

Financial Responsibility Reporting Guide (2024)

Last Updated: July 1, 2024

On July 1, 2024, the U.S. Department of Education's new *Financial Responsibility, Administrative Capability, Certification Procedures, Ability To Benefit* rule takes effect (the "2024 Rule").¹ The 2024 Rule implements a wide range of changes relating to financial responsibility, including the significant revision and expansion of the reporting obligations at 34 CFR § 668.171, which require institutions to report certain "triggering events" to the Department.² These reporting requirements are meant to alert the agency that an institution "may not be able to meet its financial responsibilities."³ If an institution fails to report a triggering event within the requisite timeframe, the Department may take administrative action, to include determining that the institution is not financially responsible, or initiating a proceeding to fine, limit, suspend, or terminate the institution's participation in the federal financial aid programs (the "Title IV Programs").⁴ If an institution reports a triggering event (or the Department otherwise becomes aware that an event has occurred), the Department may determine that the institution is not financially responsible and take various administrative actions, depending on the nature and significance of the event reported. Institutions should review the 2024 Rule carefully for additional information regarding the consequences of reporting triggering events and the opportunities to mitigate such consequences.

Below, we provide a guide to the reporting obligations under the 2024 Rule, as set forth in the regulatory text. Because the 2024 Rule, like the existing financial responsibility reporting framework, distinguishes between a Mandatory Triggering Event and a Discretionary Triggering Event, we have divided the chart to identify which triggering events fall into each category. Triggers should be reported to the Department through the Document Center, available on the Common Origination and Disbursement (COD) website, and by emailing the FSA Financial Analysis Division at FSAFinancialAnalysisDivision@ed.gov. For information concerning the form and content of the submissions, please see the Department's June 27, 2024 [Electronic Announcement](#).

On May 17, 2024, the current administration posted a [Q&A website](#) that addresses certain aspects of the new reporting requirements implemented by the 2024 Rule. We strongly encourage institutions to review the Department's Q&A website and any other relevant guidance to determine, among other things, whether the agency is interpreting the regulatory text in a manner that may expand or otherwise modify the reporting obligations as described in the 2024 Rule (and detailed in the chart below).

- 1 The final 2024 Rule was published in the Federal Register on October 31, 2023. See 88 Fed. Reg. 74568 (Oct. 31, 2023). It revises the financial responsibility regulations at 34 CFR §§ 668.23, 668.171, 668.174, 668.175, and 668.176. The 2024 Rule also revises the financial responsibility factors applicable to institutional changes in ownership, currently in § 668.15, moving them to § 668.176.
- 2 Triggering events, as explained by the Department, are external events or financial circumstances that may not appear in an institution's annual financial statements and are not yet reflected in the institution's calculated composite score. See 88 Fed. Reg. 74569 (Oct. 31, 2023).
- 3 88 Fed. Reg. 74568 (Oct. 31, 2023).
- 4 34 CFR § 668.171(f)(2) (July 1, 2024).

In the discussion already posted to the Q&A website, the agency confirms that public institutions are subject to these reporting requirements.⁵ With regard to events pre-dating the 2024 Rule, the Department observes that triggering events that were in existence on July 1, 2024, and were not considered reportable prior to that date, but would be considered reportable under the new 2024 Rule, must be reported by the institution by July 22, 2024. Significantly, this guidance also includes meaningful discussion regarding provisions in creditor agreements that must be reported to the Department, which we strongly recommend that institutions review.⁶

Institutions with questions regarding the new financial responsibility reporting requirements are welcome to contact Thompson Coburn's Higher Education Practice using the information provided at the end of this guide.

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- 5 Indeed, the agency expressly states that “even if the institution does have a letter of public status and is backed by the full faith and credit of the government entity, if it is subject to a condition of past performance, or an automatic mandatory or discretionary triggering event, it is not financially responsible.” FR-A7, [Financial Responsibility - Questions and Answers](#) (May 17, 2024).
- 6 See FR-A23, [Financial Responsibility - Questions and Answers](#) (May 17, 2024).



