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Part V

Department of Education

34 CFR Parts 668, 674, et al.
Higher Education Act of 1965; Student
Financial Assistance Programs; Federal
Regulatory Assistance Review; Proposed
Rule

DEPARTMENT OF EDUCATION**34 CFR Parts 668, 674, 675, 676, 682, 685, and 690**

RIN: 1840 AC20

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Programs, and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs), the Federal Family Education Loan (FFEL) programs, the William D. Ford Federal Direct Loan programs, the Federal Pell Grant Program, and the State Student Incentive Grant program. These proposed amendments, which eliminate unnecessary regulations and improve the existing regulations, are part of a planned series of regulatory reform and relief proposals for the title IV, HEA programs. The Secretary is proposing these changes in response to the President's Regulatory Reform Initiative.

The Federal student financial assistance programs support the National Education Goals by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning.

DATES: Comments on the proposed regulations must be received on or before October 27, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: Harold McCullough, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026-3272. Comments may also be sent through the Internet to reg_relief@ed.gov.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the

regulations that the comment addresses and that comments be in the same order as the proposed regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named above.

FOR FURTHER INFORMATION CONTACT:

1. For the Student Assistance General Provisions: Claude Denton, Student Eligibility and Verification Section, General Provisions Branch on (202) 708-7888;

2. For the Federal Perkins Loan Program: Sylvia R. Ross, Campus-Based Loan Programs Section, Loans Branch on (202) 708-8242;

3. For the FWS and FSEOG programs: Kathy S. Gause, Campus-Based Programs Section, Grants Branch on (202) 708-4690;

4. For the FFEL Programs: Ralph Madden, GSL Programs Section, Loans Branch on (202) 708-8242;

5. For the William D. Ford Federal Direct Loan Programs: Doug Laine, Direct Loan Policy Group on (202) 708-9406; and

6. For the Federal Pell Grant Program: Mike Oliver, Pell and State Grant Section, Grants Branch on (202) 708-4607.

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: On March 4, 1995, the President directed every Federal agency to review its rules and procedures to reduce regulatory and paperwork burden, and directed Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform.

Responding to the President's Regulatory Reform Initiative, the Secretary announced plans to eliminate or revise 93 percent of the Department's regulations. To launch the Department's reinvention effort, the Secretary published a notice in the May 23, 1995 Federal Register (60 FR 27223-27226), eliminating more than 30 percent of the Department's regulations, primarily in areas not related to student financial assistance.

The Secretary is conducting a page-by-page review of all student financial assistance regulations to identify those that should be eliminated or improved. The Secretary is also considering developing proposals for statutory

amendments to eliminate unnecessary administrative burden.

As part of his response to the President's regulatory reinvention initiative, the Secretary is proposing these amendments to the regulations that apply to the title IV, HEA programs. The Secretary plans to propose additional reform and relief regulatory amendments for the title IV, HEA programs in the upcoming months.

A description of the major proposed changes follows. The proposed changes that apply to more than one program are described first followed by descriptions of provisions that apply only to a specific program.

The Federal student financial assistance programs support the National Education Goals by enhancing opportunities for postsecondary education.

Summary of Proposed Changes*Student Assistance General Provisions*

The Student Assistance General Provisions regulations, 34 CFR part 668, implement requirements that are common to the title IV, HEA programs.

Subpart A—General*Section 668.7 Eligible Student*

The Secretary proposes to remove and reserve the section formerly designated as § 668.7, "Eligible student." The "eligible student" provisions currently provided in § 668.7 would now comprise a revised subpart C of 34 CFR part 668.

The Secretary believes that this relocation will improve regulatory organization, provide greater clarity, and improve understanding of those provisions.

Subpart B—Standards for Participation in Title IV, HEA Programs*Section 668.19 Financial Aid Transcript*

Under the current regulations, if an institution determines that a student previously attended another institution, the institution must obtain a financial aid transcript from that other institution. The financial aid transcript provides some of the information that enables an institution to determine whether an enrolling student is eligible to receive title IV, HEA program funds. Thus, the financial aid transcript may indicate that a student is in default on a title IV, HEA program loan, or owes a repayment on a title IV, HEA program grant or loan. It may also help the institution to determine the amount that an eligible student is entitled to receive in the current award year by indicating

a student's Scheduled Federal Pell Grant award or the amount of FFEL or William D. Ford Federal Direct loan funds that the student received in the current award year.

The Secretary proposes an alternative to obtaining a financial aid transcript. The Department has been developing the National Student Loan Data System (NSLDS), which will contain basically the same information that is included on a financial aid transcript. When the system becomes fully operational, institutions will be able to obtain financial aid history information about an applicant for title IV, HEA program assistance from the NSLDS instead of from other institutions previously attended by the applicant. Therefore, the Secretary is proposing in § 668.19 that when the NSLDS can be used to satisfy this purpose, an institution will have the option of obtaining information about an enrolling student who has previously attended another institution from the NSLDS instead of requesting a financial aid transcript from the other institution.

At the present time, the Secretary anticipates that institutions will be able to obtain financial aid transcript information from the NSLDS starting with the 1996-97 award year. However, the Secretary is proposing in § 668.19 to notify institutions through a Federal Register notice when they may begin to use this option.

