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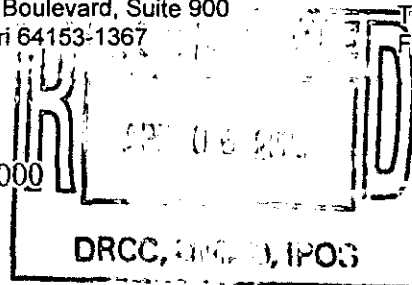
UNITED STATES DEPARTMENT OF EDUCATION

Office of Student Financial Assistance Programs

10220 North Executive Hills Boulevard, Suite 900
Kansas City, Missouri 64153-1367

Tel: (816) 880-4053
Fax: (816) 891-0983

March 24, 2000



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT #Z445703876
PRCN: 199940716575
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Dear Dr. Ross:

Thank you for your institution's responses dated September 30, 1999, and January 14, 2000, in response to the August 31, 1999 program review report. That report covered Mount St. Clare College's (MSC) administration of the Campus Security Act of 1990 from June 1996 to the present.

The Kansas City Case Management Team has made final determinations for all of the findings in the program review report. The purpose of this Final Program Review Determination (FPRD) is to close the review. However, please note that, as part of the final determination for Findings 1, 2, and 3, our Case Management Team is referring this FPRD to the Administrative Actions and Appeals Division (AAAD) for its consideration of possible adverse administrative action. Such action may include a fine, or the limitation, suspension or termination of the eligibility of the institution pursuant to 34 CFR, Part 668, Subpart G of the Student Financial Assistance General Provisions. If AAAD initiates any action, its notification will include information on institutional appeal rights and procedures on how to file an appeal.

Mount St. Clare College has taken corrective actions to resolve Findings 1 through 4, and these findings may be considered closed. **However, MSC should heed the guidance, instructions, and consequences of Findings 1, 2 and 3 discussed below.** A copy of the program review report is attached to this FPRD as Attachment A.

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

The original program review report included the following finding, reference, and requirement for this item:

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

a. All crime incidents not reported

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

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

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

1993-94

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

1994-95

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

The Clinton Police Department reported the following incidents:

- Weapons incident on September 2, 1994 (#940006364)
- Burglary in the residence hall on December 17, 1994 (#95000298)
- Burglary in the MSC business office on February 22, 1995 (#95001165)

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

The judicial board records for this academic year included information regarding a domestic violence incident that occurred on January 20, 1995. There was not an incident report and few details could be located about the nature of the incident. Perhaps this incident would have been classified as an aggravated assault. Reviewers cannot determine if this domestic violence incident was included in the campus security report statistics.

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

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

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

1995-96

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

The Clinton Police Department reported the following incidents:

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

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

None of these incidents were reported on the annual campus security report. The institution appears to have failed to report one forcible sex offense, one burglary, one weapons arrest, and one (or possibly two) aggravated assaults.

1996-97

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

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

The Clinton Police Department reported the following incidents:

- "Other" incident occurred on October 19, 1996. This appears to be the motor vehicle theft reported on the campus security report. (#960008247)
- An aggravated assault on April 17, 1997 (#97002838)
- A theft on May 22, 1997 (#97003901) Unless the incident can be classified as a burglary, it would not be required to be reported on the campus security report.

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

The Dean of Students indicated in interviews during the on-site visit that the student involved in the October 16, 1996 incident was also involved in another incident where he "beat up his girlfriend" or may have "only twisted her arm." However, reviewers could find no incident report or other documentation of that incident. The Dean of Students indicated no incident report was filed because the victim did not want to press charges with the police.

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

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

1997-98

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

The Clinton Police reported no incidents during this time period.

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

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

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

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

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

1998-99

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

The Clinton Police Department reported the following incidents:

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

- A report of an aggravated assault on November 12, 1998 (#98008148)
- A report of a burglary on February 1, 1999. It appears this was included among the burglary incidents reported in the campus security report. (#99002397)

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

b. Wrong standard and wrong reporting period used in report

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

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

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

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

c. Hate crimes

The institution's publications did not address the requirement to disclose whether any reported crimes manifest evidence of prejudice based on race, religion, sexual

orientation, or ethnicity, as prescribed by the Hate Crimes Statistics Act (28 U.S. C. 534). The College is required to make such disclosures under the requirements of 34 CFR 668.47 (a)(6)(ii).

REFERENCE:

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

REQUIRED ACTIONS:

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

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

FINAL DETERMINATION

The institution failed to accurately disclose the crime statistics it is required to report under the Campus Security Act of 1990. This inaccurate disclosure included: (1) the failure to report all crime incidents; (2) the use of the wrong standard and wrong reporting period in determining which crimes were to have been reported; and (3) the failure to include a determination as to whether any of the reported crimes manifested evidence of prejudice, as prescribed by the Hate Crimes Statistics Act (28 U.S.C. 534). *The failure to accurately disclose the crime statistics denies students and employees the opportunity to make informed judgments about the relative security of the campus environment and to make personal security decisions.*

a. All crime incidents not reported

The institution's September 30, 1999 response indicated that MSC officials had "omitted" ten incidents from previous campus security reports, but that MSC would include them in its revised statistics. These "omitted" incidents included four burglaries (12-25-93, 12-17-94, 2-22-95, and 2-8-96), three aggravated assaults (11-1-95, 10-16-96 (the judicial board summary date was 10-25-96), and 4-17-97), two forcible sex offenses (9-18-94 and 8-28-97), and one arrest for liquor law violations (2-24-98). The

Department concurs that these ten incidents are required to be included in MSC's revised crime statistics.

The Department's correspondence of December 14, 1999, indicated that it accepted MSC's explanation for three other incidents outlined in the program review report. Those incidents were: (1) the possible weapons arrest on November 1, 1995; (2) the possible second aggravated assault on October 16, 1996 (*the judicial board summary listed as 10-25-96*); and (3) the possible aggravated assault on November 12, 1998. However, in the December 14, 1999 letter, the department informed MSC that it needed to clarify the circumstances surrounding seven incidents discussed in the program review report; the Department outlined the specific information MSC needed to provide regarding these seven incidents.

The institution discussed the seven incidents requiring clarification in its response of January 14, 2000. School officials indicated MSC would include three of these seven incidents (*1-20-95, 9-9-95, and 6-13-97*) in its revised crime statistics, in addition to the ten "omitted" incidents previously mentioned. The institution claimed it did not have to report four of these seven incidents. However, the Department finds inconsistency in MSC's discussion of two of these incidents (*7-26-96 and 9-12-97*). As a result, these incidents must be included in MSC's revised crime statistics. The Department agrees with MSC that the remaining two incidents (*1996-97 "Girlfriend Incident" and 11-7-98*) do not have to be reported. In the future, though, MSC must keep better records to ensure the institution will be able to accurately disclose crime statistics. Each of these seven incidents is discussed below.

1. Domestic Violence Incident on January 20, 1995

The institution's July 31, 1995 campus security report listed two aggravated assaults for the 1994-95 academic year. The program review report speculated that these two incidents occurred on September 2, 1994 and January 20, 1995. Reviewers could not determine which incidents were included on the campus security report and asked the institution for clarification.

In its response of September 30, 1999, MSC confirmed the September 2, 1994 incident was listed on the campus security report as an aggravated assault. MSC determined that the January 20, 1995 incident was an aggravated assault and indicated the institution would revise its statistics to include this incident.

The institution's response was unclear as to whether the January 20, 1995 was included in the two aggravated assaults reported for the 1994-95 academic year. The school's response seemed to indicate that the January 20, 1995 incident had not previously been reported and would be added to the report as a result of the program review finding. However, MSC did not explain what incident was represented by the second reported aggravated assault in 1994-95.

The Department's correspondence of December 14, 1999 asked MSC to clarify the situation. In its January 14, 2000 correspondence, MSC indicated that three aggravated assaults would be reported in its revised statistics. However, the school never clearly explained what comprised the third aggravated assault.

The Department accepts MSC's revised statistics of three aggravated assaults in 1994-95, but notes that the institution never explained what incident represented the third aggravated assault. Thus, in future years, MSC must keep a more accurate accounting of incidents and keep track of which incidents comprise the reported statistics.

2. Forcible Sex Offense on September 9, 1995

The Clinton Police had a report of a forcible sex offense on September 9, 1995, but the July 31, 1996 campus security report listed no crimes for the 1995-96 academic year. In its September 30, 1999 response, MSC claimed that the information available was insufficient to determine whether this was a reportable offense. Thus, the school did not report the incident.

The Department's December 14, 1999 correspondence found that the incident was described in the police incident report as "SEX OFF F." Given that designation, MSC was asked to provide an explanation as to why the incident should not be reported. In its January 14, 2000 response, MSC indicated that the police incident case summary provided no facts regarding this incident other than the name of the alleged victim. Also, an investigation by the Clinton Police supposedly did not reveal any further information or facts regarding this report. MSC stated this incident was listed as a non-forcible sexual offense in its revised statistics.

