

Triggering Events That Could Require Immediate Reporting Under the New Borrower Defense Rules

By Tyler VanderVen, Partner

From enrollment concerns to the ongoing impact of the COVID-19 pandemic, risk and uncertainty continue to challenge higher education institutions. And the latest financial responsibility standards, which implement a new methodology and reporting requirements related to the composite score calculation, added an extra layer of complexity and responsibility for most institutions and their independent auditors.

While the focus has been on ensuring that institutions properly include the Financial Responsibility Supplemental Schedule (FRSS) within their single audit financial statement package submitted to the U.S. Department of Education (ED) subsequent to July 1, 2020, many institutions that receive Title IV funds may be unaware of additional reporting requirements if certain triggering events occur.

Here are some reminders to help you navigate the latest borrower defense rules.

Background

To improve the timeliness of reporting triggering events that may impact an institution's financial responsibility, ED released new [borrower defense rules](#) for institutions that receive Title IV funds on September 23, 2019. The new rules went into effect on July 1, 2020.

Previously, ED only received notification that financial concerns about an institution had emerged when analysts reviewed the institution's audited fiscal year-end financial statements that were submitted via the Federal Audit Clearinghouse and EZ Audit to calculate the composite score. As the reporting deadline to submit audited financial statements to both the Federal Audit Clearinghouse and through EZ Audit is 30 days after the audit report issuance date for the submission to be considered timely, this could mean a delay of several months between the time a triggering event took place and the time the financial statements were ultimately issued and submitted to ED.

The new borrower defense rules updated the requirements for triggering events and now require the institution to inform ED and potentially require a timelier calculation of the institution's composite score. These standards are meant to protect institutions, students, and taxpayers from institutional closures that are happening more frequently and often without much warning. The new mandatory and discretionary triggering event reporting requirements allow ED to be notified faster and hopefully work with an institution before it is too late.

Mandatory and Discretionary Triggers

There are two types of triggering events (triggers) that could cause immediate reporting to ED: mandatory and discretionary.

If a mandatory trigger occurs, the institution is required to report it to ED within 10 days. ED will then recalculate the composite score using current financial data, including additional liabilities that may have resulted because of the triggering event.

If one of the first three discretionary triggers occur, the institution is required to report it to ED within 10 days. If two or more of the five discretionary triggers occur, those combined triggers become mandatory triggering events and ED will recalculate the composition score using current financial data. The only exception is if a

triggering event is resolved before any subsequent events occur. Note that ED may choose to recalculate the composite score based on one discretionary trigger.

The following chart summarizes each type of triggering event, the related reporting requirements, and the location of the requirement in the Federal Register:

Triggering Event	Reporting Requirement	34 CFR 668.171 Reference
Mandatory:		
Liabilities arising from a settlement, final judgment from a court, or final determination arising from an administrative action or proceeding initiated by a federal or state entity.	Institutions must notify ED no later than 10 days after written notification to the institution of the final judgment or determination. Note: ED will recalculate the composite score based on this trigger occurring.	(c)(1)(i)(A)
Discretionary:		
Actions taken against an institution by an accrediting agency, including unsatisfied show-cause orders that would lead to a withdrawal, revocation, or suspension of institutional accreditation.	Institutions must notify ED no later than 10 days after notification by an accrediting agency.	(d)(1)
Violation of security or loan agreements with creditors, including the lender granting the waiver of noncompliance regardless of imposing sanctions or penalties as a result of issuing the waiver. Each event is a triggering event.	Institutions must notify ED no later than 10 days after the date on which the institution receives such notice.	(d)(2)
Citations by state licensing or authorizing agencies for violations of state or agency agreements that may prompt the withdrawal or termination of licensure or authorization.	Institutions must notify ED no later than 10 days after the date on which the institution receives such notice.	(d)(3)
High annual dropout rates, as calculated by ED.	Subjective. No independent reporting requirements.	(d)(5)
<p>The institution's two most recent official cohort default rates are 30% or greater, unless:</p> <ul style="list-style-type: none"> • The institution files a challenge, request for adjustment, or appeal under that subpart with respect to its rates for one or both of those fiscal years; and • That challenge, request, or appeal remains pending, results in reducing below 30% the official cohort default rate for either or both of those years, or precludes the rates from either or both years from resulting in a loss of eligibility or provisional certification. 	Independently, no composite score recalculation would be necessary. However, the institution would be placed on provisional certification and would be required to provide surety to ED. Further, if an institution's cohort default rate is 30% or higher for a third year, it loses eligibility to participate in the Pell Grant and Direct Loan programs for two years.	(d)(6)

Keep in mind that if one of the first three discretionary triggers occurs, the institution is required to notify ED within 10 days of the triggering event becoming known. However, ED would not necessarily recalculate the composite score unless two of the five discretionary triggering events occur.

For example, say the institution violates a year-end financial statement reporting covenant with a lender that forces the institution to obtain a debt covenant waiver letter. That is a discretionary triggering event and the institution is required to notify ED in writing within 10 days of the event, even if it obtains a waiver from the lender (which is also a triggering event that must be reported). See [34 CFR 668.171\(f\)](#) for a full list of reporting requirements.

Failure to adequately report triggering events could result in required letters of surety. In a worst-case scenario, the institution could lose its eligibility to participate in Title IV funding. Knowing and monitoring all triggering events and compliance-related reporting requirements is a critical step in maintaining your institution's Title IV funding.

New Compliance Policies and Procedures to Implement

So what procedures should your institution implement to ensure compliance with these new requirements?

Like other compliance standards, your chief compliance officer and chief business officer (or equivalent) should develop an understanding of these triggering events as outlined in the September 23, 2019 borrower defense rules. They should also implement procedures to monitor these triggers and ensure timely reporting to ED.

The chief business officer should proactively analyze financial stability to understand the effect, if any, a triggering event could have on your institution's composite score. Finally, your institution should develop a public relations response to handle public perception if instances of noncompliance result.

Please [contact us](#) with any questions or if you would like to discuss how this may affect your institution. We serve nearly 100 private nonprofit higher education institutions nationwide annually through attest and consulting engagements, and our higher education specialists are here to help.

Sources: Code of Federal Regulations, Title 34, NACUBO.org

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