After experience demonstrates that the NSLDS is a valid alternative to requesting a financial aid transcript from another institution, the Secretary anticipates that institutions will use the NSLDS exclusively to obtain information and the Secretary will eliminate the financial aid transcript requirement.

The Secretary expects that use of NSLDS will relieve institutions of the burden of requesting and compiling information from financial aid transcripts. Because financial aid history information will be available electronically, obtaining information from the NSLDS will also reduce delays in awarding and disbursing title IV, HEA program assistance to students.

While the Secretary is confident that NSLDS data will provide accurate and reliable information, there will be instances where an institution encounters inconsistencies between NSLDS data and other sources of information. If that happens, the institution is expected to resolve those conflicts in accordance with § 668.16(f). Resolution of inconsistencies can be achieved through use of the financial aid transcript or other methods the institution determines to be appropriate.

Subpart C—Student Eligibility

Because of increased statutory requirements affecting a student's eligibility to receive title IV, HEA program funds, the Secretary believes that the inclusion of all those requirements in one section of the regulations has become too cumbersome. Therefore, the Secretary has revised and reorganized those requirements into subpart C of 34 CFR part 668. The Secretary requests comments on this proposed reorganization.

Section 668.33 Student Identification

The Office of Inspector General recently recommended enhancement of the data match with the Social Security Administration (SSA), under which SSA would confirm claims of U.S. citizenship by applicants for title IV, HEA program funds on their Free Application for Federal Student Aid (FAFSA). Currently, the Department and SSA have a data match under which SSA confirms the accuracy of social security numbers provided by title IV, HEA program applicants.

The Secretary and SSA have agreed to this expanded data match starting with the 1996-97 award year application cycle. Section 668.33 has provisions to conform these regulations to this internal interagency process.

Operationally, the citizenship aspect of the SSA data match would be similar to other data matches. If a student's claim of U.S. citizen status is confirmed by SSA, the central processor will generate a confirming message on an applicable "output document," such as an ISIR or SAR. No further action will be required by either the student or institution, absent conflicting information. If the student's claim is not confirmed, the student would be advised of the lack of confirmation and would be given the opportunity to provide documentary evidence to the institution, such as a birth certificate, naturalization certificate, or passport, to support his or her assertion of citizenship.

The Secretary proposes, in this section, to allow students to satisfy the requirement of filing a Statement of Educational Purpose with the institution, by completing the FAFSA, which will include this statement starting with the 1996-97 award year. Currently, institutions must collect a Statement of Educational Purpose individually from each student applying for title IV, HEA program assistance. The Secretary's proposal does not affect current FFEL requirements with regard to this statement on loan applications.

The Secretary proposes to eliminate the model Statement of Educational Purpose in the current regulations. A model statement would be duplicative because the statement will appear on the FAFSA starting with the 1996-97 award year.

The Secretary also proposes to eliminate the Statement of Registration Status because the statement is duplicative. A male student's selective service registration status is now confirmed through a data match with the Selective Service System. This data match eliminates the need for the collection of a separate statement.

Section 668.34 Student Debts Under the HEA and to the U.S.

The Secretary is proposing in these regulations to amend and reorganize, for clarity and conformity, the provisions under which a student who owes a debt under the HEA or to the United States may nevertheless be eligible to receive title IV, HEA program assistance. Also, the Secretary proposes to conform the regulations to existing statutory requirements pertaining to bankruptcy.

Specifically, these regulations would allow a student who owes a debt under the HEA or to the United States to be eligible to receive title IV, HEA program funds even though the student (1) is in default on a title IV, HEA program loan, (2) inadvertently received a title IV, HEA program loan in an amount that exceeded that program's annual or aggregate loan limits, (3) owes a repayment on a title IV, HEA program grant or loan, or (4) has property subject to a judgment lien for a debt owed to the United States.

Under the proposed regulations, a student who is in default on a title IV, HEA program loan would be eligible to receive additional title IV, HEA program funds if the student repays the loan in full, or makes six consecutive monthly payments on the defaulted loan and makes arrangements, satisfactory to the holder of the loan, to repay that loan.

A student who is not in default but inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeded the annual or aggregate loan limits under that program would be eligible to receive additional title IV, HEA program funds if the student repays in full the excess loan amount or makes arrangements satisfactory to the holder of the loan, to repay that excess loan amount.

A student who receives a grant or loan overpayment under a title IV, HEA program would be eligible for additional title IV, HEA program funds if the student pays the overpayment in full, or

makes arrangements satisfactory to the institution to pay the overpayment.

A student who has property subject to a judgment lien for a debt owed to the United States would be eligible for title IV, HEA program funds if the student pays the debt in full, or makes arrangements satisfactory to the United States to pay the debt.

In addition, the proposed regulations clarify that the exception under bankruptcy law is applicable to a student who is otherwise in default on a title IV, HEA program loan, or owes an overpayment on a title IV, HEA program grant or loan.

These proposed changes provide clarification and, to the extent allowed by the HEA, consistency in the treatment by institutions of applicants for title IV, HEA program assistance who may owe a debt on previously awarded title IV aid or when the applicant has had a lien placed on another debt owed to the United States. Additionally, they provide, in the case of a grant or loan overpayment, flexibility to the holder of the debt by allowing for the establishment of satisfactory arrangements to repay so that the applicant who demonstrates good faith in resolving his or her obligation may regain eligibility for title IV, HEA program assistance.

