

SUBPART L - FINANCIAL RESPONSIBILITY

§ 668.171 General.

(c)

(2) After the end of the fiscal year for which the Secretary has most recently calculated an institution's composite score, when the institution is subject to two or more discretionary triggering events, that have been determined by the Secretary to have a material adverse effect, as defined in paragraph (d) of this section, those events become mandatory triggering events, unless a triggering event is resolved before any subsequent event(s) occurs.

(f) Reporting requirements.

(3)

(i) In response to a preliminary determination by the Secretary that the institution is not financially responsible because the institution's composite score does not yield that of at least 1.5, as provided under § 668.172 and appendices A and B to this subpart, and the institution's calculation of the score and the Secretary's calculation differ, the institution may –

(A) Explain or provide information about the conditions of the calculation that precipitated a passing score when calculated by the Institution.

(B) The Secretary can respond to this institutional appeal by examining the current financial condition of the institution and may request interim financial information that is reviewed by an independent financial expert such as an external audit firm.

(ii) In its notice to the Secretary under this paragraph, or in its response to a preliminary determination by the Secretary that the institution is not financially responsible because of a triggering event under paragraph (c) or (d) of this section, in accordance with procedures established by the Secretary, the institution may -

(A) Demonstrate that the reported withdrawal of owner's equity under paragraph (c)(1)(ii)(B) of this section was used exclusively to meet tax liabilities of the institution or its owners for income derived from the institution;

(B) Show that the creditor waived a violation of a loan agreement under paragraph (d)(2) of this section. However, if the creditor imposes additional constraints or requirements as a condition of waiving the violation, or imposes penalties or requirements under paragraph (d)(2)(ii) of this section, the institution must identify and describe those penalties, constraints, or requirements and demonstrate that complying with those actions will not adversely affect the institution's ability to meet its financial obligations;

(C) Show that the triggering event has been resolved, or demonstrate that the institution has insurance that will cover all or part of the liabilities that arise under paragraph (c)(1)(i)(A) of this section; or

- (D) Explain or provide information about the conditions or circumstances that precipitated a triggering event under paragraph (c) or (d) of this section that demonstrates that the triggering event has not or will not have a material adverse effect on the institution.
- (iii) The Secretary will consider the information provided by the institution in determining whether to issue a final determination that the institution is not financially responsible.