The Department is unable to determine the correct classification of this incident due to the lack of details surrounding the circumstances of this case. However, the Federal Bureau of Investigation's Uniform Crime Reporting Program (UCR) defines non-forcible sexual offenses as incest or statutory rape. The institution has presented no evidence that this incident involved either incest or statutory rape. The institution has not denied that this incident occurred on MSC's campus. Furthermore, school officials did not provide an explanation as to why the incident should be classified as a non-forcible sexual offense when Clinton Police did not classify that way.

The Department accepts MSC's inclusion of this incident in the revised crime statistics, but, lacking evidence to the contrary, the incident should be listed as a forcible sex offense.

3. Aggravated Assault on June 13, 1997

An aggravated assault on June 13, 1997 was included in a summary of MSC's administrative action cases but was not listed on the campus security report. In its

September 30, 1999 response, MSC indicated that this incident was reported on the 1996-97 campus security report.

The Department's December 14, 1999 correspondence instructed the school to explain where this incident was reported or, if unable, to revise its statistics. The July 31, 1997 and June 1, 1998 campus security reports listed NO aggravated assaults for 1996-97. The June 1, 1999 campus security report listed two aggravated assaults for 1996-97, but MSC had previously accounted for these two aggravated assaults (October 16, 1996 and April 17, 1997).

In its January 14, 2000 response, MSC indicated this aggravated assault is now included in the revised statistics. The Department concurs that MSC should include this incident in its report of crime statistics.

4. Aggravated Assault on July 26, 1996

The school listed an aggravated assault, occurring on July 26, 1996, in its judicial board/administrative action summary. In its September 30, 1999 response, MSC stated that institutional officials determined this incident to be a simple assault. However, the September 30, 1999 response did indicate that the Judicial Board listed one incident of aggravated assault in 1996-97. In the September 30th letter, MSC officials claimed this incident was included in the revised crime statistics. However, no date or information concerning this incident was provided.

The Department's December 14, 1999 correspondence asked MSC to explain why the July 26, 1996 incident would be a simple assault when school officials originally classified the incident as an aggravated assault. MSC explained in its January 14, 2000 correspondence that the institution used an incorrect designation in its summary of administrative action cases. MSC officials contend that this incident did not involve injury, threat of injury or attempted injury; rather, it was simply an argument and disagreement between two MSC students. As a result, MSC classified this incident as a simple assault.

The summary of corrections to the crime statistics submitted with MSC's January 14, 2000 response indicated that the school should have reported two aggravated assaults for the period of August 1, 1995 and July 31, 1996. The summary indicates these two assaults occurred on November 1, 1995 and on July 2, 1996. The source of the July 2, 1996 incident is listed as the A-board. The program review report did not discuss any incidents occurring on July 2, 1996 and neither the judicial nor administrative board summaries listed an incident occurring on July 2, 1996. Thus, the Department assumes that MSC meant to report the aggravated assault that occurred on *July 26, 1996*.

The revised crime statistics submitted with the institution's January 14, 2000 response show two aggravated assaults should be reported in the 1995-96 academic year. The Department concurs with MSC's addition of one aggravated assault to

the 1995-96 statistics. Although MSC lists this incident as July 2, 1996, the Department presumes the incident occurred on July 26, 1996.

5. Aggravated Assault on September 12, 1997

The administrative action case summary indicated that a physical assault occurred on September 12, 1997, but reviewers could not locate supporting/explanatory information for this incident. In its September 30, 1999 response, MSC indicated that institutional officials were not provided with sufficient information to determine whether the incident was an aggravated assault. In its January 14, 2000 response, MSC stated that this incident was classified as a simple assault. The perpetrator allegedly grabbed the arm of the victim, but there were no visible marks of injury, bruises or indications of an assault on the alleged victim. The limited information available indicated to MSC officials that this incident was primarily a verbal altercation with possible slight physical contact. Thus, MSC considered the incident to be a simple assault.

However, the summary of corrections to the crime statistics that MSC submitted with its January 14, 2000 response indicated one aggravated assault should have been reported for the period of August 1, 1997 and July 31, 1998. The summary indicates this assault occurred on September 12, 1997. **The revised crime statistics submitted with the institution's January 14, 2000 list one aggravated assault for 1997-98. Reviewers did not obtain any information nor did MSC provide any explanation of any other aggravated assault occurring during this time period. As a result, the Department believes this incident should be included in MSC's revised crime statistics.**

6. 1996-97 "Girlfriend" Incident

A 1996-97 "Girlfriend" incident was discovered in an interview during the program review. There was no incident report or other documentation of the incident. The Dean of Students indicated that the student involved in an incident on October 16, 1996, was also involved in an incident where he "beat up his girlfriend" or may have "only twisted her arm." The Dean of Students indicated no incident report was filed because the victim did not want to press charges with the police. In its response of September 30, 1999, MSC indicated that no information was presented to the Dean of Students in this case to determine if the incident should be classified as an aggravated assault.

The Department's December 14, 1999 correspondence requested that MSC explain the lack of an incident report in this case and the basis for not including the incident in campus security reports. MSC indicated, in its January 14, 2000, response that the Dean of Student's description of the incident was a "figure of speech." MSC conceded that an incident report should have been filed, but claimed the incident was not reported because there were no witnesses to the incident and neither party would talk about the incident. In this case, according to MSC officials, there were no visible marks of injury, bruises or indications of an assault on the alleged victim and no evidence that a physical assault had taken place. Thus, MSC considered the incident to be a simple assault.

Because reviewers do not have any information to contradict the institution's classification of these events, the Department will accept MSC's explanation of the incident as a simple assault. As a result, the regulations do not require this incident to be reported in the crime statistics.

7. Sex offense, Non Forcible on 11-7-98

A non-forcible, sex offense was reported to the Clinton Police Department, but there was no documentation concerning the incident in the MSC documentation. The police incident summary listed the incident type as "SEX OFF NONF." The incident summary comments stated that the "complainant reported sexual abuse to subject." In its response of January 14, 2000, MSC stated that the police incident summary did not provide facts regarding this incident or details about the victim or alleged perpetrator. Clinton Police told MSC that the father of the alleged victim filed this complaint. The daughter (victim) never spoke to the police, so the police were unable to obtain further information to substantiate the allegations. Because of these limited facts, MSC was unable to determine if a reportable sexual offense occurred. As a result, the incident was not included in the security report.

Because of the limited facts of this case and the fact that reviewers do not have any information to contradict the institution's classification of these events, the Department will accept MSC's explanation of the incident. The institution does not have to report this incident in the revised crime statistics.

To summarize, over the review period, the institution failed to timely report 15 incidents of crime. These include:

- 7 aggravated assaults (Unknown, 11-1-95, 7-26-96, 10-16-96, 4-17-97, 6-13-97, and 9-12-97)
- 3 Sex offenses, forcible (9-18-94, 9-9-95 and 8-28-97 – *Incident is reported in corrected summary as 12-9-97, but date of occurrence was 8-28-97*)
- 4 burglaries (12-25-93, 12-17-94, 2-22-95, and 2-8-96)
- 1 liquor law arrest (2-24-98)

Ten of these omitted incidents involved bodily injury (or at least the threat of bodily injury). MSC's failure to report these incidents resulted in an inaccurate portrayal of the situation at the institution. Students and employees who relied upon this information in making decisions about where to work or attend school did not receive a true and complete picture.

In its most recent campus security report, MSC stated that the statistics disclosed in the report are released with the intent to comply with Federal law. MSC officials should be aware that, with the Amendments to the Higher Education Act in 1998, the disclosure requirements have changed. These changes are outlined in the final regulations published November 1, 1999 (effective date of regulations is July 1, 2000). A copy of these regulations is attached. MSC should review these regulations to ensure that it is in compliance.

One of the regulatory changes is the addition of new crime categories that are to be included in the crime statistics disclosure (34 CFR 668.46(c)). The institution's October 1, 2000 campus security report should include statistics for the 1997, 1998, and 1999 **calendar** years. The statistics for calendar year 1999 must include the new categories. MSC should also note that the institution must now provide a geographic breakdown of crime statistics.