Subpart I—Immigration-Status Confirmation

Section 668.133 Conditions Under Which an Institution Shall Require Documentation and Request Secondary Confirmation

The Secretary proposes to remove the requirement that an institution request secondary confirmation from the Immigration and Naturalization Service for a student if (1) the student presents documents verifying his or her immigration status that are identical to documents presented to that institution in a previous year, and (2) that institution determined the student to be an eligible noncitizen using secondary confirmation of those same documents in a previous award year. This waiver of secondary confirmation requirements would not apply if the institution has conflicting information or reason to doubt the student's claim to be an eligible noncitizen.

Subpart K—Cash Management

Section 668.164 Maintaining Funds

The Secretary proposes to amend § 668.164(a)(2) to limit the requirement that all institutions file a UCC-1 statement for any bank account in which title IV, HEA program funds are maintained. Specifically, the Secretary

proposes to eliminate the UCC-1 filing requirement for institutions that (1) disclose clearly in the name of the account that Federal funds are maintained in that account, or (2) are backed by the full faith and credit of a State. The filing of a UCC-1 would only be required for bank accounts of institutions that do not satisfy either of these conditions.

In establishing this requirement, the Secretary sought to use the UCC-1 filing process as the means by which an institution publicly discloses which of its accounts contain Federal funds. A public disclosure reduces the possibility that an unscrupulous institution could misrepresent Federal funds as its own funds.

Upon further review, the Secretary believes that the disclosure purposes of the UCC-1 filing requirement are adequately accomplished where an institution includes the phrase "Federal funds" in the name of its accounts. Moreover, the Secretary believes that the UCC-1 filing requirement is not appropriate for public institutions because these institutions generally do not seek to obtain credit in the same manner as private institutions.

Section 668.165 Disbursing Funds

The Secretary is proposing to modify section 668.165(b)(1) to provide an institution as much flexibility as possible with respect to how it notifies a student or parent borrower that William D. Ford Federal Direct Loan or FFEL program funds have been credited to a student's account. Under the current regulations, the institution must provide such notification in writing. Under the proposed rules, the institution would be able to provide this notification electronically or through the use of telecommunication devices. If an institution provides the notification through these devices, the institution must have a means of documenting that the student or parent received this information. For example, if the institution provides this information through electronic mail, the institution must ensure that it receives a "return receipt" message from the addressee.

The Secretary proposes to amend § 668.165(b) (1) and (3) to provide that under certain circumstances, and with a student's permission, an institution may credit the student's account with title IV, HEA program funds to pay for minor institutional charges from a prior year. Currently, § 668.165(b)(1) prohibits this practice. This prohibition reflects longstanding Department policy and is based on the tenet that title IV, HEA program funds are intended to be used to pay for educational expenses a

student incurs in the period for which those funds are provided. The Cash Management regulations published on December 1, 1994 merely codified this policy.

After the publication of these regulations, institutions have brought to the Secretary's attention circumstances under which a limited exception to this rule may be appropriate. These circumstances occur where a student incurs a minor institutional charge late in a semester after the institution has released to the student all of his or her title IV, HEA program funds. This charge is often not paid by the student by the end of the semester and is consequently carried over to the next semester. Where that next semester falls within the award year, the charges may be paid using the student's title IV, HEA program funds. The institutions note, however, that a problem arises where the next semester falls in a subsequent award year because many institutions have a policy that prevents a student from continuing at the institution until all prior year charges are paid. In this case, the student's current title IV, HEA program funds may not be used to pay the prior year charges even if the amount of these funds exceeds all current allowable costs and the student's remaining funds are sufficient to pay the prior year charges. While the institutions acknowledge that a student's failure to pay institutional charges when those charges are due is a problem that may arise regardless of whether a student receives title IV, HEA program funds, they maintain that the current regulatory prohibition on the payment of prior year charges imposes an unnecessary administrative burden and otherwise interferes with an institution's ability to resolve this problem with the student.

After further review, the Department announced on July 11, 1995 that in the case described above where a balance of title IV, HEA program funds remains after the student's current allowable costs are paid, an institution may use the student's current title IV, HEA program funds to pay for minor prior year charges provided that the institution obtains appropriate authorization from a student to do so. These proposed regulations merely restate this announced policy.

The Secretary believes that, as a practical matter, the payment of minor prior year charges does not violate the intended use of title IV, HEA program funds because the primary purpose of these funds is to assist a student in beginning and continuing to pursue his or her postsecondary education. However, the Secretary is concerned

that the payment of prior year charges may impair a student from continuing his or her education at an institution if the amount of those charges reduces adversely the amount of title IV, HEA program funds that the student would otherwise rely on in meeting his or her living expenses and other educational costs. The Secretary believes strongly that this would not only violate the intended use of title IV, HEA program funds but that it would be a disservice to the student and waste of Federal funds. Therefore, although the Secretary does not specify the dollar amount of prior year charges that may be paid, the Secretary would expect institutions to use the latitude provided under this proposal in a reasonable manner.

