabilities and Net Assets**	**$ 76,240,000**		**$ 75,851,111**

Borrower Defense / Financial Responsibility
Figure 2. Triggers 4 - 5 Loss Adjustments: Closures
Illustrative Example: ABC College

STATEMENT OF ACTIVITIES

Line	Column a		b Unrestricted	c Temporarily Restricted	d Permanently Restricted		Total	b AJE(s)	b Adjusted
27	Tuition and fees	$	45,000,000			$	45,000,000		
28	Contributions		1,200,000	300,000	120,000		1,620,000		
29	Auxiliary enterprises		5,500,000				5,500,000		
30	Net assets released from restriction		200,000	(200,000)			0		
31	**Total Revenue**		**51,900,000**	**100,000**	**120,000**		52,120,000	**2,500,000**	**49,400,000**
32	Operating expenses		38,000,000				38,000,000		
33	Depreciation		5,000,000				5,000,000		
34	Interest expense		2,880,000				2,880,000		
35	Auxiliary enterprises		5,200,000				5,200,000		
36	Non-operating expenses		900,000				900,000		
37	Net assets released from restriction						0		
38	**Total Expenses**		**51,980,000**				**51,980,000**	**(2,111,111)**	**49,868,889**
39	**Change in Net Assets**		**(80,000)**	**100,000**	**120,000**		**140,000**		**(468,889)**
40	**Net Assets at Beginning of Year**		**15,270,000**	**2,700,000**	**8,880,000**		**26,850,000**		
41	**Net Assets at End of Year**	**$**	**15,190,000**	**$ 2,800,000**	**$ 9,000,000**	**$**	**26,990,000**		**$ 14,801,111**
	Net Assets at End of Year								**$ 26,601,111**

		Reported	Adjusted: Total expenses & total assets	Adjusted: All impacted balances
Primary Reserve Ratio = (Lines)	20+23-21-10-8+18+17	9,790,000	9,790,000	9,401,111
Expendable net assets / Total expenses	38 b	51,980,000	49,868,889	49,868,889
Net Income Ratio = (lines)	39 b	(80,000)	(80,000)	(468,889)
Change in URNA / Total unrestricted revenue	31 b	51,900,000	49,400,000	49,400,000
Equity Ratio = (lines)	25 - 10	26,490,000	26,490,000	26,101,111
Modified net assets / Modified assets	12 - 10	75,740,000	75,351,111	75,351,111

Borrower Defense / Financial Responsibility
Figure 2. Triggers 4 - 5 Loss Adjustments: Closures
Illustrative Example: ABC College

ABC COLLEGE: Composite Score Calculations

COMPOSITE SCORE: AS REPORTED / UNADJUSTED

COMPOSITE SCORE: LOSS ADJUSTMENTS TO TOTAL ASSETS AND TOTAL EXPENSES

COMPOSITE SCORE: LOSS ADJUSTMENTS - TOTAL ASSETS AND TOTAL EXPENSES AND CHANGE IN URNA, TOTAL URNA, TOTAL NET ASSETS AND TOTAL ASSETS AND LIABILITIES

Scale		
	Fail	-1 to .9
	Zone	1.0 to 1.4
	Pass	1.5 to 3.0

ABC COLLEGE: Composite Score Calculations

Department of Education Composite Score

Original Composite Score

RATIO	Computation results	Income algorithm	Strength factor	Weight factor	Composite scores
Primary Reserve Ratio	0.1883		1.88	40%	0.75
Net Income Ratio	(0.0015)	0.9615	0.96	20%	0.19
Equity Ratio	0.3497		2.10	40%	0.84
TOTAL Composite Score					**1.79**

ABC COLLEGE: Composite Score Calculations

Department of Education Adjusted Composite Score

Loss Adjustments to Total Assets and Total Expenses - ONLY

RATIO	Computation results	Income algorithm	Strength factor	Weight factor	Composite scores
Primary Reserve Ratio	0.1963		1.96	40%	0.79
Net Income Ratio	(0.0016)	0.9595	0.96	20%	0.19
Equity Ratio	0.3516		2.11	40%	0.84
TOTAL Composite Score					**1.82**

ABC COLLEGE: Composite Score Calculations

Department of Education Adjusted Composite Score

Loss Adjustments - Total Assets / Total Expenses and full B/S and SOA Impact : Change in Net assets, URNA, Total Net Assets, Total Assets and Liabilities

RATIO	Computation results	Income algorithm	Strength factor	Weight factor	Composite scores
Primary Reserve Ratio	0.1885		1.89	40%	0.75
Net Income Ratio	(0.0095)	0.7627	0.76	20%	0.15
Equity Ratio	0.3464		2.08	40%	0.83
TOTAL Composite Score					**1.74**