Mandatory Triggering Event	Reporting Requirement	Citation
	Events occurring after July 1, 2024	All rule citations are to 34 CFR
<p>Final monetary judgment, award, or settlement. An institution with a composite score of less than 1.5 (other than a composite score calculated under 34 CFR 600.20(g) and § 668.176) has entered against it a final monetary judgment or award, or enters into a monetary settlement which results from a legal proceeding, including from a lawsuit, arbitration, or mediation, whether or not the judgment, award settlement has been paid, <u>and</u> as a result, the recalculated composite score for the institution or entity is less than 1.0.</p>	An institution must notify the Department no later than 21 days after either the date of written notification to the institution (or entity) of the monetary judgment or award, or the execution of the settlement agreement by the institution or entity.	668.171(c)(2)(i)(A); 668.171(f)(1)(i).
<p>Federal or state agency lawsuit. On or after July 1, 2024, the institution, or any entity whose financial statements were submitted in the prior fiscal year to meet Departmental requirements, is sued by a federal or state authority to impose an injunction, establish fines or penalties, or to obtain financial relief such as damages, or in a qui tam action in which the United States has intervened, <u>but only</u> if the federal or state action has been pending for 120 days, or a qui tam action has been pending for 120 days following intervention by the United States, <u>and</u>: (1) no motion to dismiss, or its equivalent under state law has been filed within the applicable 120-day period; <u>or</u> (2) if a motion to dismiss or its equivalent under state law, has been filed within the applicable 120-day period and denied, upon such denial.</p>	An institution must notify the Department no later than 21 days after the institution (or entity) is served with the complaint, and provide an updated notice 21 days after the suit has been pending for 120 days.	668.171(c)(2)(i)(B); 668.171(f)(1)(ii).
<p>BDR recoupment action. The Department has initiated action to recover from the institution the cost of adjudicated claims in favor of borrowers under the borrower defense to repayment provisions <u>and</u> the recalculated composite score for the institution or entity as a result of the adjudicated claims is less than 1.0.</p>	The 2024 Rule does not include a reporting requirement for this triggering event (presumably because it is based on an action initiated by the Department).	668.171(c)(2)(i)(C).
<p>Final monetary judgment, settlement, or award following change in ownership. An institution or entity that has submitted an application for a change in ownership under 34 CFR 600.20 has entered against it a final monetary judgment or award, or enters into a monetary settlement which results from a legal proceeding, including from a lawsuit, arbitration, or mediation, or a monetary determination arising from an administrative proceeding described in 34 CFR 668.171(c)(2)(i)(B) or (C), <u>and</u> as a result, the recalculated composite score for the institution or entity is less than 1.0.⁷</p>	An institution must notify the Department no later than 21 days after the applicable action. This reporting requirement is applicable to any action occurring through the end of the second full fiscal year after the change in ownership has occurred.	668.171(c)(2)(i)(D); 668.171(f)(1)(xi).

⁷ This trigger applies whether the judgment, award, settlement, or monetary determination has been paid.