Campus-Based Programs

Sections 674.2, 675.2 and 676.2 Definitions

Section 674.2(b) and § 675.2(b) of the Federal Perkins Loan and FWS program regulations, respectively, define the terms "full-time or professional student" and "full-time undergraduate student" and § 676.2(b) of the FSEOG program regulations defines the term "full-time undergraduate student." However, § 668.2 of the Student Assistance General Provisions regulations contains a definition of the term "full-time student" that duplicates those definitions. Therefore, the Secretary is proposing to eliminate these duplicative definitions in § 674.2(b), § 675.2(b) and § 676.2(b) and instead incorporate the definition of the term "full-time student" set forth in § 668.2 for all three of the campus-based programs.

Sections 674.17, 675.17, and 676.17 Federal Interest in Allocated Funds

Section 674.17(a), § 675.17 and § 676.17 of the Federal Perkins Loan, FWS, and FSEOG program regulations provide that program funds are held in trust for the Secretary and intended student beneficiaries and cannot be used or hypothecated for any other purpose. These very provisions are included in § 668.161(b) of the Student Assistance General Provisions regulations so are not needed in these program regulations.

In the past, the Secretary kept these provisions in program regulations even though they were in the Student Assistance General Provisions regulations as a reminder of their importance. However, the Secretary now believes that the continued presence of redundant regulatory provisions in each Title IV, HEA program regulation is no longer needed.

Sections 674.19, 675.19, and 676.19 Fiscal Procedures and Records

The Secretary proposes to amend §§ 674.19(e)(4)(v), 675.19(c)(3), and 676.19(c)(3) of the Federal Perkins Loan, FWS, and FSEOG program regulations, respectively, to allow institutions the additional flexibility of using optical disk technology in complying with recordkeeping requirements. The Secretary believes that the use of new technologies such as optical disk is an important tool in reducing paper retention at an institution, particularly if an institution keeps its records in computer format. The Secretary further believes that broadening methods of record retention through the use of optical disk will enhance administrative efficiency and increase flexibility by providing institutions with a new recordkeeping option that saves time and space.

Federal Perkins Loan Program

Section 674.2 Definitions

The current definition of "making of a loan" under § 674.2 of the Federal Perkins Loan program regulations includes the burdensome requirement of collecting a student's signature each time loan funds are advanced. In order to make this definition consistent with the changes in signature requirements being proposed in § 674.16, the Secretary is proposing to amend this definition by removing the reference to a borrower signing for each advance of funds. The Secretary proposes to redefine "making of a loan" simply as when the borrower signs the promissory note and the loan funds are disbursed.

Section 674.16 Making and Disbursing Loans

In keeping with the Secretary's desire to alleviate administrative burden on institutions and to protect students, the Secretary is proposing to eliminate the requirement that a student must sign for each loan advance under the Federal Perkins Loan Program. The financial aid community has commented repeatedly that this is a time-consuming, costly, and impractical requirement that often results in long lines of students waiting to sign loan documents.

Under the Secretary's proposal, an institution simply must obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds under that promissory note for that award year. Thus, when he or she signs a promissory note for an award year, the student will know the loan amount for that award year. Moreover, the student will know when and how those funds

will be disbursed because the institution is required to provide that information to the student under § 668.165 of the Student Assistance General Provisions regulations.

Section 674.31 Promissory Note

The Secretary proposes to amend § 674.31(a) of the Federal Perkins Loan Program regulations to indicate that the Secretary will provide sample promissory notes to institutions. Institutions may add additional items to the sample notes as long as the new items do not alter the substance of these sample notes.

Section 674.33 Repayment

The Secretary is proposing to amend § 674.33(a)(2) of the Federal Perkins Loan Program regulations by allowing institutions to combine the last scheduled Federal Perkins Loan payment with the next-to-last payment if the last payment is \$25 or less. As currently written, in order to combine payments, the last payment must be \$15 or less. The Secretary believes that allowing institutions to combine a last payment of a higher dollar amount will reduce collection costs by eliminating the generation of bills for small dollar amounts and also significantly improve an institution's success in collecting small loan balances.

Section 674.47 Costs Chargeable to the Fund

The Secretary recently issued a "Dear Colleague" Letter regarding the limitations on write-offs in the Federal Perkins Loan Program (CB-95-17). However, the Secretary believes that confusion still exists as to what the term "write-off" means as it relates to § 674.47(g). In an attempt to clarify the Secretary's position and to alleviate burden on institutions, the Secretary is proposing to revise § 674.47(g) by replacing the term "write-off" with the term "cessation of collection activity."

As the proposed change indicates, an institution may cease collection activity on a defaulted account with a balance of less than \$25. However, the institution must continue to include the loan as in default for purposes of calculating its cohort default rate.

Cessation of collection activity by an institution does not relieve the borrower of his or her obligation to repay that loan, and interest continues to accrue on the amount on which collection activities cease. Moreover, the borrower is still considered in default on that loan and therefore remains ineligible for further title IV, HEA program assistance and retains an adverse credit rating.

It is the Secretary's long-standing policy to require institutions to collect every amount due on an account from the borrower. However, the Secretary recognizes that institutions and collection agencies experience cost-inefficiencies in their attempts to collect small-balance, defaulted loan accounts.

