

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN 1840-AC14

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions regulations. These amendments are necessary to implement a new requirement in the Higher Education Act of 1965, as amended (HEA), recently added by the Improving America's Schools Act of 1994 (IASA). The IASA provision, titled the "Equity in Athletics Disclosure Act (EADA)," requires certain coeducational institutions of higher education to prepare—and make available to students, potential students, and the public—a report on participation rates, financial support, and other information on men's and women's intercollegiate athletic programs. These proposed regulations would implement this new statutory requirement. The statute requires that the Secretary issue final regulations implementing the EADA not later than 180 days following enactment. Thus, the statute requires that final regulations be issued by April 18, 1995.

DATES: Comments must be received on or before April 4, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Ms. Paula M. Husselmann, U.S. Department of Education, 600 Independence Avenue, S.W., ROB3, Room 4318, Washington, D.C. 20202-5346, or to the following internet address: Athletic—Data@ed.gov.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Husselmann, U.S. Department of Education, 600 Independence Avenue, S.W., ROB3, Room 4318, Washington, D.C. 20202-5346. Telephone: (202) 708-7888. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions regulations (34 CFR part 668) apply to all institutions that participate in the Title IV, HEA programs. The proposed

changes in these regulations are necessary to implement changes to the HEA made by the Equity in Athletics Disclosure Act (EADA), which was included in the Improving America's Schools Act of 1994 (IASA), Pub. L. 103-382, enacted on October 20, 1994. The EADA requires that certain institutions of higher education disclose—to students, potential students, and the public—financial, participation, and other information concerning the institutions' women's and men's intercollegiate athletic programs. The EADA is a "sunshine" law designed to make "prospective students and prospective student athletes . . . aware of the commitments of an institution to providing equitable athletic opportunities for its men and women students." (IASA, section 360B(b)(7)) In enacting the EADA, Congress expected that "knowledge of an institution's expenditures for women's and men's athletic programs would help prospective students and prospective student athletes make informed judgments about the commitments of a given institution of higher education to providing equitable athletic benefits to its men and women students." (IASA, section 360B(b)(8))

The EADA does not require that this information be submitted to the Federal Government. Institutions of higher education that are subject to the EADA must make the information available to students, potential students, and the public.

Summary of the Proposed Regulations

The following is a summary of the regulations that the Secretary proposes to implement the EADA. The Secretary is interested both in ensuring that students and the public receive consistent, useful information from institutions of higher education about their intercollegiate athletic programs, and in keeping regulatory burden on those institutions to the minimum necessary to carry out congressional intent. The Secretary is also committed to working with organizations that are interested in women's and men's sports in implementing the EADA, including development of proposed and final regulations and any optional reporting formats. The Secretary began consulting with a number of these organizations soon after the law was enacted, and will continue to do so in the future.

The proposed regulations include only the statutory requirements contained in the EADA, as described below. The proposed regulations do not include any requirements except those imposed by the statute. In this summary, the Secretary describes a

number of issues that could be addressed in regulations or in non-binding guidance and requests comments on the following questions:

- Which, if any, of these issues should be addressed in the final regulations and how should they be addressed?
- Which issues instead should be addressed in non-binding guidance provided by the Department and how should they be addressed?
- Which issues should not be addressed by the Department because the statutory language is clear or for other reasons?
- Which other issues should be addressed in the final regulations or in non-binding guidance from the Department and how should they be addressed?

1. *Institutions of higher education that are subject to the EADA.*

The EADA applies to any coeducational institution of higher education (IHE) that participates in a Title IV, HEA program and has an intercollegiate athletic program. This statutory provision is set forth in proposed § 668.48(a).

The Secretary interprets "intercollegiate athletic program" to refer to varsity teams. The term "varsity" is also used in the EADA. These are the teams that compete at a certain level of play (against other IHEs' varsity-level teams). The EADA does not apply to intramural teams or to club teams even if such a team plays a limited number of intercollegiate games against varsity teams. The Secretary requests comments on whether the type or level of financial support by the IHE should also be a determinant of whether a team should be considered a varsity team under the EADA.

The Secretary interprets the term "coeducational" to refer to the composition of an IHE's undergraduate student body. Thus, if an IHE has undergraduate students of only one gender, the EADA would not apply to the IHE's intercollegiate athletic program.

2. *Annual report.*

The EADA requires that an institution subject to this law shall annually, for the immediately preceding academic year, prepare a report that contains certain information regarding intercollegiate athletics. The EADA specifies the information that must be included in the report. The statutory reporting requirement is in proposed § 668.48(b).

3. *Full-time male and female undergraduates.*

The report must include the number of male and female full-time