Mandatory Triggering Event	Reporting Requirement	Citation
	Events occurring after July 1, 2024	All rule citations are to 34 CFR
<p>Withdrawal of Owner's Equity. A proprietary institution whose composite score is less than 1.5, or any proprietary institution through the end of the first full fiscal year following a change in ownership, experiences a withdrawal of owner's equity by any means, including by declaring a dividend, <u>unless</u> the withdrawal is a transfer to an entity included in the affiliated entity group on whose basis the institution's composite score was calculated; <u>or</u> is the equivalent of wages in a sole proprietorship or general partnership or a required dividend or return of capital; <u>and as a result</u> of that withdrawal, the institution's recalculated composite score is less than 1.0.</p>	<p>For a capital distribution that is the equivalent of wages in a sole proprietorship or general partnership, an institution must notify the Department no later than 21 days after the date the Department notifies the institution that its composite score is less than 1.5.⁸</p> <p>For a distribution of dividends or return of capital, an institution must notify the Department no later than 21 days after the dividends are declared or the amount of return of capital is approved.</p> <p>For a related party receivable or other assets, an institution must notify the Department no later than 21 days after that receivable or other assets are booked or occur.</p>	<p>668.171(c)(2)(ii); 668.171(f)(1)(iv).</p>
<p>Gainful Employment. As determined annually by the Department, an institution received at least 50 percent of its Title IV Program funds in its most recently completed fiscal year from gainful employment programs that are deemed "failing."</p>	<p>The 2024 Rule does not include a reporting requirement for this triggering event (presumably because it is based on an action initiated by the Department).</p>	<p>668.171(c)(2)(iii).</p>
<p>Institutional Teach-Out Plans or Agreements. An institution is required to submit a teach-out plan or agreement by a state, the Department or another federal agency, an accrediting agency, or other oversight body for reasons related in whole or in part to financial concerns.</p>	<p>An institution must notify the Department no later than 21 days after the date on which the institution is notified of the action by the oversight body.</p>	<p>668.171(c)(2)(iv); 668.171(f)(1)(vii).</p>

8 "In response to that notice, the institution must report the total amount of the wage-equivalent distributions it made during its prior fiscal year and any distributions that were made to pay any taxes related to the operation of the institution. During its current fiscal year and the first six months of its subsequent fiscal year (18-month period), the institution is not required to report any distributions to the Department, provided that the institution does not make wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year, less any distributions that were made to pay any taxes related to the operation of the institution. However, if the institution makes wage-equivalent distributions that exceed 150 percent of the total amount of wage-equivalent distributions it made during its prior fiscal year less any distributions that were made to pay any taxes related to the operation of the institution at any time during the 18-month period, it must report each of those distributions no later than 21 days after they are made, and the Department recalculates the institution's composite score based on the cumulative amount of the distributions made at that time[.]" 34 CFR 668.171(f)(1)(iv)(A) (July 1, 2024).

Mandatory Triggering Event	Reporting Requirement	Citation
	Events occurring after July 1, 2024	All rule citations are to 34 CFR
<p>Publicly Listed Entities. For an institution that is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange:</p> <p>The U.S. Securities and Exchange Commission ("SEC") issues an order suspending or revoking the registration of any of the entity's securities or suspends trading of the entity's securities;</p> <p>The SEC files an action against the entity in district court or issues an order instituting a proceeding;</p> <p>The exchange on which the entity's securities are listed notifies the entity that it is not in compliance with the exchange's listing requirements, or its securities are delisted;</p> <p>The entity failed to file a required annual or quarterly report with the SEC within the time period prescribed for that report or by any extended due date; or</p> <p>The entity is subject to an event, notification, or condition by a foreign exchange or oversight authority that the Department determines is the equivalent of the SEC actions noted in items (A) through (D) above.</p>	<p>An institution must notify the Department no later than 21 days after the date that such event occurs.</p>	<p>668.171(c)(2)(vi); 668.171(f)(1)(vi).</p>
<p>Non-Federal Educational Assistance Funds. A proprietary institution did not receive at least 10 percent of its revenue from sources other than federal educational assistance during its most recently completed fiscal year.⁹</p>	<p>An institution must provide notice no later than 45 days after the end of the institution's fiscal year.¹⁰</p>	<p>668.171(c)(2)(vii); 668.171(f)(1)(x).</p>

⁹ The financial protection provided under this paragraph remains in place until the institution passes the 90/10 revenue requirement for two consecutive years.

¹⁰ This reporting requirement mirrors the requirement at 34 CFR § 668.28(c).