The Secretary recognizes that very small balances frequently occur, for example, when a few days of additional interest accrues on the final balance, and that billing borrowers for this small remaining balance is not cost-effective for institutions as servicing fees often exceed the remaining balance. Accordingly, the Secretary is proposing to further amend § 674.47 by adding new paragraph (h) to allow institutions to cease collection activities and write off loan accounts with a balance of less than \$1, including outstanding principal, accrued interest, collection costs, and late charges.

The write-off of balances of less than \$1 creates a paid-in-full status on the loan and, therefore, relieves the borrower of all obligations, does not have an adverse effect on the borrower's credit rating, does not affect the borrower's eligibility for further title IV, HEA program assistance, nor will the loan be included in the calculation of an institution's cohort default rate.

Federal Work-Study Programs

Appendix B—Model Off-Campus Agreement

When an institution enters into a written agreement—a contract—with any off-campus agency or company that employs FWS students, the institution must make sure the organization is a reliable organization with professional direction and staff, and that the work to be performed is adequately supervised and consistent with the purpose of the FWS Program. Appendix B of the current FWS regulations provides a model off-campus agreement. Institutions can use this model as a guide in developing their agreements.

In an effort to streamline regulations, the Secretary is proposing to eliminate this sample agreement as an appendix to the FWS regulations. The Secretary will include a model off-campus agreement in the Federal Student Financial Aid Handbook.

Federal Family Education Loan Program, William D. Ford Federal Direct Loan Programs

Sections 682.201 and 685.200 Eligible Borrowers

The Secretary proposes to expand the pool of borrowers under the Federal PLUS and Federal Direct PLUS programs to include the spouse of a student's parent if that parent remarried. The Secretary is proposing this

expansion to provide greater flexibility to the student's family to enable them to pay for the student's educational costs. The proposed extension includes the spouse of the parent if that spouse's income and assets would be taken into account in determining the student's expected family contribution.

Section 682.600 Agreement Between an Eligible School and the Secretary for Participation in the FFEL Programs and § 682.602 Schedule Requirements for Courses of Study by Correspondence

The Secretary believes that the provisions of § 682.600(a) through § 682.600(c) duplicate provisions in 34 CFR part 600 or 668 and are therefore unnecessary. Accordingly, the Secretary has proposed to eliminate those provisions in 34 CFR part 682. The provisions included in § 682.600(d) that deal with foreign schools are needed and the Secretary has proposed to include those provisions in a new section, § 682.611.

Students enrolled in correspondence programs are not eligible to receive FFEL Program loans unless they are enrolled in a program that leads to an associate, bachelor, or graduate degree. Therefore, the Secretary believes that the provisions contained in § 682.602 are no longer needed and has proposed to eliminate those provisions.

Federal Pell Grant Program

Subpart A—Scope, Purpose and General Definitions

Section 690.7 Institutional Participation

The Secretary proposes to revise § 690.7 by deleting current paragraph (a)(1) because the provisions contained in that paragraph duplicate provisions in 34 CFR part 600 or 668.

Subpart G—Administration of Grants Payments

Section 690.71 Scope, § 690.72 Institutional Participation, § 690.73 Termination of Institutional Participation Agreement, and § 690.74 Provision of Funds to Institutions

The Secretary proposes to eliminate the last sentences in §§ 690.71, 690.72, 690.73, and 690.74 because they duplicate provisions contained in 34 CFR part 668.

Section 690.83 Submission of Reports

The Secretary proposes to revise § 690.83 by consolidating in one paragraph the procedures that allow institutions to receive payment or credit for Federal Pell Grants they previously disbursed if that situation is disclosed by an initial audit or program review.

Executive Order 12866

1. Assessment of Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these regulations without impeding the effective and efficient administration of the program.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading, for example, § 674.4 Allocation and reallocation.) (4) Is the description of the regulations in the "Supplementary Information" section of this preamble helpful in understanding the regulations? How could this

description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 5125, FOB-6), Washington, D.C. 20202-2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected by these proposed regulations are small institutions of postsecondary education. The changes in these regulations will not substantially increase institutions' workload or costs associated with administering the title IV, HEA programs and, therefore, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

Sections 668.19, 668.32, 668.33, 668.34, 668.36, 668.133, 668.164, 668.165, 674.16, 674.19, 674.31, 674.47, 675.19, 676.19, and 690.83 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of information: Student Assistance General Provisions—

Section 668.19—Financial aid transcript—Institutions are required to obtain financial aid transcript information for purposes of determining student eligibility under these regulations. The information to be collected includes: assurances to meet certain statutory requirements and specific information regarding a student's financial aid history. Institutions need and use the information to release title IV, HEA program funds.

All information is to be collected on a case by case basis for those students that previously attended an institution and received title IV, HEA program funds. Annual recordkeeping and reporting burden contained in the collection of information proposed in these regulations are estimated to average .17 hours for 17,600 respondents, including the time for reviewing instructions, searching existing data sources, gathering and

maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden equals 2992 hours.

Section 668.32—Statement of Educational Purpose—The Department currently has this section approved under OMB control number for the FAFSA (1840-0110). There are no new information collection requirements as a result of these regulations.

Section 668.33—Statement of Registration Status—The Department currently has this section approved under OMB control number for the FAFSA (1840-0110). There are no new information collection requirements as a result of these regulations.

