

(B) The institution expects the student to meet those requirements within this 10-day period; or

(2) Thirty days after the date set forth in paragraph (b) of this section for funds a lender provides by EFT or master check if the Secretary places the institution on the reimbursement payment method under paragraph (d) or (e) of this section.

(d) *An institution placed under the reimbursement payment method.* (1) If the Secretary places an institution under the reimbursement payment method for the Federal Pell Grant, Direct Loan or campus-based programs, the institution—

(i) May not disburse FFEL Program funds to a borrower until the Secretary approves a request from the institution to make that disbursement for that borrower; and

(ii) If prohibited by the Secretary, may not certify a borrower's loan application until the Secretary approves a request from the institution to make that certification for that borrower.

(2) In order for the Secretary to approve a disbursement or certification request from the institution, the institution must submit documentation to the Secretary or entity approved by the Secretary that shows that each borrower included in that request whose loan has not been disbursed or certified is eligible to receive that disbursement or certification.

(3) Pending the Secretary's approval of a disbursement or certification request, the Secretary may—

(i) Prohibit the institution from endorsing a master check or obtaining a borrower's endorsement of any loan check the institution receives from a lender;

(ii) Require the institution to maintain loan funds that it receives from a lender via EFT in a separate bank account that meets the requirements under § 668.164; and

(iii) Prohibit the institution from certifying a borrower's loan application.

(e) *An institution participating solely in the FFEL Programs.* If the FFEL Programs are the only title IV, HEA programs in which an institution participates and the Secretary determines that there is a need to monitor strictly

the institution's participation in those programs, the Secretary may subject the institution to the conditions and limitations contained in paragraph (d) of this section.

(f) *An institution placed under the cash monitoring payment method.* The Secretary may require an institution that is placed under the cash monitoring described under paragraph § 668.162(e), to comply with the disbursement and certification provisions under paragraph (d) of this section, except that the Secretary may modify the documentation requirements and review procedures used to approve the institution's disbursement or certification request.

(Approved by the Office of Management and Budget under control number 1840-0697)

(Authority: 20 U.S.C. 1094)

[61 FR 60603, Nov. 29, 1996, as amended at 62 FR 27128, May 16, 1997; 62 FR 62877, Nov. 25, 1997; 63 FR 40626, July 29, 1998]

**Subpart L—Financial Responsibility**

SOURCE: 62 FR 62877, Nov. 25, 1997, unless otherwise noted.

**§ 668.171 General.**

(a) *Purpose.* To begin and to continue to participate in any title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this subpart. As provided under section 498(c)(1) of the HEA, the Secretary determines whether an institution is financially responsible based on the institution's ability to—

(1) Provide the services described in its official publications and statements;

(2) Administer properly the title IV, HEA programs in which it participates; and

(3) Meet all of its financial obligations.

(b) *General standards of financial responsibility.* Except as provided under paragraphs (c) and (d) of this section, the Secretary considers an institution to be financially responsible if the Secretary determines that—

(1) The institution's Equity, Primary Reserve, and Net Income ratios yield a

## § 668.172

## 34 CFR Ch. VI (7–1–02 Edition)

composite score of at least 1.5, as provided under § 668.172 and appendices A and B to this subpart;

(2) The institution has sufficient cash reserves to make required refunds, as provided under § 668.173;

(3) The institution is current in its debt payments. An institution is not current in its debt payments if—

(i) It is in violation of any existing loan agreement at its fiscal year end, as disclosed in a note to its audited financial statements or audit opinion; or

(ii) It fails to make a payment in accordance with existing debt obligations for more than 120 days, and at least one creditor has filed suit to recover funds under those obligations; and

(4) The institution is meeting all of its financial obligations, including but not limited to—

(i) Refunds that it is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under § 668.22 and the payment of post-withdrawal disbursements under § 668.22; and

(ii) Repayments to the Secretary for debts and liabilities arising from the institution's participation in the title IV, HEA programs.

(c) *Public institutions.* The Secretary considers a public institution to be financially responsible if the institution—

(1)(i) Notifies the Secretary that it is designated as a public institution by the State, local or municipal government entity, tribal authority, or other government entity that has the legal authority to make that designation; and

(ii) Provides a letter from an official of that State or other government entity confirming that the institution is a public institution; and

(2) Is not in violation of any past performance requirement under § 668.174.

(d) *Audit opinions and past performance provisions.* Even if an institution satisfies all of the general standards of financial responsibility under paragraph (b) of this section, the Secretary does not consider the institution to be financially responsible if—

(1) In the institution's audited financial statements, the opinion expressed by the auditor was an adverse, quali-

fied, or disclaimed opinion, or the auditor expressed doubt about the continued existence of the institution as a going concern, unless the Secretary determines that a qualified or disclaimed opinion does not have a significant bearing on the institution's financial condition; or

(2) As provided under the past performance provisions in § 668.174 (a) and (b)(1), the institution violated a title IV, HEA program requirement, or the persons or entities affiliated with the institution owe a liability for a violation of a title IV, HEA program requirement.

(e) *Administrative actions.* If the Secretary determines that an institution is not financially responsible under the standards and provisions of this section or under an alternative standard in § 668.175, or the institution does not submit its financial and compliance audits by the date permitted and in the manner required under § 668.23, the Secretary may—

(1) Initiate an action under subpart G of this part to fine the institution, or limit, suspend, or terminate the institution's participation in the title IV, HEA programs; or

(2) For an institution that is provisionally certified, take an action against the institution under the procedures established in § 668.13(d).

(Approved by Office of Management and Budget under control number 1840-0537)

(Authority: 20 U.S.C. 1094 and 1099c and section 4 of Pub. L. 95-452, 92 Stat. 1101-1109)

[62 FR 62877, Nov. 25, 1997, as amended at 63 FR 40348, July 28, 1998; 64 FR 59042, Nov. 1, 1999; 65 FR 65637, Nov. 1, 2000]

### § 668.172 Financial ratios.

(a) *Appendices A and B, ratio methodology.* As provided under appendices A and B to this subpart, the Secretary determines an institution's composite score by—

(1) Calculating the result of its Primary Reserve, Equity, and Net Income ratios, as described under paragraph (b) of this section;

(2) Calculating the strength factor score for each of those ratios by using the corresponding algorithm;

(3) Calculating the weighted score for each ratio by multiplying the strength