Appendix B: Comparison of Financial Responsibility Standards That Took Effect 10/17/2018 to Previous Rules

34 CFR §668.171 General		
NOTES	**NEW**	**PREVIOUS**
	(a) ***Purpose.*** To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to— (1) Provide the services described in its official publications and statements; (2) Meet all of its financial obligations; and (3) Provide the administrative resources necessary to comply with title IV, HEA program requirements.	**(a)** ***Purpose.*** To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to— (1) Provide the services described in its official publications and statements; (2) Administer properly the title IV, HEA programs in which it participates; and (3) Meet all of its financial obligations.
Loan agreements moved to new (g)	**(b)** ***General standards of financial responsibility.*** Except as provided under paragraphs (e) and (f) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that— (1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under §668.172 and appendices A and B to this subpart; (2) The institution has sufficient cash reserves to make required returns of unearned title IV, HEA program funds, as provided under §668.173;	**(b)** ***General standards of financial responsibility.*** Except as provided under paragraphs (c) and (d) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that— (1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under §668.172 and appendices A and B to this subpart; (2) The institution has sufficient cash reserves to make required returns of unearned title IV HEA program funds, as provided under §668.173; (3) The institution is current in its debt payments. An institution is not current in its debt payments if— (i) It is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statements or audit opinion; or (ii) It fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover funds under those obligations; and

34 CFR §668.171 General		
NOTES	**NEW**	**PREVIOUS**
	(3) The institution is able to meet all of its financial obligations and otherwise provide the administrative resources necessary to comply with title IV, HEA program requirements. An institution may not be able to meet its financial or administrative obligations if it is subject to an action or event described in paragraph (c), (d), (e), (f), or (g) of this section. The Secretary considers those actions or events in determining whether the institution is financially responsible only if they occur on or after July 1, 2017; and (4) The institution or persons affiliated with the institution are not subject to a condition of past performance under §668.174(a) or (b).	4) The institution is meeting all of its financial obligations, including but not limited to— (i) Refunds that it is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under §668.22; and (ii) Repayments to the Secretary for debts and liabilities arising from the institution's participation in the title IV, HEA programs.
New language re triggers	**(c)** ***Debts, liabilities, and losses.*** (1) Except as provided under paragraph (h)(3) of this section, an institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if, after the end of the fiscal year for which the Secretary has most recently calculated an institution's composite score, the institution is subject to one or more of the following actions or triggering events, and as a result of the actual or potential debts, liabilities, or losses that have stemmed or may stem from those actions or events, the institution's recalculated composite score is less than 1.0, as determined by the Secretary under paragraph (c)(2) of this section: (i) *Debts and borrower defense-related lawsuits.* (A) The institution is required to pay any debt or incur any liability arising from a final judgment in a judicial proceeding or from an administrative proceeding or determination, or from a settlement; or (B) The institution is being sued in an action brought on or after July 1, 2017, by a Federal or State authority for financial relief on claims related to the making of the Direct Loan for enrollment at the school or the provision of educational services and the suit has been pending for 120 days. (ii) *Other litigation.* The institution is being sued in an action brought on or after July 1, 2017, that is not described in paragraph (c)(1)(i)(B) of this section and—	

34 CFR §668.171 General		
NOTES	**NEW**	**PREVIOUS**
	(A) The institution has filed a motion for summary judgment or summary disposition and that motion has been denied or the court has issued an order reserving judgment on the motion; (B) The institution has not filed a motion for summary judgment or summary disposition by the deadline set for such motions by the court or agreement of the parties; or (C) If the court did not set a deadline for filing a motion for summary judgment and the institution did not file such a motion, the court has set a pretrial conference date or trial date and the case is pending on the earlier of those two dates. (iii) *Accrediting agency actions.* The institution was required by its accrediting agency to submit a teach-out plan, for a reason described in §602.24(c)(1), that covers the closing of the institution or any of its branches or additional locations. (iv) *Gainful employment.* As determined annually by the Secretary, the institution has gainful employment programs that, under §668.403, could become ineligible based on their final D/E rates for the next award year.	
N/A for nonprofits	(v) *Withdrawal of owner's equity.* For a proprietary institution whose composite score is less than 1.5, any withdrawal of owner's equity from the institution by any means, including by declaring a dividend, unless the transfer is to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated.	
Recalculating the score	(2) *Recalculating the composite score*—(i) *General.* Unless the institution demonstrates to the satisfaction of the Secretary that the event or condition has had or will have no effect on the assets and liabilities of the institution under paragraph (g)(3)(iv) of this section, as specified in Appendix C of this subpart, the Secretary recognizes and accounts for the actual or potential losses associated with the actions or events under paragraph (c)(1) of this section and, based on that accounting, recalculates the institution's most recent composite score. The recalculation will occur regularly after associated actions or events are reported to the Secretary. The Secretary recalculates the	