Section 668.34—Model Statement of Educational Purpose and Registration Status—The Department currently has this section approved under OMB control number for the FAFSA (1840-0110). There are no new information collection requirements as a result of these regulations.

Section 668.36—Selective Service notification, administrative review, and liability—The Department currently has this section approved under OMB control number for the FAFSA (1840-0110). There are no new information collection requirements as a result of redesignating and renaming this section from § 668.35.

Section 668.133—Conditions under which an institution shall require documentation and request secondary confirmation—Institutions must require documentation and secondary confirmation with INS for purposes of determining student eligibility for noncitizen applicants under these regulations. The information to be collected includes: specific information regarding a student's residency status and documentary evidence. Institutions need and use the information to determine a student's eligibility for title IV, HEA program funds.

All information is to be collected on a case by case basis. Annual recordkeeping and reporting burden contained in the collection of information proposed in these regulations are estimated to average .25 hours for 8,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden equals 2000 hours.

Section 668.164—Maintaining funds—Institutions are required to deposit title IV, HEA program funds into a bank account, (1) with the words

“Federal funds” in the title of the account, or (2) be backed by the full faith and credit of a state, or (3) file a UCC-1 form with the appropriate county and/or State office(s) and maintain a copy of that filing in its records to disclose that Federal funds are maintained in that bank account under these regulations.

All information is to be collected on a one time basis if changing the title of a bank account, or annually if filing a UCC-1 form. Annual recordkeeping and reporting burden contained in the collection of information proposed in these regulations are estimated to average 1.23 hours for 3,634 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden equals 4470 hours.

Section 668.165—Disbursing funds—There are no new information collection requirements as a result of these regulations.

Collection of information: Federal Perkins Loan, FWS, and FSEOG programs—

Section 674.16—Making and disbursing loans and section 674.31—Promissory note—There are no new information collection requirements as a result of these regulations.

Section 674.19, 675.19, and 676.19—Fiscal procedures and records—The Department currently has these sections approved under OMB control number for the FISAP (1840-0073). There are no new information collection requirements as a result of these regulations.

Section 674.47—Costs chargeable to the fund—There are no new information collection requirements as a result of these regulations.

Collection of information: Federal Pell Grant Program—

Section 690.83—Submission of reports—Institutions must follow certain procedures for receiving funds for payment submissions after established deadline dates.

All information is to be collected annually. There are no new collection requirements as a result of these regulations. The current annual recordkeeping and reporting burden contained in section 690.83 is estimated to average 41 hours for 400 respondents, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The total annual recordkeeping and reporting burden equals 16,400 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have a practical use;

- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3053, ROB-3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available

from, any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Loan programs—education, Grant programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 675

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 676

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program.)

Dated: September 13, 1995.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 668, 674, 675, 676, 682, 685, and 690 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

§ 668.2 [Amended]

2. Section 668.2, paragraph (b) is amended by revising the first paragraph of the definition of "Payment period" to read as follows: "With respect to the Federal Pell Grant Program, a payment period as defined in 34 CFR 690.3;"

§ 668.7 [Amended]

3. Section 668.7 is removed and reserved.

4. Section 668.19 is revised to read as follows:

§ 668.19 Financial aid transcript.

(a)(1) An institution shall determine whether a student who is applying for assistance under any title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any title IV, HEA program funds—

(i) The institution must request each institution the student previously attended to provide a financial aid transcript to the institution the student is, or will be, attending; or

(ii) The institution may use information obtained from the National Student Loan Data System, that would otherwise be provided on a financial aid transcript, once the Secretary notifies institutions through a notice in the Federal Register that the National Student Loan Data System is available for this purpose.

(3) Except as provided in paragraph (a)(5) of this section, if an institution requests a financial aid transcript from each of the institutions a student previously attended, until the institution receives a financial aid transcript from each of those institutions, the requesting institution—

(i) May withhold payment of Federal Pell Grant and campus-based funds to the student;

(ii) May disburse Federal Pell Grant or campus-based funds to the student for one payment period only;

(iii) May decline to certify the student's Federal Stafford Loan application or the parent's Federal PLUS application under the FFEL Program;

(iv) May decline to originate the student's Federal Direct Stafford Loan application or the parent's Federal Direct PLUS application under the William D. Ford Federal Direct Loan Programs;

(v) May not release Federal Stafford Loan proceeds to a student or Federal PLUS proceeds to a parent or student under the FFEL Program; and

(vi) May not release Federal Direct Stafford Loan proceeds to a student or Federal Direct PLUS proceeds to a parent or student under the William D. Ford Federal Direct Loan Programs.

(4)(i) An institution may not hold Federal Stafford, or Federal PLUS loan proceeds under paragraph (a)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of those proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a Federal Stafford or Federal PLUS loan

application before receiving all required financial aid transcripts shall return to the lender the appropriate amount of any Federal Stafford or Federal PLUS loan proceeds for the student if it receives a financial aid transcript indicating that the student is not eligible for all, or a part, of the loan proceeds.

