Financial Responsibility: Mandatory and Discretionary Triggering Events

The U.S. Department of Education (ED) has amended financial responsibility regulations to strengthen its ability to identify high-risk events in a timely manner. These regulations are applicable to institutions that receive Title IV funds.

There are two types of triggering events, mandatory and discretionary, and institutions have 21 days to report them. The following charts summarize the triggering events effective July 1, 2024.

Mandatory Triggering Events

Source: Federal Register, Financial Responsibility, Table 4.1

Mandatory Triggering Event	Description
Debts or liability payments § 668.171(c)(2)(i)(A)	An institution with a composite score of less than 1.5, with some exceptions, is required to pay a debt or incurs a liability from a settlement, final judgment, or similar proceeding that results in a recalculated composite score of less than 1.0.
Lawsuits § 668.171(c)(2)(i)(B)	Lawsuits against an institution after July 1, 2024, by federal or state authorities or a qui tam in which the federal government has intervened.
Borrower defense recoupment § 668.171(c)(2)(i)(C)	The Department has initiated a proceeding to recoup the cost of approved borrower defense claims against an institution.
Change in ownership debts and liabilities § 668.171(c)(2)(i)(D)	An institution in the process of a change in ownership must pay a debt or liability related to settlement, judgment, or similar matter at any point through the second full fiscal year after the change in ownership.
Withdrawal of owner's equity § 668.171(c)(2)(ii)(A)	A proprietary institution with a score less than 1.5 has a withdrawal of owner's equity that results in a composite score of less than 1.0.
Significant share of federal aid in failing GE programs § 668.171(c)(2)(iii)	An institution has at least 50% of its Title IV, HEA aid received for programs that fail GE thresholds.
Teach-out plans or agreements § 668.171(c)(2)(iv)	The 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.
Actions related to publicly listed entities § 668.171(c)(2)(vi)	These apply to any entity where at least 50% of an institution's direct or indirect ownership is listed on a domestic or foreign exchange. Actions include the SEC taking steps to suspend or revoke the entity's registration or taking any other action. It also includes actions from exchanges, including foreign ones, that say the entity is not in compliance with the listing requirements or may be delisted. Finally, the entity failed to submit a required annual or quarterly report by the required due date.

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Mandatory Triggering Event	Description
90/10 failure § 668.171(c)(2)(vii)	A proprietary institution did not meet the requirement to derive at least 10% of its revenue from sources other than federal educational assistance.
Cohort default rate (CDR) failure § 668.171(c)(2)(viii)	An institution's two most recent official CDRs are 30% or greater.
Contributions followed by a distribution § 668.171(c)(2)(x)	The institution's financial statements reflect a contribution in the last quarter of its fiscal year followed by a distribution within first two quarters of the next fiscal year and that results in a recalculated composite score of <1.0.
Creditor events § 668.171(c)(2)(xi)	An institution has a condition in its agreements with a creditor that could result in a default or adverse condition due to an action by the Department or a creditor terminates, withdraws, or limits a loan agreement or other financing arrangement.
Financial exigency § 668.171(c)(2)(xii)	The institution makes a formal declaration of financial exigency.
Receivership § 668.171(c)(2)(xiii)	The institution is either required to or chooses to enter a receivership.

Discretionary Triggering Events

Source: Federal Register, Financial Responsibility, Table 4.2

Discretionary Triggering Event	Description
Accreditor actions § 668.171(d)(1)	The institution is placed on show cause, probation, or an equivalent status.
Other creditor events and judgments § 668.171(d)(2)	The institution is subject to other creditor actions or conditions that can result in a creditor requesting grated collateral, an increase in interest rates or payments, or other sanctions, penalties, and fees, and such event is not captured as a mandatory trigger. This trigger also captures judgments that resulted in the awarding of monetary relief that is subject to appeal or under appeal.
Fluctuations in Title IV, HEA volume § 668.171(d)(3)	There is a significant change upward or downward in the Title IV, HEA volume at an institution between consecutive award years or over a period of award years.
High dropout rates § 668.171(d)(4)	An institution has high annual dropout rates, as calculated by the Department.
Interim reporting § 668.171(d)(5)	An institution that is required to provide additional reporting due to a lack of financial responsibility shows negative cash flows, failure of other financial ratios, or other indicators of a significant adverse change of the financial condition of a school.
Pending borrower defense claims § 668.171(d)(6)	The institution has pending borrower defense claims and the Department has formed a group process to consider at least some of them.
Program discontinuation § 668.171(d)(7)	The institution discontinues a program or programs that affect more than 25% of its enrolled students that receive Title IV, HEA program funds.
Location closures § 668.171(d)(8)	The institution closes locations that enroll more than 25% of its students who receive Title IV, HEA program funds.

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Discretionary Triggering Event	Description
State actions and citations § 668.171(d)(9)	The institution 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.
Loss of institutional or program eligibility § 668.171(d)(10)	The institution or one or more of its programs loses eligibility to participate in another federal education assistance program due to an administrative action.
Exchange disclosures § 668.171(d)(11)	An institution that is at least 50% owned by an entity that is listed on a domestic or foreign stock exchange notes in a filing that it is under investigation for possible violations of state, federal, or foreign law.
Actions by another federal agency § 668.171(d)(12)	The institution is cited and faces loss of education assistance funds from another federal agency if it does not comply with that agency's requirements.
Other teach-out plans or agreements § 668.171(d)(13)	The institution is required to submit a teach-out plan or agreement, including programmatic teach-outs and it is not captured in § 668.171(c)(2)(iv).
Other events or conditions § 668.171(d)(14)	Any other event or condition the Department determines is likely to have a significant adverse effect on the financial condition of the institution.

Please contact us with any questions or if you would like to discuss how this may affect your institution.

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