34 CFR §668.171 General		
NOTES	**NEW**	**PREVIOUS**
	composite score under this paragraph using the financial statements on which the institution's composite score has been calculated under §668.172. (ii) *Calculation of potential loss—debts and borrower defense-related lawsuits.* For a debt or a suit described in paragraph (c)(1)(i) of this section, the amount of loss is— (A) The amount of debt; (B) For a suit, the amount set by a court ruling, or, in the absence of a court ruling— (*1*) The amount of relief claimed in the complaint; (*2*) If the complaint demands no specific amount of relief, the amount stated in any final written demand issued by the agency to the institution prior to the suit or a lesser amount that the agency offers to accept in settlement of any financial demand in the suit; or (*3*) If the agency stated no specific demand in the complaint, in a pre-filing demand, or in a written offer of settlement, the amount of tuition and fees received by the institution during the period, and for the program or location, described in the allegations in the complaint. (iii) *Calculation of potential loss—other litigation.* For any suit described in paragraph (c)(1)(ii) of this section, the amount of loss is the amount set by a court ruling, or, in the absence of a court ruling— (A) The amount of relief claimed in the complaint; (B) If the complaint demands no specific amount of relief, the amount stated in any final written demand by the claimant to the institution prior to the suit or a lesser amount that the plaintiff offers to accept in settlement of any financial demand in the suit; or (C) If the complainant stated no specific demand in the complaint, in a pre-filing demand, or in a written offer of settlement, the amount of the claim as stated in a response to a discovery request, including an expert witness report. (iv) *Calculation of potential loss—other events.* (A) For a closed location or institution, or the potential loss of eligibility for gainful	

34 CFR §668.171 General		
NOTES	**NEW**	**PREVIOUS**
N/A for nonprofits	employment programs, as described in paragraph (c)(1)(iii) or (iv), the amount of loss is the amount of title IV, HEA program funds the institution received in its most recently completed fiscal year for that location or institution, or for those GE programs. (B) For the withdrawal of owner's equity, described in paragraph (c)(1)(v) of this section, the amount of loss is the amount transferred to any entity other than the institution.	
N/A for nonprofits	**(d)** ***Non-title IV revenue.*** Except as provided under paragraph (h)(3) of this section, a proprietary institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if, for its most recently completed fiscal year, the institution did not derive at least 10 percent of its revenue from sources other than title IV, HEA program funds, as provided under §668.28(c).	
N/A for nonprofits	**(e)** ***Publicly traded institutions.*** Except as provided under paragraph (h)(3) of this section, a publicly traded institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if the institution is currently subject to one or more of the following actions or events: (1) *SEC actions.* The SEC warns the institution that it may suspend trading on the institution's stock. (2) *SEC reports.* The institution failed to file a required annual or quarterly report with the SEC within the time period prescribed for that report or by any extended due date under 17 CFR 240.12b-25. (3) *Exchange actions.* The exchange on which the institution's stock is traded notifies the institution that it is not in compliance with exchange requirements, or its stock is delisted.	

34 CFR §668.171 General		
NOTES	**NEW**	**PREVIOUS**
	(f) ***Cohort default rates.*** Except as provided under paragraph (h)(3) of this section, an institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if the institution's two most recent official cohort default rates are 30 percent or greater, as determined under subpart N of this part, unless— (1) The institution files a challenge, request for adjustment, or appeal under that subpart with respect to its rates for one or both of those fiscal years; and (2) That challenge, request, or appeal remains pending, results in reducing below 30 percent the official cohort default rate for either or both years, or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification.	
Discretionary triggers	**(g)** ***Discretionary factors or events.*** Except as provided under paragraph (h)(3) of this section, an institution is not able to meet its financial or administrative obligations under paragraph (b)(3) of this section if the Secretary demonstrates that there is an event or condition that is reasonably likely to have a material adverse effect on the financial condition, business, or results of operations of the institution, including but not limited to whether— (1) There is a significant fluctuation between consecutive award years, or a period of award years, in the amount of Direct Loan or Pell Grant funds, or a combination of those funds, received by the institution that cannot be accounted for by changes in those programs; (2) The institution is cited by a State licensing or authorizing agency for failing State or agency requirements; (3) The institution fails a financial stress test developed or adopted by the Secretary to evaluate whether the institution has sufficient capital to absorb losses that may be incurred as a result of	