(5) An institution may disburse title IV, HEA program funds to a student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended—

(i) Has closed, and information concerning the student's receipt of title IV, HEA program assistance for attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly provide to the institution that requested a financial aid transcript—

(1) All information in its possession concerning whether the student in question attended institutions other than itself and the requesting institution; and

(2)(i) A financial aid transcript for that student, if the student received or benefited from any title IV, HEA program assistance while attending the institution; or

(ii) A written certification that—

(A) The student did not receive or benefit from any title IV, HEA program assistance while attending the institution; or

(B) The transcript would cover only years for which the institution no longer has records and is no longer required to keep records under the applicable title IV, HEA program recordkeeping requirements.

(c) An institution must disclose on a financial aid transcript for a student—

(1) The student's name and social security number;

(2) To the extent that the institution is aware, whether the student is in default on any title IV, HEA loan;

(3) Whether the student owes an overpayment on any grant made under the Federal Pell Grant or FSEOG programs and, to the extent that the institution is aware, the SSIG Program, for attendance at the institution;

(4) For the award year for which a financial aid transcript is requested—

(i) The student's scheduled Federal Pell Grant award;

(ii) The amount of Federal Pell Grant funds disbursed to the student;

(iii) The amount of loans made under the National Defense Student Loan, Direct Loan, and Federal Perkins Loan programs; and

(iv) The amount of loans made under the FFEL and William D. Ford Federal Direct Loan programs; and

(5) The aggregate amount of loans under the title IV, HEA loan programs for attendance at the institution.

(d)(1) A financial aid transcript must be signed by an official authorized by the institution to disclose information in connection with title IV, HEA programs.

(2) An institution must base the information it includes on financial aid transcripts on records it maintains under the title IV, HEA programs' recordkeeping requirements.

5. The heading for § 668.21 is revised to read as follows:

668.21 Treatment of Federal Perkins Loan, FSEOG, and Federal Pell Grant program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

§ 668.22 [Amended]

6. Section 668.22 is amended by removing paragraph (h)(1)(i) and redesignating paragraphs (h)(1)(ii) through (xiii) as paragraphs (h)(1)(i) through (xii), respectively.

7.–8. Subpart C is revised to read as follows:

Subpart C—Student Eligibility

Sec.

668.31 Scope.

668.32 Student enrollment.

668.33 Student identification.

668.34 Student debts under the HEA and to the U.S.

668.35 Program-specific requirements.

668.36 Selective Service notification, administrative review, and liability.

Subpart C—Student Eligibility

§ 668.31 Scope.

This subpart establishes rules by which a student establishes eligibility for assistance under the title IV, HEA programs. In order to qualify as an eligible student, a student must meet all applicable requirements in this subpart.

(Authority: 20 U.S.C. 1091)

§ 668.32 Student enrollment.

A student is eligible to receive assistance under the title IV, HEA programs if the student—

(a)(1) Is a regular student enrolled or accepted for enrollment in an eligible program at an eligible institution;

(2) For purposes of the FFEL or William D. Ford Federal Direct Loan programs, is enrolled for no longer than one twelve-month period as at least a half-time student in a course of study

necessary for enrollment in an eligible program; or

(3) For purposes of the Federal Perkins Loan, FWS, FFEL, or William D. Ford Federal Direct Loan programs, is enrolled or accepted for enrollment as at least a half-time student at an eligible institution in a program necessary for a professional credential or certification from a State that is required for employment as a teacher in an elementary school or secondary school in that State;

(b) Is not enrolled in either an elementary or secondary school;

(c)(1) Has a high school diploma or its recognized equivalent;

(2) Has obtained within 12 months before the date the student initially receives title IV, HEA program funds, a passing score specified by the Secretary on an approved, independently administered test, in accordance with subpart J of this part; or

(3) Is enrolled in an eligible institution that participates in a State process approved by the Secretary under subpart J of this part;

(d) Maintains satisfactory progress in his or her course of study according to the institution's published standards of satisfactory progress that satisfy the provisions of § 668.16(e). To make a determination that a student is maintaining satisfactory progress, an institution shall—

(1) At a minimum, review the student's academic progress at the end of each academic year;

(2) If the student is enrolled in a program of study of more than two academic years, at the end of the student's second year of attendance, determine that the student—

(i) Has at least a cumulative grade point average of "C" or its equivalent, or has academic standing consistent with the institution's graduation requirements; or

(ii) Failed to have at least a cumulative grade point average of "C" or its equivalent, or academic standing consistent with its graduation requirements because of—

(A) The death of a relative of the student;

(B) An injury or illness of the student; or

(C) Other special circumstances; or

(3) Is not making satisfactory progress at the end of the second academic year, but at the end of a subsequent grading period comes into compliance with the institution's requirements for graduation. The institution may consider the student as making satisfactory progress beginning with the next grading period;

(e) Is enrolled in an educational program leading to an associate, bachelor's, or graduate degree, if enrolled in telecommunications or correspondence courses; and

(f) If engaged in a study-abroad program, (which need not be required as part of the student's degree program)—

(1) Maintains enrollment in an eligible institution during his or her study-abroad program; and

(2) Enrolls in a study-abroad program that has been approved for academic credit by the eligible institution at which the student is enrolled.

(Authority: 20 U.S.C. 1091)

§ 668.33 Student identification.