The crime categories that must be reported are the following:

- (i) Criminal homicide:
 - (A) Murder and nonnegligent manslaughter
 - (B) Negligent manslaughter
- (ii) Sex offenses:
 - (A) Forcible sex offenses
 - (B) Nonforcible sex offenses
- (iii) Robbery
- (iv) Aggravated Assault
- (v) Burglary
- (vi) Motor vehicle theft
- (vii) Arson
- (viii) (A) Arrests for liquor law violations, drug law violations, and illegal weapons possession
- (B) Persons not included in above arrest category who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession

In addition, the regulations (34 CFR 668.46(f)) require an institution that maintains a campus police or campus security department to maintain a written crime log. Because MSC has a campus security department, the institution must ensure that it is complying with this provision, effective July 1, 2000.

b. Wrong standard and wrong reporting period used in report

Until the institution's 1999 campus security report, the institution's standard for reporting occurrences of the specified crimes in the statistical portion of its annual campus security

report was incorrect. Before the 1999 campus security report, MSC only reported those incidents where the County Attorney's office brought criminal charges. In the institution's November 3, 1998 correspondence with the Department, the Dean of Students indicated the College "only reported crimes where the perpetrator was found guilty." During the on-site visit, the Dean indicated that unless a student went to the police and pressed charges, an otherwise reportable incident would not appear in the campus security report statistics. The campus security report submitted with institution's response of September 30, 1999 indicates that MSC intends to comply with the Campus Security Act requirements regarding the disclosure of crime statistics.

In its response of September 30, 1999, MSC indicated the College did not have a formalized system for the collection of information from the Clinton Police Department. The institution indicated it would prepare and implement a system for collecting information from pertinent sources (including the Clinton Police) regarding occurrences of the specified crimes on campus.

The Department's interim correspondence of December 14, 1999 requested an institutional explanation of MSC's system of collecting information from the Clinton Police Department. The institution's January 14, 2000 response indicated that between July and December 1999 the institution maintained monthly oral contact with the Clinton Police Department regarding crimes reported to Clinton Police that occurred on the MSC campus. On December 31, 1999, MSC began monthly written correspondence with Clinton Police. The sample memo, submitted with the institution's January 14, 2000 response, asks the Clinton Police to provide MSC with monthly statistics for reported offenses, occurrences, crimes or incidents on the MSC campus.

In addition, MSC reported its statistics using an ACADEMIC year basis. In its September 30, 1999 response, MSC said, beginning with the calendar year 1999, the crime statistics would be reported on a calendar year basis. However, the campus security report submitted with the institution's January 14, 2000 response still reports the crime statistics by academic year. **The institution is advised that the disclosures/report due to be distributed on October 1, 2000 should contain statistics for the 1999, 1998 and 1997 CALENDAR years.**

c. Hate crimes

The campus security reports did not reflect whether any of the listed crimes manifested evidence of prejudice. Institutional officials corrected this error in the institution's September 30, 1999 response to the program review report. The institution reported that none of the reported crimes manifested prejudice as prescribed by the Hate Crime Statistics Act. **MSC officials should note that regulations effective July 1, 2000 require institutions that report crimes as hate crimes to report those incidents by category of prejudice (34 CFR 668.46 (c)(3)).**

As part of the final determination for this finding, the Kansas City Case Management Team has determined that a fine for this violation may be appropriate, and is making a formal fine referral to the Administrative Actions and Appeals Division (AAAD) for its consideration. AAAD will notify the institution of any action it may take as a result of this FPRD, and will include at that time information on institutional appeal rights and procedures.

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

The original program review report included the following finding, reference, and requirement for this item:

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

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

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

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

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

REQUIRED ACTIONS:

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

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

FINAL DETERMINATION

The institution failed to adequately inform prospective students and employees of the campus security report's availability, provide them with a summary of the report's contents and afford them the opportunity to request a copy of the campus security report information. This failure inhibits the ability of students, prospective students and employees from making informed choices regarding the institution of postsecondary education where these individuals might choose to attend or work.

During the on-site review, admissions staff informed reviewers that students were directed to the Office of Student Affairs for specific questions about campus safety. No admissions material provided to prospective students informed students of the availability of the campus security report. Reviewers also expressed concern regarding the manner in which the school distributed the Campus Security Act report to students. Reviewers were unsure whether MSC personnel staffed the distribution table and whether students who did not complete Fall registration would receive a copy of the report.

In its September 30, 1999 response, MSC indicated that institutional personnel staff the registration table. Students are required to sign a form acknowledging they received a copy of the report. MSC indicated that prospective students are informed of the availability of the report through a notification in the admissions pamphlet that is mailed to all prospective students. The campus security report is also posted to the institution's Internet website.

The Department's correspondence of December 14, 1999, asked MSC to clarify when the notification was printed in the admissions pamphlet. The Department's correspondence also noted that the notification was in small type hidden underneath informational reply cards. Further, the notification statement did not inform students how to request a hard copy of the report.

The institution's January 14, 2000 response indicated that the notification did not appear in the admissions pamphlet until the Fall of 1999. The institution also indicated it would amend its notification to include information on how students could request a hard copy of the campus security report.

Based on conversations with institutional personnel while reviewers were on-site, MSC began posting its campus security information on its Internet website in the summer of 1999. However, a review of this information on March 16, 2000, shows the Internet version of the report differs slightly from the information presented in the hard copy report submitted with the institution's January 14, 2000 response. *Most importantly, the*

crime statistics vary between hard copy and the copy posted on the Internet. The hard copy reflects three aggravated assaults in 1996-97, whereas only two aggravated assaults are reported on the Internet report. The hard copy reflects one aggravated assault in 1997-98 whereas the Internet copy shows zero aggravated assaults for this award year. Also, the hard copy report shows three arrests for liquor law violations in 1998-99, whereas the Internet copy only shows two arrests. The report distributed to students should contain the same, accurate information whether it is in hard copy or posted to the Internet.

The regulations effective July 1, 2000 (34 CFR 668.41(e)) changed the distribution deadline to October 1 from September 1. MSC officials should also note the requirements if the institution wishes to provide its annual security report to prospective students through an Internet posting. The notice directing students to the Internet posting must include (1) the **exact** electronic address at which the report is posted; (2) a brief description of the report; and (3) a statement that the institution will provide a paper copy of the report upon request.

As part of the final determination for this finding, the Kansas City Case Management Team has determined that a fine for this violation may be appropriate, and is making a formal fine referral to the Administrative Actions and Appeals Division (AAAD) for its consideration. AAAD will notify the institution of any action it may take as a result of this FPRD, and will include at that time information on institutional appeal rights and procedures.

3. Statements of Policy Omitted or Incomplete

The original program review report included the following finding, reference and requirement for this item:

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

a. Timely Warning Information The campus security reports distributed by the College did not include statements of the institution's policies for making timely reports to the campus community regarding the occurrence of the specified crimes. Such reports must be made in a timely manner that will aid in the prevention of similar crimes. 34 CFR 668.47(e). The DRAFT campus security statement given to reviewers on July 20, 1999 (subsequent to the institution's correspondence of April 1, 1999) contained timely warning information for sexual assaults but did not address timely warning procedures for the Campus Security Act's other enumerated crimes.

b. Safety, Access, Maintenance Concerns Regarding Campus Facilities This information was provided on pages 64-65 of the 1998-99 Student Handbook, but was not included in the Campus Security Act brochure.

c. Informational Programs The campus security reports omit the descriptions required under 34 CFR 668.47(a)(4) of the type and frequency of programs designed to

inform students and employees about campus security procedures and practices and crime prevention.

d. Sexual assault prevention programs and procedures for reporting a sex offense

This information was not included in the campus security report until the DRAFT campus security brochure presented to reviewers on July 20, 1999. Individual brochures and a revised policy concerning sexual assault were submitted with the institution's correspondence on April 1, 1999. However, it appears no programs/procedures have been published in the campus security reports distributed by MSC.

Failure to develop and publish the policies and procedures required to be disclosed under the Campus Security Act is a violation of the Act and denies students and employees the opportunity to be fully informed and/or know how to act in personal safety/security matters.

REFERENCE:

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

REQUIRED ACTIONS:

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

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

FINAL DETERMINATION

The institution's policies and procedures concerning timely warning information, security/access to campus facilities, informational programs, and sexual assault prevention programs and procedures for reporting a sex offense were either omitted or incomplete. The institution's failure to develop and publish these required policies is a violation of the Campus Security Act and denies students and employees the opportunity to be fully informed and/or know how to act in personal safety/security matters.

The institution submitted revised policies in the four required areas with its September 30, 1999 response. In its January 14, 2000 response, MSC conceded that these policy statements did not appear in MSC's campus security reports until the June 1, 1999 report.

The institution should be advised that the regulations effective July 1, 2000 (34 CFR 668.46 (b)) added additional policies that must be included in the institution's October 1, 2000 report. These regulations require the following new policies to be disclosed:

1. The institution's policies for preparing the annual disclosure of crime statistics (34 CFR 668.46(b)(2)(ii))
2. The list of titles/organization to whom students and employees report criminal offenses should disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for

inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures (34 CFR 668.46(b)(2)(iii))

3. A description of procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics (34 CFR 668.46(b)(4)(iii))

As part of the final determination for this finding, the Kansas City Case Management Team has determined that a fine for this violation may be appropriate, and is making a formal fine referral to the Administrative Actions and Appeals Division (AAAD) for its consideration. AAAD will notify the institution of any action it may take as a result of this FPRD, and will include at that time information on institutional appeal rights and procedures.