34 CFR §668.171 General		
NOTES	**NEW**	**PREVIOUS**
Loan agreements	adverse conditions and continue to meet its financial obligations to the Secretary and students; (4) As calculated by the Secretary, the institution has high annual dropout rates; (5) The institution is or was placed on probation or issued a show-cause order, or placed on an accreditation status that poses an equivalent or greater risk to its accreditation, by its accrediting agency for failing to meet one or more of the agency's standards; (6)(i) The institution violated a provision or requirement in a loan agreement; and (ii) As provided under the terms of a security or loan agreement between the institution and the creditor, a monetary or nonmonetary default or delinquency event occurs, or other events occur, that trigger, or enable the creditor to require or impose on the institution, an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees; (7) The institution has pending claims for borrower relief discharge under §685.206 or §685.222; or (8) The Secretary expects to receive a significant number of claims for borrower relief discharge under §685.206 or §685.222 as a result of a lawsuit, settlement, judgment, or finding from a State or Federal administrative proceeding.	*From paragraph (b) above:* *(3) The institution is current in its debt payments. An institution is not current in its debt payments if—* *(i) It is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statements or audit opinion; or* *(ii) It fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover funds under those obligations; ….*
Reporting	**(h)** ***Reporting requirements.*** (1) In accordance with procedures established by the Secretary, an institution must notify the Secretary of any of the following actions or events identified in paragraphs (c) through (g) of this section no later than— (i) For lawsuits and for other actions or events described in paragraph (c)(1)(i) of this section— (A) For lawsuits, 10 days after the institution is served with the complaint and 10 days after the suit has been pending for 120 days; and	

34 CFR §668.171 General		
NOTES	NEW	PREVIOUS
N/A for nonprofits	(B) For debts arising from lawsuits and for other actions or events, 10 days after a payment was required or a liability was incurred. (ii) For lawsuits described in paragraph (c)(1)(ii) of this section— (A) Ten days after the institution is served with the complaint; (B) Ten days after the court sets the dates for the earliest of the events described in paragraph (c)(1)(ii) of this section, provided that, if the deadline is set by procedural rules, notice of the applicable deadline must be included with notice of the service of the complaint; and (C) Ten days after the earliest of the applicable events occurs; (iii) For an accrediting agency action described in paragraph (c)(1)(iii) of this section, 10 days after the institution is notified by its accrediting agency that it must submit a teach-out plan; (iv) For a withdrawal of owner's equity described in paragraph (c)(1)(v) of this section, 10 days after the withdrawal is made; (v) For the non-title IV revenue provision in paragraph (d) of this section, 45 days after the end of the institution's fiscal year, as provided in §668.28(c)(3); (vi) For the SEC and stock exchange provisions for publicly traded institutions in paragraph (e), 10 days after the SEC or exchange warns, notifies, or takes an action against the institution, or 10 days after any extension granted by the SEC; (vii) For State or agency actions in paragraph (g)(2) of this section, 10 days after the institution is cited for violating a State or agency requirement; (viii) For probation or show cause actions under paragraph (g)(5) of this section, 10 days after the institution's accrediting agency places the institution on that status; or (ix) For the loan agreement provisions in paragraph (g)(6) of this section, 10 days after a loan violation occurs, the creditor waives	

34 CFR §668.171 General		
NOTES	NEW	PREVIOUS
Mitigating circumstances **N/A for nonprofits**	the violation, or the creditor imposes sanctions or penalties in exchange or as a result of the waiver. (2) The Secretary may take an administrative action under paragraph (k) of this section against the institution if it fails to provide timely notice under this paragraph (h). (3) In its notice to the Secretary, the institution may demonstrate that— (i) For a suit by a Federal or State agency described in paragraph (c)(1)(i)(B) of this section, the amount claimed in the complaint or determined under paragraph (c)(2)(ii) of this section exceeds the potential recovery because the allegations in the complaint, if accepted as true, and the claims asserted, if fully successful, cannot produce relief in the amount claimed or, if no amount was claimed, the amount deemed under paragraph (c)(2)(ii) because they pertain to a period, program, or location for which the full recovery possible is a lesser amount; (ii) The reported withdrawal of owner's equity under paragraph (c)(1)(v) of this section was used exclusively to meet tax liabilities of the institution or its owners for income derived from the institution; (iii) The reported violation of a provision or requirement in a loan agreement under paragraph (g)(6) of this section was waived by the creditor. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation, or imposes penalties or requirements under paragraph (g)(6)(ii) of this section, the institution must identify and describe those penalties, constraints, or requirements and may demonstrate that complying with those actions will not adversely affect the institution's ability to meet its current and future financial obligations; or (iv) The action or event reported under this paragraph (h) no longer exists or has been resolved or the institution has insurance that will cover part or all of the debts and liabilities that arise at any time from that action or event.	