Mandatory Triggering Event	Reporting Requirement	Citation
	Events occurring after July 1, 2024	All rule citations are to 34 CFR
Cohort Default Rates. An institution's two most recent official cohort default rates are 30 percent or greater, unless the institution files a challenge, request for adjustment, or appeal and the challenge, request, or appeal is pending or successful.	The 2024 Rule does not include a reporting requirement for cohort default rates, presumably because the Department will calculate these rates and thus requires no notification.	668.171(c)(2)(viii).
Contributions and Distributions. An institution's audited financial statements reflect a contribution in the last quarter of the fiscal year, an entity that is part of the financial statements then made a distribution during the first two quarters of the next fiscal year; <u>and</u> the offset of such distribution against the contribution results in a recalculated composite score of less than 1.0.	An institution must notify the Department no later than 21 days after the distribution.	668.171(c)(2)(x); 668.171(f)(1)(v).
Adverse Creditor Events Resulting from Department Action. As a result of an action taken by the Department, the institution, or any entity included in the institution's audited financial statements is subject to a default or other adverse condition under a line of credit, loan agreement, security agreement, or other financing arrangement. ¹¹	An institution must notify the Department no later than 21 days after the date on which the institution is notified of the action by its creditor.	668.171(c)(2)(xi); 668.171(f)(1)(viii).
Declaration of Financial Exigency. The institution declares a state of financial exigency to a federal, state, tribal, or foreign governmental agency or its accrediting agency.	An institution must notify the Department no later than 21 days after the institution communicates such declaration.	668.171(c)(2)(xii); 668.171(f)(1)(xiv).
Receivership. The institution, or an owner or affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management of policies of the institution, files for a state or federal receivership, or an equivalent proceeding under foreign law, or has entered against it an order appointing a receiver or appointing a person of similar status under foreign law.	An institution must notify the Department no later than 21 days after either the filing for receivership or the order appointing a receiver or appointing a person of similar status under foreign law, as applicable.	668.171(c)(2)(xiii); 668.171(f)(1)(xv).

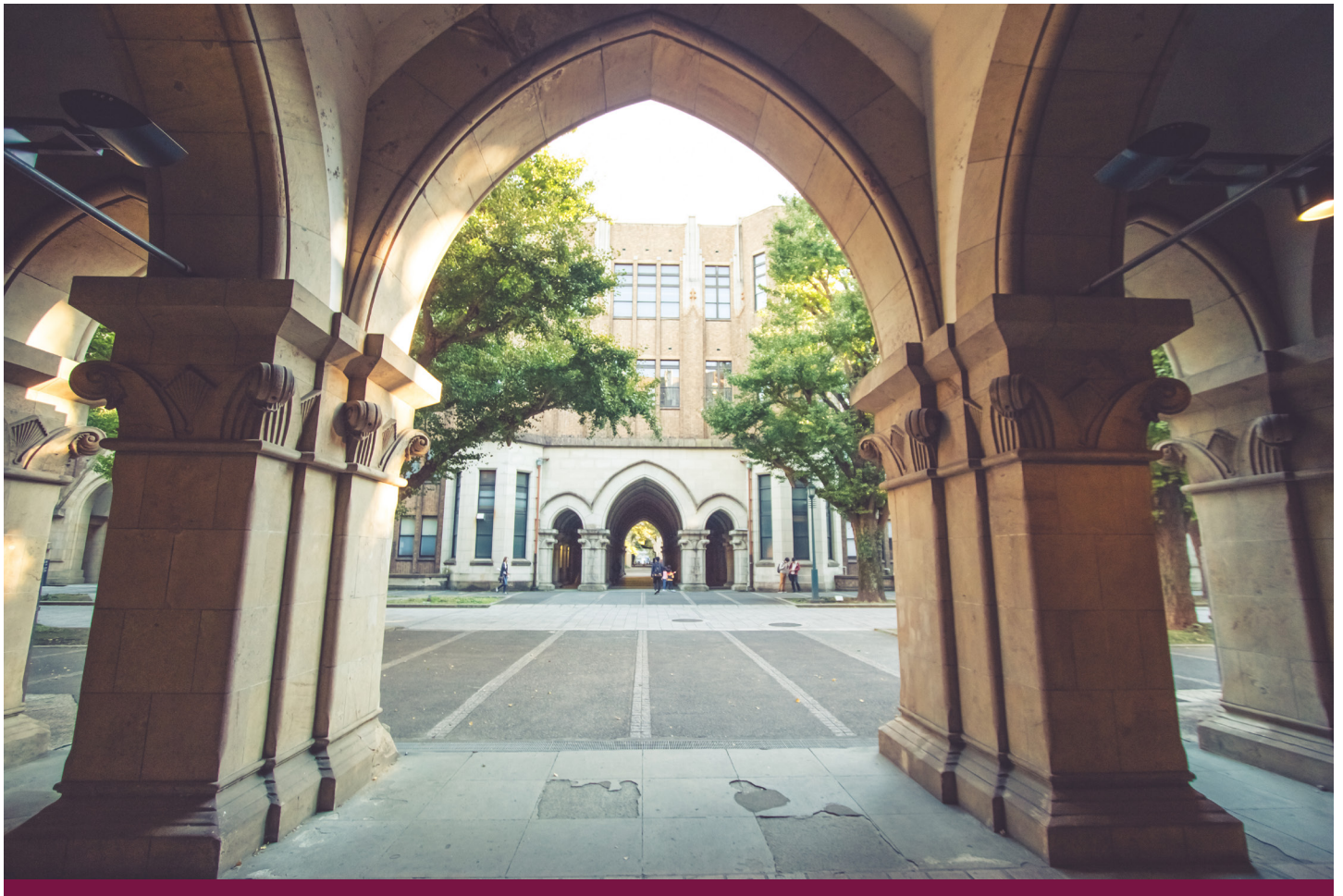
11 For purposes of the mandatory and discretionary triggers, "any entity included in the institution's financial statements" includes any entity that was included in the audited financial statements submitted by the institution to the Department in the current or prior fiscal year under 34 CFR 600.20(g) or (h), § 668.23, or § 668 Subpart L. See 34 CFR § 668.171(c)(2)(xi) (July 1, 2024).



