

*Discussion:* The Secretary agrees with the commenters, and will not require institutions to report this information if five or fewer students are involved. The institution must supply a note stating that the disclosure was not made due to privacy concerns.

*Changes:* A change has been made in § 668.49 to add a provision that an institution need not disclose a completion or graduation rate or a transfer-out rate for categories that include five or fewer students.

*Comments:* Several commenters supported the provision that the same cohort of students be the subject of the reports in both §§ 668.46 and 668.49.

*Discussion:* The Secretary appreciates these commenters' support.

*Changes:* None.

*Comments:* Several commenters noted the absence of a definition of the term "athlete" in the proposed rules, and maintained that such a definition should be supplied in the final rules in order for the regulations to generate comparable data among institutions. One of these commenters inquired whether the term referred only to athletes who receive athletically-related student aid, whether it would include only participants in intercollegiate athletic sports, and how long participants need participate before being deemed "athletes."

*Discussion:* The Secretary does not agree that it is necessary to define the term "athlete." The Secretary notes that the statutory term "athletically-related student aid" governs the selection of students upon whose performance completion or graduation rates are reported, and to whom information on performance is provided. The Secretary believes that for the purposes of the information required by § 668.49(a)(1)(ii), students who receive athletically-related student aid are all students who receive that aid at any time during the previous reporting year. For purposes of § 668.49(a)(1)(iv), entering students who receive athletically-related student aid are those students who receive athletically-related student aid for any period of time between July 1 and June 30 of their entering year. The Secretary notes that this is a methodology similar to that now employed for these purposes by the NCAA.

*Changes:* None.

#### Executive Order 12866

These regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of the regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal government in the exercise of their governmental functions.

#### Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the following heading: *Analysis of Comment and Changes.*

#### Paperwork Reduction Act of 1995

Sections 668.41, 668.46 and 668.49 all contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for review.

#### *Collection of Information: Student Right-to-Know*

These regulations affect the following types of entities eligible to participate in the Title IV, HEA programs: Educational institutions that are public or nonprofit institutions, and businesses and other for-profit institutions.

Institutions of higher education that participate in title IV, HEA programs will need and use the information required by these regulations to meet the eligibility requirements for participation in those programs that were added by the Student Right-to-Know Act.

Section 668.41—Institutions must make available to students and potential students information on the completion or graduation rates and transfer out rates of the general full-time undergraduate population.

Institutions that award athletically-related student aid must provide the potential student athlete, and his or her parents, coaches, and high school counselor information on the completion or graduation rates and transfer-out rates of student-athletes. Institutions must also provide a copy of this information to the Secretary. The Secretary needs and uses this report to fulfill statutory requirements under the

Student Right-to-Know Act to publish that information broken down by institution and athletic conference.

Section 668.46—The information to be collected includes the completion or graduation rate, and the transfer-out rate of full-time, certificate- or degree-seeking undergraduate students entering the institution.

Section 668.49—The information to be collected includes the number of students attending the institution who received athletically related student aid, broken down by race and gender; the completion or graduation rate and transfer-out rate of full-time, certificate- or degree-seeking undergraduate students broken down by race and gender; the completion or graduation rate and transfer-out rate of full-time, certificate- or degree-seeking undergraduate students who received athletically related student aid, broken down by race and gender with each sport; and the average graduation or completion rate and transfer-out rate of full-time, certificate- or degree-seeking undergraduate students for the four most recent graduating or completing classes, broken down by race and gender.

Information is to be collected and disclosed once each year for institutions covered by §§ 668.41(a) and 668.46, and collected, disclosed, and reported to the Secretary once each year for institutions covered by §§ 668.41(b) and 668.49. Annual public reporting and recordkeeping burden is estimated to average 24.5 hours for each response for 8,000 respondents for § 668.46 and 24.5 hours for each response for 1,800 respondents for § 668.49. Thus the total annual reporting and recordkeeping burden for this collection is estimated to be 240,100 hours. These hours include the time needed for searching existing data sources and gathering, maintaining, and disclosing the data.

OMB is required to make a decision concerning the collections of information contained in these final regulation between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.