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Minor wording changes	**(i)** ***Public institutions.*** (1) The Secretary considers a domestic public institution to be financially responsible if the institution— (i)(A) Notifies the Secretary that it is designated as a public institution by the State, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and (B) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and (ii) Is not subject to a condition of past performance under §668.174. (2) The Secretary considers a foreign public institution to be financially responsible if the institution— (i)(A) Notifies the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and (B) Provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity; and (ii) Is not subject to a condition of past performance under §668.174.	**(c)** ***Public institutions.*** (1) The Secretary considers a domestic public institution to be financially responsible if the institution— (i)(A) Notifies the Secretary that it is designated as a public institution by the State, local, or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and (B) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and (ii) Is not in violation of any past performance requirement under §668.174. (2) The Secretary considers a foreign public institution to be financially responsible if the institution— (i)(A) Notifies the Secretary that it is designated as a public institution by the country or other government entity that has the legal authority to make that designation; and (B) Provides documentation from an official of that country or other government entity confirming that the institution is a public institution and is backed by the full faith and credit of the country or other government entity; and (ii) Is not in violation of any past performance requirement under §668.174.
	(j) ***Audit opinions.*** Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if, in the institution's audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion, or the auditor expressed doubt about the continued existence of the institution as a going concern, unless	**(d)** ***Audit opinions and past performance provisions.*** Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if— (1) In the institution's audited financial statements, the opinion expressed by the auditor was an adverse, qualified, or disclaimed opinion, or the auditor expressed doubt about the continued existence of the institution as a going concern, unless the Secretary determines

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Moved to (b)(4) above	the Secretary determines that a qualified or disclaimed opinion does not significantly bear on the institution's financial condition.	that a qualified or disclaimed opinion does not have a significant bearing on the institution's financial condition; or (2) As provided under the past performance provisions in §668.174 (a) and (b)(1), the institution violated a title IV, HEA program requirement, or the persons or entities affiliated with the institution owe a liability for a violation of a title IV, HEA program requirement.
Minor wording changes	**(k)** ***Administrative actions.*** If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in §668.175, or the institution does not submit its financial and compliance audits by the date and in the manner required under §668.23, the Secretary may— (1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; or (2) For an institution that is provisionally certified, take an action against the institution under the procedures established in §668.13(d).	**(e)** ***Administrative actions.*** If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in §668.175, or the institution does not submit its financial and compliance audits by the date permitted and in the manner required under §668.23, the Secretary may— (1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; or (2) For an institution that is provisionally certified, take an action against the institution under the procedures established in §668.13(d).

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Unchanged	**(a)** ***General.***	**(a)** ***General.*** An institution that is not financially responsible under the general standards and provisions in §668.171, may begin or continue to participate in the title IV, HEA programs by qualifying under an alternate standard set forth in this section.
Unchanged	**(b)** ***Letter of credit alternative for new institutions.***	**(b)** ***Letter of credit alternative for new institutions.*** A new institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5, qualifies as a financially responsible institution by submitting an irrevocable letter of credit, that is acceptable and payable to the Secretary, for an amount equal to at least one-half of the amount of title IV, HEA program funds that the Secretary determines the institution will receive during its initial year of participation. A new institution is an institution that seeks to participate for the first time in the title IV, HEA programs.
	(c) ***Letter of credit alternative for participating institutions.*** A participating institution that is not financially responsible either because it does not satisfy one or more of the standards of financial responsibility under §668.171(b) through (g), or because of an audit opinion described under §668.171(j), qualifies as a financially responsible institution by submitting an irrevocable letter of credit or other form of financial protection specified by the Secretary in a notice published in the FEDERAL REGISTER, that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.	**(c)** ***Letter of credit alternative for participating institutions.*** A participating institution that is not financially responsible either because it does not satisfy one or more of the standards of financial responsibility under §668.171(b), or because of an audit opinion described under §668.171(d), qualifies as a financially responsible institution by submitting an irrevocable letter of credit, that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than one-half of the title IV, HEA program funds received by the institution during its most recently completed fiscal year.
	(d) ***Zone alternative.*** (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score under §668.172 is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in	**(d)** ***Zone alternative.*** (1) A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 may participate in the title IV, HEA programs as a financially responsible institution for no more than three consecutive years, beginning with the year in which the