Discretionary Triggering Event	Reporting Requirement	Citation
	Events occurring after July 1, 2024	All rule citations are to 34 CFR
Accrediting Agency and Government Agency Actions. An institution's accrediting agency or a federal, state, local, or tribal authority places the institution on probation or issues a show-cause order or places the institution in a comparable status that poses an equivalent or greater risk to its accreditation, authorization, or eligibility.	An institution must notify the Department no later than 21 days after the date on which the institution is notified of the action by the oversight body.	668.171(d)(1); 668.171(f)(1)(vii).
Adverse Creditor Events. Unless otherwise qualifying as a Mandatory Triggering Event, an institution or any entity included in the institution's financial statements is subject to a default or other adverse condition under a line of credit, loan agreement, security agreement, or other financing arrangement; <u>or</u> under a line of credit, loan agreement, security agreement, or other financing arrangement, a monetary or nonmonetary default or delinquency or other event occurs that allows the creditor to require or impose on the institution or any entity included in the institution's financial statements an increase in collateral, a change in contractual obligations, an increase in interest rates or payments, or other sanctions, penalties, or fees; <u>or</u> a creditor of the institution or any entity included in the institution's financial statements takes action to terminate, withdraw, limit, or suspend a loan agreement or other financing arrangement or calls due a balance on a line of credit with an outstanding balance.	An institution must notify the Department no later than 21 days after the event occurs, with an update no later than 21 days after the creditor waives the violation, or the creditor imposes sanctions or penalties, including sanctions or penalties imposed in exchange for or as a result of granting the waiver.	668.171(d)(2)(i)-(iii); 668.171(f)(1)(ix).
Credit Agreement Provisions Relating to Departmental Actions. The institution or any entity included in the institution's financial statements enters into a line of credit, loan agreement, security agreement, or other financing arrangement whereby the institution or entity may be subject to a default or other adverse condition as a result of any action taken by the Department.	The 2024 Rule indicates that an institution must notify the Department "no later than 21 days after the event occurs." We interpret this to mean no later than 21 days from entering into the agreement or arrangement.	668.171(d)(2)(iv); 668.171(f)(1)(ix).
Monetary Judgments Under Appeal. The institution or any entity included in the institution's financial statements has a judgment awarding monetary relief entered against it that is subject to appeal or under appeal.	An institution must notify the Department no later than 21 days after the court enters the judgment, with an update no later than 21 days after the appeal is filed or the period for appeal expires without a notice of appeal being filed. If an appeal is filed, no later than 21 days after the decision on the appeal is issued.	668.171(d)(2)(v); 668.171(f)(1)(ix).
Fluctuations in Title IV Program Volume. There is a significant fluctuation between consecutive award years, or a period of award years, in the amount of Direct Loan or Pell Grant funds, or a combination of those funds, received by the institution that cannot be accounted for by changes in those programs.	The 2024 Rule does not include a reporting requirement for fluctuations in Title IV volume, presumably because Department will calculate these rates and thus requires no notification.	668.171(d)(3).