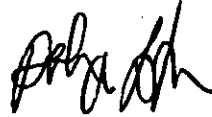
CONCLUSION

In addition to the regulatory changes previously mentioned, 34 CFR 668.41(e)(5) requires an institution to submit its crime statistics to the Secretary on an annual basis. The Department will notify institutions of the availability of the form and submission deadline date. MSC officials should monitor the Information for Financial Aid Professionals (IFAP) website and other Departmental announcements for information regarding the submission of this information. Please contact the Kansas City office should you have questions concerning MSC's compliance with these regulations.

Record retention requirements that pertain to program records relating to the period of time covered by this program review appear at 34 CFR 668.24. Generally, an institution must retain records for three years. Thus, MSC must keep campus security records for three years following the last year in which the information is included in the annual security report. For example, an incident that occurred in calendar year 1999 must be reported on the Campus Security Act reports due October 1, 2000, October 1, 2001, and October 1, 2002. The school must retain the information concerning the reported incident for three years after the incident is reported in the October 1, 2002 report. Thus, MSC would have to retain information concerning a reportable crime incident in 1999 until October 1, 2005.

Your cooperation throughout the program review process is appreciated. If you have any questions, please contact Mr. Steve Dorssom at (816) 880-4053.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ralph A. LoBosco', written in a cursive style.

Ralph A. LoBosco
Area Case Director
Kansas City Case Management Team
Case Management & Oversight
Student Financial Assistance Programs

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

UNITED STATES DEPARTMENT OF EDUCATION

Office of Student Financial Assistance Programs

10220 North Executive Hills Boulevard, Suite 900

Kansas City, Missouri 64153-1367

Tel: (816) 880-4053

Fax: (816) 891-0983



August 31, 1999

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

Certified Mail
Return Receipt Requested

PRCN: 199940716575

Dear Dr. Ross:

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "R. LoBosco", is written above the typed name.

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

Enclosure

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

PROGRAM REVIEW REPORT

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

DATES OF REVIEW: July 20-23, 1999

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

OPE ID#: 00188100
EIN: 420745980

TYPE AND CONTROL: Private/4year

ACCREDITATION: North Central Association of Colleges and Schools

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

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

METHOD OF PAYMENT: Advance Payment

SFA PROGRAM PARTICIPATION:

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

INSTITUTIONAL OFFICIALS CONTACTED:

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

TABLE OF CONTENTS

A. INTRODUCTION	1
B. SCOPE OF REVIEW	2
C. FINDINGS REQUIRING INSTITUTIONAL ACTION	
1. Crime Statistics Not Accurately Disclosed.....	3
2. Information Not Made Available.....	11
3. Policy Omitted or Incomplete.....	12
4. Equity in Athletics Report Not Prepared.....	13
D. TECHNICAL ASSISTANCE	14

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

INTRODUCTION

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

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

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

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

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

SCOPE OF REVIEW

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

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

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

FINDINGS REQUIRING INSTITUTIONAL ACTION

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

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

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

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

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

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

1993-94

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

1994-95

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

The Clinton Police Department reported the following incidents:

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

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

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

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

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

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

1995-96

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

The Clinton Police Department reported the following incidents:

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

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

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

1996-97

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

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

The Clinton Police Department reported the following incidents:

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

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

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

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

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

1997-98

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

The Clinton Police reported no incidents during this time period.

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

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

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

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

1998-99

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

The Clinton Police Department reported the following incidents:

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

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

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

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

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

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

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

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

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

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

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

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

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

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

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

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

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

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

REQUIRED ACTIONS:

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

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

3. Statements of Policy Omitted or Incomplete

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

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

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

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

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

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

4. Equity In Athletics Report Not Prepared

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

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

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

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

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

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

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

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

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

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

TECHNICAL ASSISTANCE

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

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

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

Mount Saint Clare College
400 North Bluff Blvd.
Clinton, Iowa 52732

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

Registered
Federal Register

Monday
November 1, 1999

Part IX

**Department of
Education**

34 CFR Part 668

**Student Assistance General Provisions;
Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1845-AA03

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

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

DATES: *Effective Date:* These regulations are effective July 1, 2000.

Implementation Date: The changes to certain sections, particularly §§ 668.41 (b) and (c) and 668.46(c) (1)–(4) and (f), reflect changes made by Public Law 105–244 that already are in effect. Sections 668.41 (b) and (c) concern the distribution of information through electronic media and the distribution to enrolled students of a list of the information to which they are entitled upon request. Sections 668.46(c) (1)–(4) and (f) concern the reporting of crime statistics and the maintenance of a crime log. You may use these regulations prior to July 1, 2000 as guidance in complying with the relevant statutory provisions. You can find the full text of Public Law 105–244 at <http://www.access.gpo.gov/nara/publaw/105publ.html>.

FOR FURTHER INFORMATION CONTACT:

Paula Husselmann
(Paula_Husselmann@ed.gov) or Lloyd Horwich (Lloyd_Horwich@ed.gov),
U.S. Department of Education, 400
Maryland Avenue, SW, ROB–3, room
3045, Washington, DC 20202–5344.
Telephone (202) 708–8242. If you use a
telecommunications device for the deaf
(TDD), you may call the Federal
Information Relay Service (FIRS) at 1–
800–877–8339.

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

SUPPLEMENTARY INFORMATION: On August 10, 1999, we published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions in the *Federal Register* (64 FR 43582). In the preamble to the NPRM, we discussed the following proposed changes:

- Amending § 668.41 to make the information disclosure process more understandable and less burdensome, to require institutions to provide enrolled students a list of the information to which the students are entitled upon request, and to provide for institutions' use of Internet and Intranet websites for the disclosure of information.

- Amending § 668.42 by incorporating it into § 668.41.

- Amending § 668.43 to require institutions to disclose their requirements and procedures for a student to officially withdraw from the institution.

- Amending § 668.45 regarding the disclosure of completion/graduation and transfer-out rate information by implementing changes made by the 1998 Amendments, providing for a July 1 annual disclosure date, limiting the required disclosure of transfer-out rates to certain institutions, achieving greater consistency between term and nonterm-based institutions in establishing a cohort, and adding optional disclosures.

- Amending § 668.46 regarding the disclosure of campus security information to define terms (including campus, noncampus buildings or property, and public property), by excluding pastoral or professional counselors from the definition of a campus security authority, by adding new categories of crimes to be reported and new policies to be disclosed, by clarifying how to compile and depict crime statistics, by changing the date for disclosure of the annual security report to October 1, by requiring certain institutions to maintain a publicly available crime log, and by requiring institutions annually to submit their crime statistics to the Department.

- Amending § 668.47 by providing for the disclosure of additional data about revenues and expenses attributable to an institution's intercollegiate athletic activities, by clarifying the meaning of various terms, and by requiring institutions annually to submit their Equity in Athletics Disclosure Act (EADA) report to the Department.

- Amending § 668.48 to correspond with § 668.45 concerning the disclosure of completion/graduation and transfer-out rates.

Discussion of Student Financial Assistance Regulations Development Process

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, we obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, we must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless we reopen that process or explain any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 10, 1999, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. We invited comments on the proposed regulations by September 15, 1999, and 132 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

These regulations reflect the following changes to the proposed regulations in response to public comment:

- In § 668.43(a)(3), we clarified that the requirement that institutions disclose when a student must officially withdraw from the institution includes the disclosure of the procedures for a student to officially withdraw.

- In § 668.46(a) we revised the definition of a professional counselor to no longer require that the counselor be an employee of the institution. In addition, we revised the definition by replacing the term "psychological counseling" with the term "mental health counseling."

- We moved the definition of "prospective employee" from § 668.46(a) to § 668.41(a).

We added § 668.46(c)(2) to require institutions to record a crime statistic in their annual security reports for the calendar year in which the crime was reported to a campus security authority. We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes and

suggested changes the law does not authorize us to make.

Analysis of Comments and Changes

Subpart D—Institutional and Financial Assistance Information for Students

These regulations (1) retitle Subpart D from "Student Consumer Information Services" to "Institutional and Financial Assistance Information for Students," to conform the title to that of section 485 of the HEA, and (2) renumber the sections.

These regulations remove current § 668.42 and incorporate it into § 668.41. Therefore, these regulations renumber current §§ 668.43–49 as §§ 668.42–48; the preamble to these regulations refers to the new section numbers.

Questions and Recommendations:

Commenters requested guidance on implementation of the requirements of this subpart and made recommendations concerning how we should interpret these regulations or apply them to particular circumstances. As these comments did not request any changes in the proposed regulations, we will provide separate guidance at a later date.

General Comments

The Secretary should clarify the record retention requirements that apply to these regulations.