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	which the Secretary determines that the institution qualifies under this alternative. (i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and (B) An institution continues to qualify under this alternative if, based on the institution's audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution's composite score is in the range from 1.0 to 1.4. (ii) An institution that qualified under this alternative for three consecutive years, or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Secretary. (2) Under the zone alternative, the Secretary— (i) Requires the institution to make disbursements to eligible students and parents, and to otherwise comply with the provisions, under either the heightened cash monitoring or reimbursement payment method described in §668.162; (ii) Requires the institution to provide timely information regarding any of the following oversight and financial events— (A) Any event that causes the institution, or related entity as defined in Accounting Standards Codification (ASC) 850, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement; or (B) Any losses that are unusual in nature or infrequently occur, or both, as defined in accordance with Accounting Standards Update (ASU) No. 2015-01 and ASC 225;	Secretary determines that the institution qualifies under this alternative. (i)(A) An institution qualifies initially under this alternative if, based on the institution's audited financial statement for its most recently completed fiscal year, the Secretary determines that its composite score is in the range from 1.0 to 1.4; and (B) An institution continues to qualify under this alternative if, based on the institution's audited financial statement for each of its subsequent two fiscal years, the Secretary determines that the institution's composite score is in the range from 1.0 to 1.4. (ii) An institution that qualified under this alternative for three consecutive years or for one of those years, may not seek to qualify again under this alternative until the year after the institution achieves a composite score of at least 1.5, as determined by the Secretary. (2) Under this zone alternative, the Secretary— (i) Requires the institution to make disbursements to eligible students and parents under either the cash monitoring or reimbursement payment method described in §668.162; (ii) Requires the institution to provide timely information regarding any of the following oversight and financial events— (A) Any adverse action, including a probation or similar action, taken against the institution by its accrediting agency; (B) Any event that causes the institution, or related entity as defined in the Statement of Financial Accounting Standards (SFAS) 57, to realize any liability that was noted as a contingent liability in the institution's or related entity's most recent audited financial statement; (C) Any violation by the institution of any loan agreement;

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	(iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under §668.23(a)(4); and (iv) May require the institution to provide information about its current operations and future plans. (3) Under the zone alternative, the institution must— (i) For any oversight or financial event described in paragraph (d)(2)(ii) of this section for which the institution is required to provide information, in accordance with procedures established by the Secretary, notify the Secretary no later than 10 days after that event occurs; and (ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds. (4) If an institution fails to comply with the requirements under paragraph (d)(2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.	(D) Any failure of the institution to make a payment in accordance with its debt obligations that results in a creditor filing suit to recover funds under those obligations; (E) Any withdrawal of owner's equity from the institution by any means, including by declaring a dividend; or (F) Any extraordinary losses, as defined in accordance with Accounting Principles Board (APB) Opinion No. 30. (iii) May require the institution to submit its financial statement and compliance audits earlier than the time specified under §668.23(a)(4); and (iv) May require the institution to provide information about its current operations and future plans. (3) Under the zone alternative, the institution must— (i) For any oversight or financial event described under paragraph (d)(2)(ii) of this section for which the institution is required to provide information, provide that information to the Secretary by certified mail or electronic or facsimile transmission no later than 10 days after that event occurs. An institution that provides this information electronically or by facsimile transmission is responsible for confirming that the Secretary received a complete and legible copy of that transmission; and (ii) As part of its compliance audit, require its auditor to express an opinion on the institution's compliance with the requirements under the zone alternative, including the institution's administration of the payment method under which the institution received and disbursed title IV, HEA program funds. (4) If an institution fails to comply with the requirements under paragraphs (d)(2) or (3) of this section, the Secretary may determine that the institution no longer qualifies under this alternative.
Deleted	**(e)** RESERVED	**(e)** ***Transition year alternative.*** A participating institution that is not financially responsible solely because the Secretary determines that its composite score is less than 1.5 for the institution's fiscal year that