Discretionary Triggering Event	Reporting Requirement	Citation
	Events occurring after July 1, 2024	All rule citations are to 34 CFR
High Annual Dropout Rates. As calculated by the Department, the institution has high annual dropout rates.	The 2024 Rule does not include a reporting requirement for this triggering event (presumably because it is based on a determination made by the Department).	668.171(d)(4).
Interim Reporting. For an institution required to provide additional financial reporting to the Department due to a failure to meet the financial responsibility standards in this subpart or due to a change in ownership, there are negative cash flows, failure of other financial ratios, cash flows that significantly miss the projections submitted to the Department, withdrawal rates that increase significantly, or other indicators of a significant change in the financial condition of the institution.	The 2024 Rule does not include a reporting requirement for this triggering event (presumably because it is based on a determination made by the Department).	668.171(d)(5).
Pending Borrower Defense Claims. There are pending claims for borrower relief discharge under 34 CFR 685.400 from students or former students of the institution and the Department has formed a group process to consider claims under 34 CFR 685.402 and, if approved, those claims could be subject to recoupment.	The 2024 Rule does not include a reporting requirement for this triggering event (presumably because it is based on a determination made by the Department).	668.171(d)(6).
Discontinuation of Programs. The institution discontinues academic programs that enroll more than 25 percent of its enrolled students who receive Title IV Program funds.	An institution must notify the Department no later than 21 days after a discontinuation of programs that meets or exceeds the noted thresholds.	668.171(d)(7); 668.171(f)(1)(xii).
Closure of Locations. The institution closes locations that enroll more than 25 percent of its students who receive Title IV Program funds.	An institution must notify the Department no later than 21 days after a closure that meets or exceeds the noted thresholds.	668.171(d)(8); 668.171(f)(1)(xvi).
State Actions and Citations. The institution, or one or more of its programs, is cited by a state licensing or authorizing agency for failing to meet state or agency requirements, including notice that it will withdraw or terminate the institution's licensure or authorization if the institution does not take the steps necessary to come into compliance with that requirement.	An institution must notify the Department no later than 21 days after the date on which the institution is notified of the action by the oversight body.	668.171(d)(9); 668.171(f)(1)(vii).
Loss of Institutional or Program Eligibility. The institution or one or more of its programs has lost eligibility to participate in another federal educational assistance program due to an administrative action against the institution or its programs.	An institution must notify the Department no later than 21 days after the date on which the institution is notified of the action by the oversight body.	668.171(d)(10); 668.171(f)(1)(vii).
Exchange Disclosures. An institution is directly or indirectly owned at least 50 percent by an entity whose securities are listed on a domestic or foreign exchange, and the entity discloses in a public filing that it is under investigation for possible violations of state, federal or foreign law.	An institution must notify the Department no later than 21 days after the public filing disclosing the investigation.	668.171(d)(11); 668.171(f)(1)(xvii).

