

Several commenters asked that waivers granted to institutions for substantially comparable data supplied to athletic conferences or associations not exempt those institutions from the requirement to supply information to students, prospective students, the public, or high school counselors and coaches, as stipulated in §§ 668.41(a)(3) and 668.41(b).

One commenter asked that small institutions be allowed to request waivers exempting them entirely from these regulations. This commenter argued that small denominators in graduation rate fractions would lead to huge variances in rates from year to year. If waivers could not be granted, this commenter asked that such institutions be permitted to report data for several years together in order to cure this problem.

*Discussion:* The statute provides institutions the opportunity to ask for waivers through their athletic conferences or associations. The Secretary does not have the authority to remove this opportunity, or to withhold waivers to associations or conferences that submit applications that meet reasonable criteria. The Secretary will not approve waivers if the application does not specify that the methodology by which the conference or association is to gather these data meets the criteria set forth by the statute and these regulations. The Secretary believes that these approval criteria will provide comparable data between those institutions that report according to athletic association or conference protocols, and those that do not.

As noted above, the Secretary will also consider the protocols of state higher education agencies or other associations as acceptable methodologies if those protocols meet the requirements set by the statute and these regulations.

The statute is clear in requiring that all institutions that participate in any title IV, HEA program must comply with the requirements for supplying completion or graduation rate information and transfer-out rate information for their undergraduate populations, and that all institutions that participate in any title IV, HEA program and award athletically-related student aid must comply with the requirements to supply information on their general student population and the completion or graduation rate and transfer-out rate of their student-athletes. The statute only allows waivers for substantially comparable data submitted to an athletic conference or association. It does not empower the Secretary either to exempt an institution

from these requirements, or to allow institutions to make these disclosures and reports on any but an annual basis.

In response to the concerns of small schools, institutions are always able to provide additional information, such as prior years' data, and explanations of factors affecting their completion or graduation rates.

The Secretary does not construe the statute to prohibit institutions from compiling and publishing these data even if its athletic conference or association has successfully requested waivers on its behalf, so long as the institution generates the information in compliance with the requirements of the statute, these regulations, and other Departmental guidance regarding acceptable protocols.

The Secretary agrees with the commenter that the successful application for waivers of data collection requirements on behalf of an institution by an athletic association or conference does not also exempt that institution from supplying this information to the parties identified in the statute. Institutions that obtain such waivers must still comply with the information dissemination requirements set by § 668.41.

The Secretary will publish at a later date the procedures by which an athletic association or conference may request waivers for its member institutions.

*Changes:* A change has been made to § 668.46(e) that clarifies that an institution that obtains waivers through its athletic association or conference for the generation of this data must still comply with the provisions of § 668.41.

#### *Section 668.49 Graduation or Completion Rate and Transfer-out Rates of Student-athletes*

*Comments:* Several commenters expressed concern over the July 1, 1997 reporting date for the data on graduation and completion rates of student athletes. These commenters contended that requiring institutions to meet this date would entail gathering information on students who had entered as far back as 1993, and because institutions who were not members of the NCAA are not tracking those students, the result would be inaccurate and flawed data, as well as a heavy burden on those institutions. These commenters believed that the tracking of these students should begin with the students entering after July 30, 1996, and that the Department not require the first report to be compiled and issued until after the 150% of the time for graduation or completion for that group of students has elapsed.

*Discussion:* The Secretary appreciates the concerns of these commenters with regard to the issue of disclosing completion or graduation rates for students entering before July 1, 1996.

With regard to the students on which institutions must compile completion or graduation rate information, the Secretary will not require institutions to provide this information for students who enter before July 1, 1996, subject to the regulatory provisions regarding the provision of average rates for previous years. However, the Secretary is aware that a large number of schools will have in hand data on students entering prior to that date as a result of complying with the requirements of organizations such as the NCAA. The Secretary strongly encourages those institutions to report those data.

All institutions must disclose the information other than the completion or graduation rate data required by this section beginning July 1, 1997. Institutions affected by these regulations must disclose the information on completion or graduation rates for student-athletes beginning on the July 1 immediately following the expiration of 150% of normal time for the group of students entering on or after July 1, 1996 on which the institution bases its completion or graduation rate, in accordance with § 668.46(a)(2).

The Secretary also wishes to clarify that the disclosure and reporting date for this information is the July 1 of the calendar year following the expiration of the 150% of normal time for the students whose graduation or completion rate performance is measured. Institutions thus will not be required to disclose this information for approximately one year after the expiration of the 150% period. The Secretary encourages institutions to disclose earlier, for example, along with the January 1 disclosures for non-student athletes.

*Changes:* None.

*Comments:* Several comments expressed concern that the level of detail the statute requires regarding the gender and race of athletes within particular sports will result in the possibility that particular students will be identifiable from the data an institution reports. These commenters contended that such a situation would violate the privacy provisions of the Buckley Amendment (Family Educational Rights and Privacy Act), and therefore asked that the Department allow institutions to leave blank those categories in their reports in which the status of a very few students (less than five) would be reported.