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		began on or after July 1, 1997, but on or before June 30, 1998, may qualify as a financially responsible institution under the provisions in §668.15(b)(7), (b)(8), (d)(2)(ii), or (d)(3), as applicable.
	(f) ***Provisional certification alternative.*** (1) The Secretary may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if, as determined annually by the Secretary— (i) The institution is not financially responsible because it does not satisfy the general standards under §668.171(b)(1) or (3), its recalculated composite score under §668.171(c)(2) is less than 1.0, is subject to an action or event under §668.171(d), (e), (f), or (g) or because of an audit opinion described in §668.171(i); or (ii) The institution is not financially responsible because of a condition of past performance, as provided under §668.174(a), and the institution demonstrates to the Secretary that it has satisfied or resolved that condition. (2) Under this alternative, the institution must— (i) Provide to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, agree to a set-aside under paragraph (h) of this section, or, at the Secretary's discretion, provide another form of financial protection specified by the Secretary in a notice published in the FEDERAL REGISTER, for an amount determined by the Secretary under paragraph (f)(4) of this section, except that this requirement does not apply to a public institution; and (ii) Comply with the provisions under the zone alternative, as provided under paragraph (d)(2) and (3). (3) If at the end of the period for which the Secretary provisionally certified the institution, the institution is still not financially responsible, the Secretary— (i) May permit the institution to participate under a provisional certification, but—	**(f)** ***Provisional certification alternative.*** (1) The Secretary may permit an institution that is not financially responsible to participate in the title IV, HEA programs under a provisional certification for no more than three consecutive years if— (i) The institution is not financially responsible because it does not satisfy the general standards under §668.171(b) or because of an audit opinion described under §668.171(d); or (ii) The institution is not financially responsible because of a condition of past performance, as provided under §668.174(a), and the institution demonstrates to the Secretary that it has satisfied or resolved that condition. (2) Under this alternative, the institution must— (i) Submit to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, for an amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year, except that this requirement does not apply to a public institution; (ii) Demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under §668.171 (b)(3) and (b)(4), for its two most recent fiscal years; and (iii) Comply with the provisions under the zone alternative, as provided under paragraph (d) (2) and (3) of this section. (3) If at the end of the period for which the Secretary provisionally certified the institution, the institution is still not financially responsible, the Secretary may again permit the institution to participate under a provisional certification, but the Secretary—

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	(A) May require the institution, or one or more persons or entities that exercise substantial control over the institution, as determined under §668.174(b)(1) and (c), or both, to provide to the Secretary financial protection for an amount determined by the Secretary under paragraph (f)(4) of this section; and (B) May require one or more of the persons or entities that exercise substantial control over the institution, as determined under §668.174(b)(1) and (c), to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs; and (ii) May permit the institution to continue to participate under a provisional certification but require the institution to provide, or continue to provide, the financial protection resulting from an event described in §668.171(c) through (g) until the institution meets the requirements of paragraph (f)(5) of this section. (4)(i) The institution must provide to the Secretary the financial protection described under paragraph (f)(2)(i) in an amount that, together with the amount of any financial protection that the institution has already provided if that protection covers the period described in paragraph (f)(5) of this section, equals, for a composite score calculated under §668.172, a composite score recalculated under §668.171(c)(2), or for any other reason that the institution is not financially responsible— (A) Ten percent of the total amount of title IV, HEA program funds received by the institution during its most recently completed fiscal year; and (B) Any additional amount that the Secretary demonstrates is needed under paragraph (f)(4)(ii) of this section. (ii) The Secretary determines the amount specified in paragraph (f)(4)(i)(B) of this section that must be provided by the institution in addition to the amount specified in paragraph (f)(4)(i)(A) of this section, and must ensure that the total amount of financial protection provided under paragraph (f)(4)(i) of this section is sufficient to fully cover any estimated losses. The Secretary may reduce the amount	(i) May require the institution, or one or more persons or entities that exercise substantial control over the institution, as determined under §668.174(b)(1) and (c), or both, to submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs; and (ii) May require one or more of the persons or entities that exercise substantial control over the institution, as determined under §668.174(b)(1) and (c), to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs.

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	required under paragraph (f)(4)(i)(B) only if an institution demonstrates that this amount is unnecessary to protect, or is contrary to, the Federal interest. (5) The Secretary maintains the full amount of the financial protection provided by the institution under paragraph (f)(4) of this section until the Secretary first determines that the institution has— (i) A composite score of 1.0 or greater based on the review of the audited financial statements for the fiscal year in which all losses from any event described in §668.171(c), (d), (e), (f), or (g) on which financial protection was required have been fully recognized; or (ii) A recalculated composite score of 1.0 or greater, and any event or condition described in §668.171(d), (e), (f), or (g) has ceased to exist.	
Unchanged	**(g)** ***Provisional certification alternative for persons or entities owing liabilities.***	**(g)** ***Provisional certification alternative for persons or entities owing liabilities.*** (1) The Secretary may permit an institution that is not financially responsible because the persons or entities that exercise substantial control over the institution owe a liability for a violation of a title IV, HEA program requirement, to participate in the title IV, HEA programs under a provisional certification only if— (i)(A) The persons or entities that exercise substantial control, as determined under §668.174(b)(1) and (c), repay or enter into an agreement with the Secretary to repay the applicable portion of that liability, as provided under §668.174(b)(2)(ii); or (B) The institution assumes that liability, and repays or enters into an agreement with the Secretary to repay that liability; (ii) The institution satisfies the general standards and provisions of financial responsibility under §668.171(b) and (d)(1), except that institution must demonstrate that it was current on its debt payments and has met all of its financial obligations, as required under §668.171 (b)(3) and (b)(4), for its two most recent fiscal years; and (iii) The institution submits to the Secretary an irrevocable letter of credit that is acceptable and payable to the Secretary, for an