Discussion: Section 668.24 of the Student Assistance General Provisions outlines the record retention requirements for the student financial assistance programs. Generally, a record must be maintained for three years following the end of the award year for which the record was established. With respect to the disclosure of institutional and financial assistance information provided under Subpart D of the Student Assistance General Provisions, the purpose is for the disclosure of certain information to students and other parties. Therefore, the institution must retain any record related to the disclosure for three years following the date of disclosure.

Using the campus security records as an example, an institution's annual security report to be disclosed on October 1, 2000 must include crime statistics for calendar years 1997, 1998, and 1999. The record retention regulations require the institution to retain records to substantiate the information in its 2000 report for three years from October 1, 2000. Therefore, calendar year 1997 records must be retained until October 1, 2003.

Changes: None.

Section 668.41 Reporting and Disclosure of Information

Comments: Section 668.41 should address any information institutions participating in Title IV, HEA programs are required to disclose by any Department of Education regulation, not just information institutions are required to disclose by these regulations (34 CFR Part 668, Subpart D).

Discussion: Section 668.41 only is intended to address information that institutions are required to disclose by section 485 of the HEA. We believe that including in § 668.41 all information that institutions must disclose under any Department regulation is impractical and would be confusing.

Changes: None.

Comments: The Department should provide a chart listing all information that institutions must disclose under these regulations and the persons to whom they must disclose the information.

Discussion: We believe that § 668.41 adequately provides the information sought by this comment. However, we will provide continuing technical assistance, including the requested chart, to institutions to help them understand and comply with these regulations.

Changes: None.

Comments: The Department should clarify the level of description of required information it expects institutions to provide in the various notices of the availability of information that are required by § 668.41.

Discussion: As stated in the preamble to the NPRM (64 FR 43583), the description should be sufficient to allow students and others to understand the nature of the information and to make informed decisions about whether to request the information. We do not believe there is a need to be more prescriptive in this area.

Changes: None.

Comments: Remove the word "freshman" from the definition "first-time, freshman student" in § 668.41(a), which identifies those students that institutions must include in their cohorts for calculating completion or graduation rates, and if applicable, transfer-out rates.

Discussion: As described in § 668.45, institutions must include in their cohorts first-time, certificate- or degree-seeking, full-time undergraduate students who never have attended any institution of higher education (including in the cohort those who enroll in the fall term having attended a postsecondary institution for the first time in the prior summer term or having

earned college credit in high school) regardless of their class standing. As some members of the cohort may have advanced standing, we agree that the use of the word "freshman" in the definition could cause confusion.

Changes: The term "first-time freshman student" is replaced by the term "first-time, undergraduate student" wherever it appears in these regulations (§§ 668.41(a), 668.45(a)(3)(iii), and 668.45(a)(4)(i)–(ii)).

Comments: The definition of "notice" in § 668.41(a) should not require institutions, in providing the various notices of the availability of information required by § 668.41, to provide the notices on a one-to-one basis to persons to whom the information need only be provided upon request.

Discussion: We do not believe that students and others entitled to the information will be adequately notified of its availability if the notification of its availability is made through means that do not ensure that each person who is entitled to the notification receives it. The regulation does not prescribe the method by which institutions must notify students and others of the information's availability; the regulation simply prescribes that the method used must provide individualized notice.

Changes: None.

Comments: Change §§ 668.41(c) and (d) to include completion and graduation rates, and if applicable, transfer-out rates, for athletes under § 668.48, among the required disclosures of information.

Discussion: Section 485(a)(1) of the HEA does not include completion and graduation rates of athletes in the list of information institutions must provide upon request to enrolled and prospective students. Although section 485(e) of the HEA only requires institutions to provide the report concerning athletes' graduation rates to prospective student-athletes and their parents, high school coaches, and guidance counselors, we encourage institutions to provide the report to others who request it.

Changes: None.

Comments: Rather than requiring institutions under § 668.41(c) annually to provide all enrolled students a notice listing the information to which they are entitled upon request, allow institutions to tell students, at the time the institutions distribute the notice, how often they will publish the list and how students can obtain interim changes to the list.

Discussion: Section 485(a) of the HEA specifically requires that institutions provide the list annually to all enrolled students.

Changes: None.

Comments: The Department should clarify that § 99.7, which is referenced in § 668.41(c)(1), refers to the notification requirements under the Family Educational Rights and Privacy Act of 1974 (FERPA).

Discussion: We agree.

Changes: Section 668.41(c)(1) is amended to include a reference to FERPA.

Comments: The requirement for disclosure of information about the terms and conditions of deferral of loan repayments for service under the Peace Corps Act, the Domestic Volunteer Service Act of 1973, or for comparable service as a volunteer for a tax-exempt organization of demonstrated effectiveness in the field of community service should be moved from § 668.41(d)(4) to § 668.42 (Financial assistance information), which addresses, among other subjects, loan repayment.

Discussion: We agree with the commenters.

Changes: Section 668.41(d)(4) in the NPRM is moved to § 668.42(c)(7).

Comments: If the purpose of the revised § 668.41 is to put all of an institution's disclosure responsibilities under subpart D in a single section, the requirement that an institution must report its crime statistics to the Department should be moved from § 668.46(g) to § 668.41.

Discussion: We agree with the commenters.

Changes: Section 668.46(g) in the NPRM is moved to § 668.41(e)(5).

Comments: The Department should clarify that the prohibition on using the Internet to provide the information required by § 668.41(f)(1)(i) to prospective student-athletes and their parents does not prohibit a national collegiate athletic association from obtaining a waiver for its members under § 668.41(f)(1)(ii) for providing the information to prospective student-athletes' high school coaches and guidance counselors by distributing the information to all secondary schools in the United States through the Internet or other electronic means.

Discussion: We did not intend the prohibition referred to above to address the means by which a national collegiate athletic association must provide the information to secondary schools in order to obtain a waiver under § 668.41(f)(1)(ii). We would be pleased to work with any such association seeking a waiver for its members to determine whether the association's proposed method of providing the information to secondary

schools is sufficient to qualify for a waiver.

Changes: None.

Section 668.43 Institutional and Financial Assistance Information

Comments: The requirement in § 668.43(a)(2) and (4) that an institution disclose any refund policy with which the institution is required to comply should make clear that the requirement refers to any refund policy required by the institution's accrediting agency or State agency, not to the requirements for determining the amount of Title IV HEA program assistance that a student has earned upon withdrawal.

Discussion: Institutions are required to disclose any refund policy that requires the return of unearned funds to their source. This information includes the determination of amounts returned to the title IV programs and all other provisions of § 668.22, as well as any refund policy required by the State or the school's accrediting agency, or any institutional refund policy.

Changes: None.

Comments: In addition to an institution's disclosure of when a student must officially withdraw from the institution, the disclosure should include the institution's procedures for that withdrawal.

Discussion: Any disclosure of the requirements for withdrawal must necessarily include sufficient information for a student to know how to go about withdrawing from the institution.

Changes: We revised § 668.43(a)(3) to clarify that the requirement that an institution disclose its requirements for withdrawal includes a requirement that an institution disclose the procedures a student must follow to officially withdraw.

Section 668.45 Information on Completion or Graduation Rates

Comments: Term-based institutions whose students enroll before September 1 of a given year should continue to include these students in their fall cohort for that year.

Discussion: These regulations do not change how a term-based institution establishes its fall cohort. A term-based institution may include in its fall cohort students who enroll for the fall term before September 1 of a given year, and continue to include students who attended the institution for the first time during the summer preceding the fall term.

Changes: We revised § 668.45(a)(3)(i) to clarify that an institution's fall cohort must include all students who enter a term-based institution during the fall

term, regardless of whether they enter before or after September 1.

Comments: Institutions should be allowed to disclose graduation or completion and, if applicable, transfer-out rates for their 1996 and 1997 cohorts based on a September 1 through August 31 year.

Discussion: We agree. The 1998 Amendments changed the year during which institutions must determine whether students for whom 150% of normal time for completion of their programs has elapsed have completed or graduated from the program from July 1 through June 30 to September 1 through August 31. These regulations reflect the statutory change.

Changes: None.

Comments: In determining its fall cohort, a term-based institution should be able to consider who is enrolled on another official fall reporting date other than October 15 or the end of the drop-add period to make the reporting date consistent with the Department's Integrated Postsecondary Education Data System's (IPEDS) Fall Enrollment (EF) report.

Discussion: We agree that a term-based institution's establishment of its fall cohort under this regulation should be consistent with the IPEDS data on fall enrollment.

Changes: We revised § 668.45(a)(4) to include as an entering student a first-time, full-time, certificate or degree-seeking undergraduate who is enrolled on another official fall reporting date. Also, we added to § 668.41(a) the definition of "official fall reporting date" used by the IPEDS EF report.

