program is necessary because it shows recognition that not all programs are defined in the same way among all institutions. Other commenters believe that persistence rates should not be allowed to substitute for graduation rates in any cases because an institution cannot determine whether a persister will graduate. These commenters believe that counting persisters as completers distorts the graduation rate. These commenters therefore believe that students who are enrolled in a program that is longer than the program on which the institution bases its disclosure, should not be counted as completers. These commenters recommended use of the GRS.

Other commenters recommended that institutions be given an option of calculating a persistence rate until they are able to calculate a graduation rate.

Discussion: While the Secretary is concerned that graduation rates be disclosed as early as is legally possible so that students may receive current information, the Secretary has been persuaded by the commenters that any type of equation of persisters with graduates is misleading. Therefore, the Secretary has eliminated the proposal that an institution consider students in good standing who are enrolled in programs longer than the predominant programs' length as completers for the purpose of disclosing its graduation or completion rate.

As for the disclosure of a persistence rate in general, either before a disclosure date, or at the disclosure date, an institution may disclose such a rate as supplemental information, but must clearly mark the rate as a persistence

Changes: A change has been made to § 668.46(b) that eliminates the inclusion of students persisting in programs longer than the program on which the disclosure date is based as completers.

Comments: Most commenters support the cohort's exclusion of students who die or become permanently and totally disabled. A number of commenters pointed out the small number of these students would have little effect on graduation rates.

Some commenters expressed serious concern that the graduation rates at institutions with a significant number of legal exclusions may appear artificially low. For example, an institution with a large percentage of its students who serve on church missions will report a low graduation rate if those students do not complete within the statutory time frame. Many commenters objected to the statutory exclusions and believe that any post-hoc adjustment of the cohort based on subsequent student behavior

will affect comparability of data. These commenters recommend use of the GRS to allow reporting these students as not enrolled if the time of reporting coincides with the time of the special circumstance, and separate statistics for students who have left the institution for various reasons, e.g., performing church missions, joining the Armed Forces, etc. One commenter argued that in order to be excluded, the student must leave school for the express purpose of joining the Armed Forces, going on a church mission, etc., and not just subsequently join such an endeavor after leaving school for another reason.

Discussion: In response to the commenters' support, the regulations retain the exclusions for students who die or become totally and permanently disabled.

The Secretary appreciates the concerns raised regarding the other statutory exclusions, such as church missionary activity. However, the Secretary is unable to extend the time frame within which graduation or completion may take place for the student to be counted as a completor or graduate in the institution's completion or graduation rate, because this time frame (150% of normal time) is a statutory provision. An institution, however, may choose to deal with the difficulties of this situation in several ways. It could explain the reasons why only a few students are in its cohort, if it excludes these students through the statutory provisions. Or it could include these students in its cohort, and supplement the required calculation with additional information on the graduation rate of those students when an extended time frame is applied. The Secretary encourages institutions to provide supplementary information and data concerning these and other limitations of its graduation rate disclosure.

The Secretary also agrees that a student must leave the institution due to one of the circumstances described in § 668.46(d) in order to be excluded from the denominator of the completion or graduation rate fraction.

Changes: None.

Comments: Most commenters recommended that institutions not report a single graduation rate number based on a ratio of completers, transfers and persisters. Institutions strongly recommend the reporting of separate rates for graduates, students still enrolled, transfers-out, transfers-in and students not enrolled or graduated. The commenters believe that combining these rates will lead to a meaningless statistic.

Discussion: As noted above, the Secretary has dropped the proposal that institutions be allowed to count students persisting in programs longer than the program on which the institution bases its disclosure date as completers. The Secretary also mandates a separate completion or graduation rate, and a separate transferout rate. Therefore, the provisions in the proposed § 668.46(c) that required the break out of the different factors of the institution's graduation or completion rate have been eliminated.

As noted above, an institution may also supply supplemental information describing the transfer rate of the students who transfer into the institution. It may also publish supplemental information describing the rate of those who complete or graduate when combined with the rate of those students who transferred-out.

*Changes:* Section 668.46(c) is revised as described above.

Comments: Several commenters supported the provisions that allow the Secretary to waive the requirements of §§ 668.46 and 668.49 if an athletic association or conference of which it is a member satisfies the Secretary that it compiles and publishes substantially comparable data. Some of these commenters asked that the standard process for obtaining a waiver be published with the final regulations. One of these commenters also expressed the belief that the granting of the waiver should be pro forma. One of these commenters asked that an institution that is a member of such an athletic association or conference be allowed to maintain, publish, and distribute its own set of data as well. One commenter asked that an athletic conference or association be allowed to apply on behalf of all its members at once, rather than for each institution individually.

One commenter asked that state higher education agencies be given the opportunity to request similar waivers for their member institutions. This commenter argued that such additional waivers would not result in any more incomparability than would already be generated under the flexible rules the Secretary is proposing.

Several commenters argued that the Secretary should not give institutions the opportunity to obtain a waiver. These commenters maintained that in the interests of accurate and comparable consumer information, the Department recognize only the GRS as an acceptable method for gathering this information, and that athletic associations or conferences not be allowed to determine the methodology by which any of these data is gathered.