

**§ 668.173**

arising from those HEA funds are excluded from the ratio calculations.

(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; 65 FR 65637, Nov. 1, 2000]

**§ 668.173 Refund reserve standards.**

(a) *General.* The Secretary considers that an institution has sufficient cash reserves (as required under § 668.171(b)(2)) to make 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 if the institution—

- (1) Satisfies the requirements of a public institution under § 668.171(c)(1);
- (2) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or
- (3) Demonstrates that it makes its refunds timely, as provided under paragraph (b) of this section.

(b) *Timely refunds.* An institution demonstrates that it makes required refunds, including payments required under § 668.22, if the auditor or auditors who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years—

- (1) Finds in the sample of student records audited or reviewed for each of those fiscal years that—
  - (i) The institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have received a refund or for whom a repayment of unearned title IV, HEA program funds was made or should have been made under § 668.22; or
  - (ii) The institution made only one late refund or repayment of unearned

title IV, HEA program funds for a student in that sample; and

- (2) Did not note for either of those fiscal years a material weakness or a reportable condition in the institution's report on internal controls that is related to refunds.

(c) *Refund findings.* Upon a finding that an institution no longer satisfies a refund standard under paragraph (a) (1) or (2) of this section, or that the institution is not making its refunds timely under paragraph (b) of this section, the institution must submit an irrevocable letter of credit, acceptable and payable to the Secretary, equal to 25 percent of the total amount of title IV, HEA program refunds the institution made or should have made during its most recently completed fiscal year. The institution must submit this letter of credit to the Secretary no later than—

- (1) Thirty days after the date the institution is required to submit its compliance audit to the Secretary under § 668.23, if the finding is made by the auditor who conducted that compliance audit; or
- (2) Thirty days after the date that the Secretary, or the State or guaranty agency that conducted a review of the institution notifies the institution of the finding. The institution must also notify the Secretary of that finding and of the State or guaranty agency that conducted that review of the institution.

(d) *State tuition recovery funds.* In determining whether to approve a State's tuition recovery fund, the Secretary considers the extent to which that fund—

- (1) Provides refunds to both in-State and out-of-State students;
- (2) Allocates all refunds in accordance with the order required under § 668.22; and
- (3) Provides a reliable mechanism for the State to replenish the fund should any claims arise that deplete the fund's assets.

(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]