Comments: Transfer-out rates should be optional for all institutions for a number of reasons, including the greater regulatory burden placed on institutions that consider "substantial preparation" as part of their mission—for example, community colleges.

Discussion: The HEA requires institutions to report the rate at which students who receive substantial preparation transfer out of the institution. Therefore, the transfer-out rate cannot be made optional in all cases. These regulations limit the requirement to institutions that determine that their missions include providing substantial preparation for their students to enroll in other eligible institutions. Institutions with substantial numbers of transfers-out may have a lower graduation and completion rate than other institutions and thus may find it desirable to report a transfer-out rate. We anticipate that the required transfer-out rate will not apply to most four-year institutions. Consistent with the treatment of

transfer-out students by IPEDS Graduation Rate Survey (GRS), an institution only is required to report on students whom the institution knows transferred to another institution.

Changes: None.

Comments: The Secretary should clarify that a student who leaves an undergraduate institution for study at a graduate institution is not a transfer-out under these regulations.

Discussion: For purposes of these regulations, a student who leaves an undergraduate program for study in a graduate program is not considered a transfer-out. Normally, such a student would have completed his or her program and be included in the institution's completion/graduation rate.

Changes: None.

Comments: A term-based institution should be defined as an institution at which more than fifty percent of the programs are term-based.

Discussion: Section 668.45(a)(3)(i) defines a term-based institution as an institution at which a predominant number of the programs are based on semesters, trimesters, or quarters.

Changes: None.

Comments: The Secretary should indicate that an institution's compliance with the IPEDS GRS ensures compliance with the methodological requirements of § 668.45.

Discussion: We agree. An institution's compliance with the GRS constitutes compliance with the methodological provisions of §§ 668.45 and 668.48.

Changes: None.

Section 668.46 Institutional Security Policies and Crime Statistics

Comments: Numerous commenters requested that we specifically exclude certain types of employees from the definition of a campus security authority—for example, lay counselors, dormitory rectors, physicians, access monitors, rape crisis counselors, doctoral counselor trainees, campus ombudsmen, and teaching faculty. Other commenters requested clarification about whether student security personnel organized by student governments and concert security employees who work for the institution are campus security authorities. Still other commenters asked us to define who is an "official" of the institution, and what "significant responsibility" for student and campus activities means.

Discussion: To determine if an institution must collect crime statistics from a particular employee or official, or provide a timely warning report based on crimes reported or known to the employee or official, an institution must first determine if that official is a

campus security authority. In addition to campus law enforcement staff, a campus security authority is someone with "significant responsibility for student and campus activities." Absent this responsibility, an employee is not a campus security authority.

For example, a dean of students who oversees student housing, a student center, or student extra-curricular activities, has significant responsibility for student and campus activities. Similarly, a director of athletics, team coach, and faculty advisor to a student group also have significant responsibility for student and campus activities.

A single teaching faculty member is unlikely to have significant responsibility for student and campus activities, except when serving as an advisor to a student group. A physician in a campus health center or a counselor in a counseling center whose only responsibility is to provide care to students are unlikely to have significant responsibility for student and campus activities. Also, clerical staff are unlikely to have significant responsibility for student and campus activities.

Since official responsibilities and job titles vary significantly from campus to campus, we believe that including a list of specific titles in the regulation is not practical. However, as stated above, we will provide additional guidance at a later date concerning interpretation of these regulations.

Changes: None.

Comments: The definition of campus security authority should include only individuals working for the institution's campus security office or expressly performing a campus security function at the institution's request.

Discussion: We believe that the new definition and guidance reflect the reality that on colleges campuses, officials who are not police officials or acting as event security at student or campus events nevertheless are responsible for students' or campus security. We also believe the new definition and guidance will better enable institutions to determine who is a campus security authority and thereby to comply with these regulations.

Changes: None.

Comments: Commenters asked a number of questions regarding our interpretation of the definitions of campus, noncampus building or property, and public property, such as what it means for an institution to "control" property, what "adjacent to and accessible from the campus" means, and whether remote classrooms or remote research stations are included in

the definition of campus. Commenters also asked how different institutions that occupy the same general geographic area and different campuses of an institution should report crimes.

Discussion: We will respond to commenters' questions concerning implementation of the proposed regulations, and will post our answers on our Information for Financial Assistance Professionals (IFAP) website: <http://ifap.ed.gov>

Changes: None.

Comments: Generally, the commenters expressed much satisfaction with the compromises made during negotiated rulemaking regarding the definitions in § 668.46(a). In particular, many commenters agreed with the negotiators' decision to exclude professional and pastoral counselors from being required to report crimes discussed with them in their role as counselor. Some commenters disagreed with this exclusion, on the belief that reporting a statistic cannot identify the victim. Other commenters believed that the process of reporting statistics and avoiding double-counting can lead to identification of the victim. Many commenters stressed the importance of ensuring that students' ability to obtain confidential counseling not be compromised.

Discussion: We agree with the commenters about the importance of victims' being able to obtain confidential counseling. We also agree that although reporting a statistic is not likely, of itself, to identify the victim, the need to verify the occurrence of the crime and the need for additional information about the crime to avoid double-counting can lead to identification of the victim.

Representatives of psychological counselors informed us that counselors would, as a matter of professional obligation, be required to inform a patient at the beginning of any session that detailed information may be disclosed to other parties for statistical reporting purposes. In their experience, this disclosure has a chilling effect on access to professional counseling by causing a victim to decline or be wary of professional assistance. Given the importance of access to counseling, the availability of statistics from other sources on campus, and the provisions we included in this regulation concerning confidential reporting, we believe this regulation strikes the appropriate balance between individuals' need for counseling and the community's need for complete statistics.

Changes: None.

Comments: The definition of professional counselor should refer to mental health counseling instead of psychological counseling because the job description of a professional counselor other than a psychologist or psychiatrist might refer to mental health counseling or crisis counseling, but would be unlikely to refer to psychological counseling. This definition also should refer to independent contractors who perform professional counseling for institutions.

Discussion: We agree with the commenters that changing the definition to refer to mental health counseling rather than psychological counseling provides a clearer, more precise definition, but emphasize that the change does not expand the definition to include non-professional or informal counselors.

We believe that changing the definition by eliminating the reference to employee would clarify that the definition refers to the nature of the counselor, not the counselor's employment relationship with the institution.

Changes: We changed the definition of professional counselor in § 668.46(a) to refer to mental health counseling and to exclude the requirement that a professional counselor be an employee of the institution.

Comments: The requirement that institutions provide notice of the availability of the annual security report to each prospective employee is overly burdensome as that term is defined (an individual who has contacted an eligible institution requesting information concerning employment with the institution). The definition should be limited to individuals who apply for employment. Also, the definition should be moved from § 668.46 to § 668.41, because it applies to both sections, and the definitions in § 668.41 apply to the entire subpart, while those in § 668.46 only apply to that section.

Discussion: We do not believe that the definition is unduly burdensome, especially given the importance of prospective employees being able to make fully informed choices. The requirement applies only when an individual requests information from an institution and the institution, presumably, either will mail the individual the information or tell the individual where to obtain the information. The institution simply can include in whatever information it provides the individual a brief notice of the availability of the annual security report.

We agree that the definition should be moved to § 668.41.

Changes: The definition of prospective employee is moved from § 668.46(a) to § 668.41(a).

Comments: Some commenters objected to the requirement in § 668.46(b)(2)(ii) that institutions disclose their policies for preparing the annual disclosure of crime statistics and requested clarification of what this disclosure entails.

Discussion: This disclosure serves two important purposes. It informs the students about how and from what sources the report is prepared. Many students may not be aware that a formal police report or investigation is not needed in order for a crime report to be included in the statistics. This disclosure also requires an institution to consider what officials or offices must be canvassed in order to prepare a complete report. Incorrectly, some institutions believe that only formal police reports need be included; the disclosure allows the reader to conclude that all of the proper offices have been canvassed. The disclosure need only provide a general description of the process for preparing the report, including the offices surveyed. There is no requirement to disclose every detailed step in the report's preparation.

Changes: None.

Comments: The endorsement of anonymous crime reporting procedures is a valuable addition to the regulations. Although incomplete anonymous reports raise a number of statistical reporting questions, it is a valuable alternative for some crime victims. In some States confidential reporting of crime is illegal.

Discussion: Institutions should note that the regulations refer to confidential reporting, not anonymous reporting. The regulations do not require institutions to allow confidential reporting. Rather, § 668.46(b)(2)(iii) and (4)(iii) require institutions to state whether they allow confidential reporting, and if so, to describe their procedures for that reporting, including whether the institution encourages pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of those procedures. An institution prohibited by State law from allowing confidential reporting simply would be required to state that in its annual security report.

Changes: None.

Comments: Campus judicial processes do not determine whether a crime occurred, but rather determine only whether the accused person committed an act that violates the institution's

rules, policies, or code of conduct. Therefore, the Secretary should clarify that referrals for alcohol, drug, and weapons law violations are limited to a breach of institutional policy, not law.