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		amount determined by the Secretary that is not less than 10 percent of the title IV, HEA program funds received by the institution during its most recently completed fiscal year. (2) Under this alternative, the Secretary— (i) Requires the institution to comply with the provisions under the zone alternative, as provided under paragraph (d) (2) and (3) of this section; (ii) May require the institution, or one or more persons or entities that exercise substantial control over the institution, or both, to submit to the Secretary financial guarantees for an amount determined by the Secretary to be sufficient to satisfy any potential liabilities that may arise from the institution's participation in the title IV, HEA programs; and (iii) May require one or more of the persons or entities that exercise substantial control over the institution to be jointly or severally liable for any liabilities that may arise from the institution's participation in the title IV, HEA programs.
New option for surety	**(h)** ***Set-aside.*** If an institution does not provide a letter of credit or financial protection acceptable to the Secretary for the amount required under paragraph (d) or (f) of this section within 45 days of the Secretary's request, the Secretary offsets the amount of title IV, HEA program funds that an institution is eligible to receive in a manner that ensures that, no later than the end of a nine-month period, the total amount offset equals the amount of financial protection the institution would otherwise provide. The Secretary uses the funds to satisfy the debt and liabilities owed to the Secretary that are not otherwise paid directly by the institution, and provides to the institution any funds not used for this purpose during the period for which the financial protection was required, or provides the institution any remaining funds if the institution subsequently submits the financial protection originally required under paragraph (d) or (f) of this section.	

34 CFR §668.41 Reporting and Disclosure of Information		
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	(i) ***Financial protection disclosures*—(1)** ***General.*** An institution must deliver a disclosure to enrolled and prospective students in the form and manner described in paragraph (i)(3), (4), and (5) of this section, and post that disclosure to its Web site as described in paragraph (i)(6) of this section, within 30 days of notifying the Secretary under §668.171(h) of the occurrence of a triggering event or events identified pursuant to paragraph (i)(2) of this section. The requirements in this paragraph (i) apply for the 12-month period following the date the institution notifies the Secretary under §668.171(h) of a triggering event or events identified under paragraph (i)(2). **(2)** ***Triggering events***. The Secretary will conduct consumer testing to inform the identification of events for which a disclosure is required. The Secretary will consumer test each of the events identified in §668.171(c) through (g), as well as other events that result in an institution being required to provide financial protection to the Department, to determine which of these events are most meaningful to students in their educational decision-making. The Secretary will identify the triggering events for which a disclosure is required under paragraph (i)(1) in a document published in the FEDERAL REGISTER. **(3)** ***Form of disclosure.*** The Secretary will conduct consumer testing to ensure the form of the disclosure is meaningful and helpful to students. The Secretary will specify the form and placement of the disclosure in a notice published in the FEDERAL REGISTER following the consumer testing. **(4)** ***Delivery to enrolled students.*** An institution must deliver the disclosure required under this paragraph (i) to each enrolled student in writing by— (i) Hand-delivering the disclosure as a separate document to the student individually or as part of a group presentation; or	*No corresponding provisions in previous regulations.*

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	(ii)(A) Sending the disclosure to the student's primary email address or delivering the disclosure through the electronic method used by the institution for communicating with the student about institutional matters; and (B) Ensuring that the disclosure is the only substantive content in the message sent to the student under this paragraph unless the Secretary specifies additional, contextual language to be included in the message. **(5) *Delivery to prospective students.*** An institution must deliver the disclosure required under this paragraph (i) to a prospective student before that student enrolls, registers, or enters into a financial obligation with the institution by— (i) Hand-delivering the disclosure as a separate document to the student individually, or as part of a group presentation; or (ii)(A) Sending the disclosure to the student's primary email address or delivering the disclosure through the electronic method used by the institution for communicating with prospective students about institutional matters; and (B) Ensuring that the disclosure is the only substantive content in the message sent to the student under this paragraph unless the Secretary specifies additional, contextual language to be included in the message. **(6) *Institutional Web site.*** An institution must prominently provide the disclosure required under this paragraph (i) in a simple and meaningful manner on the home page of the institution's Web site.	