Discretionary Triggering Event	Reporting Requirement	Citation
	Events occurring after July 1, 2024	All rule citations are to 34 CFR
Actions By Another Federal Agency. The institution is cited and faces loss of education assistance funds from another federal agency if it does not comply with the agency's requirements.	An institution must notify the Department no later than 21 days after the date on which the institution is notified of the action by the oversight body.	668.171(d)(12); 668.171(f)(1)(vii).
Other Teach-Out Plans or Agreements. Unless covered under a Mandatory Triggering Event, an institution is required to submit a teach-out plan or agreement, including programmatic teach-outs, by a state, the Department or another federal agency, an accrediting agency, or other oversight body.	An institution must notify the Department no later than 21 days after the date on which the institution is notified of the action by the oversight body.	668.171(d)(13); 668.171(f)(1)(vii).
Other Events or Conditions. Any other event or condition that the Department learns about from the institution or other parties, and the Department determines is likely to have a significant adverse effect on the financial condition of the institution.	An institution must notify the Department no later than 21 days following any event that is likely to have a significant adverse condition on the financial condition of the institution.	668.171(d)(14); 668.171(f)(1)(xviii).



Additional Reporting Obligation

Finally, we note that while the failure to meet the general standards of financial responsibility set forth at 34 CFR § 668.171(b) is not listed as a mandatory or discretionary trigger in the 2024 Rule, the new regulatory text does expressly require institutions "to report the failure to meet any of the standards in paragraph (b) of this section, no later than 21 days after the institution ceases to meet the standard." As of July 1, 2024, 34 CFR § 668.171(b) will read as follows:

(b) General standards of financial responsibility. Except as provided in paragraph (h) of this section, the Department considers an institution to be financially responsible if the Department determines that—

(1) The institution's Equity, Primary Reserve, and Net Income ratios yield a composite score of at least 1.5, as provided under § 668.172 and appendices A and B to this subpart;

(2) The institution has sufficient cash reserves to make required returns of unearned title IV, HEA program funds, as provided under § 668.173;

(3) The institution is able to meet all of its financial obligations and provide the administrative resources necessary to comply with title IV, HEA program requirements. An institution is not deemed able to meet its financial or administrative obligations if—

(i) It fails to make refunds under its refund policy, return title IV, HEA program funds for which it is responsible under § 668.22, or pay title IV, HEA credit balances as required under § 668.164(h)(2);

(ii) It fails to make repayments to the Department for any debt or liability arising from the institution's participation in the title IV, HEA programs;

(iii) It fails to make a payment in accordance with an existing undisputed financial obligation for more than 90 days;

(iv) It fails to satisfy payroll obligations in accordance with its published payroll schedule;

(v) It borrows funds from retirement plans or restricted funds without authorization; or

(vi) It is subject to an action or event described in paragraph (c) of this section (mandatory triggering events), or

an action or event that the Department has determined to have a significant adverse effect on the financial condition of the institution under paragraph (d) of this section (discretionary triggering events); and

(4) The institution or persons affiliated with the institution are not subject to a condition of past performance under § 668.174(a) or (b).



Inquiries and Disclaimer

Institutions with questions regarding the reporting requirements set out above are welcome to contact Aaron Lacey (alacey@thompsoncoburn.com) or Scott Goldschmidt (sgoldschmidt@thompsoncoburn.com). Please note that the purpose of this document is to provide news and information on legal issues and all content provided is for informational purposes only and should not be considered legal advice. The transmission of information from this document does not establish an attorney-client relationship with the reader. If you desire legal advice for a particular situation, you should consult an attorney.

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The scope of our higher education practice is broad, and includes corporate, regulatory, and litigation services, among others. These legal services are complimented and further enhanced by our significant lobbying and policy experience in the higher education space. Our attorneys leverage their knowledge and experience to deliver insightful, creative, and efficient legal advice across a wide range of issues, including those involving students, faculty and staff, facilities, academics, governance, and operations. We routinely offer general counsel, compliance, and training services to small and mid-size institutions of higher education, while providing specialized services to large institutions with in-house legal departments. Our clients include public, private non-profit, and proprietary institutions of higher education. We also periodically represent organizations that provide academic, financial, or operational services to postsecondary institutions.

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