Discussion: The requirement that institutions report statistics for referrals for campus disciplinary action for alcohol, drug and weapons possession refers to violations of law only. For example, if a student of legal drinking age in the State in which an institution is located violates the institution's "dry-campus" policy and is referred for campus disciplinary action, that statistic should not be included in the institution's crime statistics. We believe that campus judicial officials and campus police are capable of determining whether a particular alcohol, drug, or weapons violation is a violation of law.

Changes: None.

Comment: Most commenters responded to our question regarding whether a crime should be recorded for the calendar year in which the crime was reported to the institution or the calendar year in which the crime occurred. The commenters were largely in favor of recording the crime on the date the crime was reported to the institution. The commenters indicated that for statistical purposes the FBI collects crime data based on when crimes are reported to the police, not on the date crimes occur. One reason for this standard is that crimes generally are discovered after they occur, making the date of occurrence unknown or uncertain. The commenters explained that using the date of occurrence creates additional burden for institutions.

Discussion: We appreciate the responses to our solicitation for comment on this issue. We previously have required institutions to report crime statistics according to the year in which the crimes occurred. However, we are convinced by the weight of the comments that we would eliminate a considerable burden on institutions by making this reporting requirement consistent with FBI reporting practices, and that no crime statistics will go unreported as a result of this change.

Changes: Section 668.46(c)(2) is revised to require an institution to record crime data based on when the crime was reported to a campus security authority.

Comments: The problem with reporting which crimes are hate crimes is an institution's reliance on municipal police departments to provide this information. Hate crimes are often a political issue in municipalities, which may be reluctant to release information concerning hate crimes to an institution.

Discussion: We recognize that some institutions must rely on data, including hate crime data, from outside agencies. In complying with the statistical reporting requirements, an institution must make a reasonable, good-faith effort to obtain statistics from outside agencies. An institution that makes such an effort is not responsible for the agencies' failure to provide the statistics or for verifying the accuracy of statistics the agencies provide.

Changes: None.

Comments: The requirement that institutions report hate crimes related to "any crime involving bodily injury" is inconsistent with other statistical reporting requirements. To require an institution to search for every crime that may have involved personal injury is overly burdensome.

Discussion: The requirement that institutions report hate crimes related to any crime involving bodily injury is mandated by the HEA.

Changes: None.

Comments: The Secretary should clarify that institutions are not required to report statistics for public property that surrounds noncampus buildings or property.

Discussion: These regulations do not require an institution to report crime statistics for public property surrounding noncampus buildings or property.

Changes: None.

Comments: The commenters asked that the preamble make clear that an institution must use both the UCR definitions and standards when reporting crime.

Discussion: We reiterate the language of § 668.46(c)(7) that requires an institution to use UCR guidance when defining and classifying crimes.

Changes: None.

Comments: The commenters strongly supported the use of a map to aid in the disclosure of crime statistics, and believe that a map would be very effective in indicating the areas to be considered in compiling these statistics. Some commenters believe that the Department will receive complaints or queries from the campus community that a map disclosed by an institution does not accurately depict the reporting area of a campus and recommended that the Department establish a uniform review process for the review of maps so that questions can be handled in a timely and efficient manner.

Discussion: We agree with the commenters that using a map in disclosing crime statistics can be very helpful; students and others will be able to visualize the areas covered by an institution's annual security report. We

will not establish a uniform process to review institutions' maps. Anyone who believes that an institution is not in compliance with the campus security regulations may contact the Office of Student Financial Assistance regional office for the State in which the institution is located. The addresses and telephone numbers for the regional Case Team Managers are at the following Internet address: <http://ed.gov/about.html>.

Changes: None.

Comments: The regulations should define what is meant, for purposes of crime log entries, by the nature, date, time and general location of each crime. The Department should emphasize that institutions may withhold this information only when it is absolutely necessary to prevent a breach of victim's confidentiality.

Discussion: We believe these terms are straightforward and there is no need for more prescriptive regulation. However, we emphasize that an institution may only withhold this information when it is sufficiently clear that the victim's confidentiality is in jeopardy.

Changes: None.

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

Comments: Section 668.47 should include a separate audit requirement for the data it requires institutions to report.

Discussion: As discussed in the preamble to the NPRM (64 FR 43588-89), the primary change to the EADA made by the 1998 Amendments was the relocation of informational requirements concerning revenues and expenses attributable to institutions' intercollegiate athletic activities from section 487(a) of the HEA (Program Participation Agreements) to section 485(g). In relocating those requirements, Congress repealed the audit requirement under section 487(a). We believe Congress' intent is clear that there should not be a separate audit requirement for the data required by § 668.47.

Changes: None.

Comments: Institutions annually submit an audited financial statement to the Department. The requirement in § 668.47 to report intercollegiate athletics financial data separately requires reformatting the data, causes the data to appear differently than in the financial statement, and is administratively burdensome. The Department should consider whether the benefit to students, parents, and others from this report outweighs the cost to institutions.

Discussion: The requirements in § 668.47 concerning the disclosure of intercollegiate athletics financial data are statutory requirements.

Changes: None.

Comments: When and to which office of the Department should institutions submit their EADA reports?

Discussion: We are developing a process for receiving the reports. When the process is complete, we will inform institutions on the Department's IFAP website: <http://ifap.ed.gov>. Institutions should have made the reports available to students and others by October 15, 1999.

Changes: None.

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

Comments: Allow term-based institutions, in determining their athletic cohorts under § 668.48(a), to include athletes who receive athletically related student aid at any time during the academic year in which their cohorts are established, rather than only allowing those institutions to include athletes who receive aid by the end of the institution's drop-add period or by October 15.

Discussion: We stated in the preamble to the NPRM (64 FR 43589) that institutions should include in their athletic cohorts students who receive athletically related student aid by the end of the institution's drop-add period or by October 15 because we believed that would lessen institutions' burden. However, based on the weight of the comments, and because the Department's Integrated Postsecondary Education Data System's (IPEDS) Graduation Rate Survey allows term-based institutions to use the entire academic year to determine their athletic cohorts, we now change the guidance we gave in the preamble to the NPRM and allow term-based institutions to use the entire academic year to determine their athletic cohorts. Further, we clarify that "drop-add period," in this context, refers to institutions' fall drop-add periods.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with these final regulations are those resulting from statutory requirements and those we have determined to be

necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (64 FR 43589–43590).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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

List of Subjects in 34 CFR Part 668

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

Dated: October 19, 1999.

Richard W. Riley,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

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

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

Subpart D—Institutional and Financial Assistance Information for Students

3. Section 668.41 is revised to read as follows:

§ 668.41 Reporting and disclosure of information.

(a) *Definitions.* The following definitions apply to this subpart:
Athletically related student aid means any scholarship, grant, or other form of financial assistance, offered by an institution, the terms of which require the recipient to participate in a program of intercollegiate athletics at the institution. Other student aid, of which a student-athlete simply happens to be the recipient, is not athletically related student aid.

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

First-time undergraduate student means an entering undergraduate who has never attended any institution of higher education. It includes a student enrolled in the fall term who attended a postsecondary institution for the first time in the prior summer term, and a student who entered with advanced

standing (college credit earned before graduation from high school).

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

Notice means a notification of the availability of information an institution is required by this subpart to disclose, provided to an individual on a one-to-one basis through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail, or electronic mail. Posting on an Internet website or an Intranet website does not constitute a notice.

Official fall reporting date means that date (in the fall) on which an institution must report fall enrollment data to either the State, its board of trustees or governing board, or some other external governing body.

Prospective employee means an individual who has contacted an eligible institution for the purpose of requesting information concerning employment with that institution.

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

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

(b) *Disclosure through Internet or Intranet websites.* Subject to paragraphs (c)(2), (e)(2) through (4), or (g)(1)(ii) of this section, as appropriate, an institution may satisfy any requirement to disclose information under paragraph (d), (e), or (g) of this section for—

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

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

(c) *Notice to enrolled students.* (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant to paragraphs (d), (e), and (g) of this section, and pursuant to 34 CFR 99.7 (§ 99.7 sets forth the notification requirements of

the Family Educational Rights and Privacy Act of 1974). The notice must list and briefly describe the information and tell the student how to obtain the information.

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

(i) The exact electronic address at which the information is posted; and

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

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

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

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

(3) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

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

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

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

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

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

(3) *Current employees—annual security report.* If an institution chooses to distribute its annual security report to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must,

by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report.* The institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report, upon request, to a prospective student or prospective employee. If the institution chooses to provide its annual security report to prospective students and prospective employees by posting the disclosure on an Internet website, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(5) *Submission to the Secretary—annual security report.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by § 668.46(c) to the Secretary.

