

intercollegiate schedule against other varsity teams.

The Secretary agrees that a team's membership in an athletic conference, or its participation in a schedule made up primarily of intercollegiate contests against varsity teams, is a mark of varsity status. However, the Secretary believes that, because it would exclude independent programs, defining varsity status by membership in an athletic conference alone is too limited a definition. The Secretary also believes it would not be productive to set a specific number of annual intercollegiate contests as a defining criterion.

The Secretary therefore defines the term "varsity team" as used in the statute to mean a team that is either: (a) designated or defined by its institution or an athletic association as a varsity team, or (b) a team that primarily competes against other teams that are designated or defined as varsity teams.

The Secretary notes that this interpretation is not meant to include as "varsity teams" those club teams that annually play a small number of games, or compete in a small number of matches or meets, against varsity teams.

*Changes:* A new § 668.48(b)(6) is added that clarifies the definition of varsity team.

*Comments:* One commenter supported counting all varsity participants on a varsity team as participants. One commenter urged that two totals of varsity participants be listed, one including, and one excluding, "redshirted" athletes (those athletes who do not play in varsity games in order to preserve their eligibility for a future season). The commenter based this recommendation on the finding in the statute that there is concern about athletic opportunities among different groups of athletes, including redshirts.

Many commenters argued that all players who receive athletically-related aid should be counted as participants. Some of these commenters argued that this included everyone who practices with a varsity team and receives coaching, and thus includes redshirts. Some of the commenters who supported this definition construed it to cover only varsity and junior varsity players. Others argued that such a definition included members of freshmen and junior varsity teams as well as redshirts. One of these commenters thought such a definition should include all student-athletes, whether or not they are eligible or competing at the time. Another of these commenters supported this definition and the inclusion of redshirts as participants on the grounds that it

coincides with provisions in Title IX regulations.

One commenter believed that the term "varsity participant" should include everyone who participates as of the first day of practice. One commenter supported the inclusion of redshirts, but not the inclusion of athletes on medical waivers, as this is consistent with NCAA procedures. One commenter supported the inclusion of athletes who are injured and unable to compete, as this is consistent with NCAA procedures.

One commenter cautioned that counting varsity participants would include counting more than undergraduates, since previous redshirts might be participating and on scholarship as graduate students under their remaining eligibility. This commenter suggested that Congressional intent be the determining factor in deciding whether to count these students as participants.

*Discussion:* From the breadth and variety of comments received in this area, the Secretary is concerned that institutions may take an unnecessarily and improperly restrictive view of who is a participant in order to avoid full disclosure. The Secretary recognizes that the term "participants" may be open to varied interpretations, and therefore emphasizes that the statute requires institutions to include in the category of participants all members listed on the roster of varsity teams. Institutions may not, for example, apply this term only to those athletes who actually take part in any one contest.

The Secretary agrees that students who receive athletically-related aid should be counted as varsity participants, because they receive financial benefits by reason of their association as athletes with an intercollegiate athletic program. The Secretary, however, does not agree that this should be the sole criterion for designation as a participant, since this would exclude team members not on scholarship ("walk-ons") and all team members in institutions that do not give athletically-related student aid. The Secretary also agrees that an athlete who practices with the varsity team and receives coaching from varsity coaches as of the day of the first scheduled contest of the designated reporting year should be counted as a participant.

The Secretary agrees that it is reasonable to include redshirts in the count of participants, because these student-athletes may receive athletically-related financial aid, or the benefits of varsity team coaching, or both. Junior varsity team and freshman team players must be included if they

are part of the overall varsity program. The Secretary also believes this count must include student-athletes who are injured and still receive scholarship assistance (since they are receiving a substantial financial benefit) as well as fifth-year team members who have already received a bachelor's degree (because they may receive athletically-related financial aid or the benefits of coaching).

Therefore the Secretary interprets the statute as requiring an institution to count all varsity team members as participants, and believes that a reasonable count of participants would also cover all students who receive athletically-related student aid, in addition to students who practice with the varsity team and receive coaching as of the day of the first scheduled intercollegiate contest of the designated reporting year.

*Changes:* A supplementary note providing a discussion of the term participant has been added to the regulations.

*Comments:* Several commenters supported the definition of operating expenses as stated, and thought no further regulatory guidance was necessary. One commenter argued for a comprehensive categorization, which would include, for example, travel expenses for coaches' spouses, medical trainers and alumni and alumnae. This commenter also urged that the source of funds used for expenses should have no bearing on the reporting of team-related expenses. One commenter maintained that no one definition should be codified, as there are thousands of different accounting procedures in use by institutions. One commenter urged that a three-year averaging method be used, in order to take into account year-to-year variations in expenditures on such items as uniforms and travel. One commenter recommended that appearance guarantees paid to visiting teams and expenses related to post-season contests not be included. One commenter strongly urged that institutions be required to report expenses for home as well as away contests. One commenter recommended that costs of videotaping and videotape personnel be included, as well as capital expenses exceeding one year. One commenter believed that reporting expenses by team would be misleading, since the required sizes of the teams and the nature of the sports would differ and greatly affect expenses.

*Discussion:* While understanding the concerns of those commenters who argued for a more comprehensive categorization of operating expenses, the Secretary notes that the statute includes