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

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

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

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

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

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

(2) By July 1 of each year, an institution must submit to the Secretary

the report produced pursuant to § 668.48.

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

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

(ii) The institution must provide notice to all enrolled students, pursuant to paragraph (c)(1) of this section, and prospective students of their right to request the report described in paragraph (g)(1) of this section. If the institution chooses to make the report available by posting the disclosure on an Internet website or an Intranet website, it must provide in the notice the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report on request. For prospective students, the institution may not use an Intranet website for this purpose.

(2) An institution must submit the report described in paragraph (g)(1)(i) of this section to the Secretary within 15 days of making it available to students, prospective students, and the public.

(Approved by the Office of Management and Budget under control number 1845-0004 and 1845-0010)

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

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

5. Newly redesignated § 668.42 is amended by removing the word "and" at the end of paragraph (c)(5); by removing the period at the end of paragraph (c)(6), and adding, in its place, "; and"; by adding a new paragraph (c)(7) and revising the OMB control number to read as follows:

§ 668.42 Financial assistance information.

* * * * *

(c) ***

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

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

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

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

(Approved by the Office of Management and Budget under control number 1845-0022)

6. Newly redesignated § 668.43 is revised to read as follows:

§ 668.43 Institutional information.

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

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of costs for necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Estimates of transportation costs for students; and

(v) Any additional cost of a program in which a student is enrolled or expresses a specific interest;

(2) Any refund policy with which the institution is required to comply for the return of unearned tuition and fees or other refundable portions of costs paid to the institution;

(3) The requirements and procedures for officially withdrawing from the institution;

(4) A summary of the requirements under § 668.22 for the return of title IV grant or loan assistance;

(5) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(6) The names of associations, agencies or governmental bodies that accredit, approve, or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

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

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

(9) A statement that a student's enrollment in a program of study abroad

approved for credit by the home institution may be considered enrollment at the home institution for the purpose of applying for assistance under the title IV, HEA programs.

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

(Approved by the Office of Management and Budget under control number 1845-0022) (Authority: 20 U.S.C. 1092)

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

§ 668.45 Information on completion or graduation rates.

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

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

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

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

(iii) For purposes of the completion or graduation rate and, if applicable, transfer-out rate calculations required in paragraph (a) of this section, an institution must count as entering students only first-time undergraduate students, as defined in § 668.41(a).

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time undergraduate student who is enrolled as of October 15, the end of the institution's drop-add period, or another official reporting date as defined in § 668.41(a).

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

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

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

(5) An institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the 12-month period ending August 31 during which 150% of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

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

(1) Students who have completed or graduated by the end of the 12-month period ending August 31 during which 150% of the normal time for completion or graduation from their program has lapsed; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, by the end of the 12-month period ending August 31 during which 150% of normal time for completion from that program has lapsed.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who by the end of the 12-month period ending August 31 during which 150% of the normal time for completion or graduation from the program in which they were enrolled has lapsed, have not completed or graduated but have subsequently enrolled in any program of an eligible institution for which its program provided substantial preparation.

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

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

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

(3) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(4) Are totally and permanently disabled; or

(5) Are deceased.

(e)(1) The Secretary grants a waiver of the requirements of this section to any institution that is a member of an athletic association or conference that

has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

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

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

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

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate and transfer-out rate for students described in paragraphs (d)(1) through (4) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Approved by the Office of Management and Budget under control number 1845-0004)

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

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

§ 668.46 Institutional security policies and crime statistics.

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

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

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

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

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

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

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

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

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

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

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

Professional counselor: A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification.

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

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

(b) *Annual security report.* An institution must prepare an annual

security report that contains, at a minimum, the following information:

(1) The crime statistics described in paragraph (c) of this section.

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

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

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

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

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

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

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

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

(iii) Describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

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

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

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

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

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

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

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

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

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

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

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

(v) Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;

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

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

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

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

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

(i) Criminal homicide:

(A) Murder and nonnegligent manslaughter.

(B) Negligent manslaughter.

(ii) Sex offenses:

(A) Forcible sex offenses.

(B) Nonforcible sex offenses.

(iii) Robbery.

(iv) Aggravated assault.

(v) Burglary.

(vi) Motor vehicle theft.

(vii) Arson.

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

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

(2) *Recording crimes.* An institution must record a crime statistic in its annual security report for the calendar year in which the crime was reported to a campus security authority.

(3) *Reported crimes if a hate crime.* An institution must report, by category of prejudice, any crime it reports pursuant to paragraphs (c)(1)(i) through (vii) of this section, and any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

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

(i) On campus.

(ii) Of the crimes in paragraph (c)(4)(i) of this section, the number of crimes that took place in dormitories or other residential facilities for students on campus.

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

(iv) On public property.

(5) *Identification of the victim or the accused.* The statistics required under paragraphs (c)(1) and (3) of this section may not include the identification of the victim or the person accused of committing the crime.

(6) *Pastoral and professional counselor.* An institution is not required to report statistics under paragraphs (c)(1) and (3) of this section for crimes reported to a pastoral or professional counselor.

(7) *UCR definitions.* An institution must compile the crime statistics required under paragraphs (c)(1) and (3) of this section using the definitions of crimes provided in Appendix E to this part and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. For further guidance concerning the application of definitions and classification of crimes, an institution must use either the UCR Reporting Handbook or the UCR Reporting Handbook: NIBRS EDITION, except that in determining how to report crimes committed in a multiple-offense situation an institution must use the UCR Reporting Handbook. Copies of the UCR publications referenced in this paragraph are available from: FBI, Communications Unit, 1000 Custer Hollow Road, Clarksburg, WV 26306 (telephone: 304-625-2823).

(8) *Use of a map.* In complying with the statistical reporting requirements under paragraphs (c)(1) and (3) of this section, an institution may provide a map to current and prospective students and employees that depicts its campus, noncampus buildings or property, and public property areas if the map accurately depicts its campus, noncampus buildings or property, and public property areas.

(9) *Statistics from police agencies.* In complying with the statistical reporting requirements under paragraphs (c)(1) through (4) of this section, an institution must make a reasonable, good faith effort to obtain the required statistics and may rely on the information supplied by a local or State police

agency. If the institution makes such a reasonable, good faith effort, it is not responsible for the failure of the local or State police agency to supply the required statistics.

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

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

(i) Described in paragraph (c)(1) and (3) of this section;

(ii) Reported to campus security authorities as identified under the institution's statement of current campus policies pursuant to paragraph (b)(2) of this section or local police agencies; and

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

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

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

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

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

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

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

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

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

(C) Result in the destruction of evidence.

(ii) The institution must disclose any information withheld under paragraph (f)(3)(i) of this section once the adverse

effect described in that paragraph is no longer likely to occur.

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

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

(Approved by the Office of Management and Budget under control number 1845-0022) (Authority: 20 U.S.C. 1092)

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

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

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

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

(2) Has an intercollegiate athletic program.

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

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

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

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

(B) Officials.

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

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

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

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

(B) Receive athletically related student aid; or

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

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

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

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

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

(7) *Varsity team* means a team that—

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

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

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

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

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

(i) The total number of participants as of the day of its first scheduled contest

of the reporting year, the number of participants who also participated on another varsity team, and the number of other varsity teams on which they participated.

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

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

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

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

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

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

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

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

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

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

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

(D) Revenues attributable to football.

(E) Revenues attributable to men's basketball.

(F) Revenues attributable to women's basketball.

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

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

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

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

(i) Total expenses attributable to intercollegiate athletic activities.

(ii) Expenses attributable to football.

(iii) Expenses attributable to men's basketball.

(iv) Expenses attributable to women's basketball.

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

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

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

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

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

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

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

among the teams on a basis consistent with the coach's responsibilities for the different teams.

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

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

(Approved by the Office of Management and Budget under control number 1845-0010)

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

§ 668.48 [Amended]

10. Newly redesignated § 668.48 is amended as follows:

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

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

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

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

E. In paragraph (a)(1)(vi), by adding "if applicable," before "transfer-out" both times it appears; by adding after "recent," "completing or graduating"; by removing "§ 668.46(a)(2), (3), and (4)" and adding in its place "§ 668.45(a)(1)"; and by removing "shall" and adding in its place "must"; and

F. In paragraph (b), by removing "§ 668.46" and adding in its place "§ 668.45"; by removing "(a)(1)(iii), (a)(1)(iv), and (a)(1)(v)" and adding in

their place "(a)(1)(iii) through (vi)"; and by adding ", if applicable," before "transfer-out."

G. At the end of the section, by replacing the OMB control number "1840-0719" with the number "1845-0004."

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

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

* * * * *

Crime Definitions From the Uniform Crime Reporting Handbook

Arson

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

Criminal Homicide—Manslaughter by Negligence

The killing of another person through gross negligence.

Criminal Homicide—Murder and Nonnegligent Manslaughter

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

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