A student is eligible to receive assistance under the title IV, HEA programs if the student—

(a) *Citizenship status.* (1) Has confirmed status as a U.S. citizen or national as a result of a data match with the Social Security Administration;

(2) In the absence of confirmation as provided in paragraph (a)(1) of this section, and within a deadline to be set by the institution of no less than 30 days from the date the institution is notified of the results of the data match, has provided documented evidence that he or she is a U.S. citizen or national;

(3) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(4) For purposes of the FWS, FSEOG, and Federal Pell Grant programs—

(i) Is a citizen of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau, and attends an eligible institution of higher education in a State or a public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau; or

(ii) Meets the requirements of paragraph (a)(1), (a)(2), or (a)(3) of this section and attends an eligible public or nonprofit private institution of higher education in the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau;

(b) *Selective Service.* (1) Has confirmed registration with Selective Service as a result of a data match with the Selective Service System; or

(2) In the absence of confirmation as provided in paragraph (b)(1) of this section and within a deadline to be set

by the institution of no less than 30 days from the date the institution is notified of the results of the data match, has provided evidence of compliance with, or exemption from, Selective Service registration requirements. An institution may establish that a student is exempt from Selective Service registration requirements if the institution determines, based on clear and unambiguous evidence, that—

(i) The student is not, or was not required to be, registered with Selective Service; or

(ii) The student—

(A) Was required to be registered with the Selective Service prior to age 26;

(B) Is now at least 26 years old;

(C) Failed to register with the Selective Service prior to age 26; and

(D) (1) Demonstrates to the institution that he did not knowingly and willfully fail to register with the Selective Service. The Secretary considers that a student satisfies this requirement by obtaining and presenting to the institution an advisory opinion from the Selective Service System that does not dispute the student's claim that he did not knowingly and willfully fail to register, and the institution does not have uncontroverted evidence that the student knowingly and willfully failed to register; or

(2) Served as a member of one of the U.S. Armed Forces on active duty and received a DD Form 214, "Certificate of Release or Discharge from Active Duty" showing military service with other than the Reserve Forces and National Guard;

(iii) The student is enrolled in an officer procurement program the curriculum of which has been approved by the Secretary of Defense at the following institutions:

(A) The Citadel, Charleston, South Carolina;

(B) North Georgia College, Dahlonega, Georgia;

(C) Norwich University, Northfield, Vermont; or

(D) Virginia Military Institute, Lexington, Virginia;

(iv) The student is a commissioned officer of the Public Health Service or a member of the Reserve of the Public Health Service who is on active duty as provided in section 6(a)(2) of the Military Selective Service Act; or

(v) The student was unable to present himself for registration for reasons beyond his control, such as being hospitalized, institutionalized, or incarcerated;

(c) *Incarcerated students.* For purposes of the Federal Perkins Loan, FFEL, and William D. Ford Federal Direct Loan programs, is not an

incarcerated student at the time funds are delivered or disbursed;

(d) *Social security number.* Except for the residents of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau, has a correct social security number that has been verified by an eligible institution, which shall enforce the following conditions:

(1) An institution may not deny, reduce, delay or terminate a student's eligibility for assistance under the title IV, HEA programs because social security number verification is pending.

(2) If the institution receives an output document indicating that the Secretary has determined that the student's social security number is correct, the institution may not require the student to produce other evidence to confirm that the student's social security number is correct, unless the institution—

(i) Has documentation that conflicts with the social security number status reported on the output document; or

(ii) Has reason to believe the output document is incorrect.

(3) If the institution receives an output document indicating that the Secretary has determined that the social security number provided by the student is incorrect, or that the Secretary was unable to confirm that the social security number provided by the student is correct, the institution—

(i) Shall provide the student an opportunity, within a deadline of at least 30 days from the date the institution is notified of the results of the data match, to provide clear and convincing evidence to verify that the student has a correct social security number;

(ii) May disburse any combination of title IV, HEA program funds, employ the student under the FWS Program, certify a Federal Stafford, Federal PLUS, or originate a William D. Ford Federal Direct Loan application for the student upon making, based on the evidence provided for in paragraph (d)(3)(i) of this section, a determination that the social security number provided by the otherwise eligible student to the institution is correct; and

(iii) Shall ensure that the student reports his or her correct social security number to the Secretary if the correct social security number differs from the social security number previously reported by the student to the Secretary.

(4) If a student fails to submit the documentation by the deadline established in accordance with paragraph (d)(3)(i) of this section, the institution need not disburse to the student, or certify the student as eligible

for, any title IV, HEA program funds for that period of enrollment or award year; employ the student under the FWS Program; certify a Federal Stafford, or Federal PLUS; or originate a William D. Ford Federal Direct Loan for the student for that period of enrollment.

(5) If the Secretary determines that the social security number provided to an institution by a student is incorrect, and the institution has not made a determination under paragraph (d)(3) of this section, and a loan has been guaranteed for the student under FFEL Program, the institution shall notify and instruct the lender and guaranty agency making and guaranteeing the loan, respectively, to cease further disbursements of the loan, until the Secretary or the institution determines that the social security number provided by the student is correct, but the guaranty may not be voided or otherwise nullified with respect to disbursements made before the date that the lender and the guaranty agency receive the notice.

(6) Nothing in this section permits the Secretary to take any compliance, disallowance, penalty or other regulatory action against—

(i) Any institution of higher education with respect to any error in a social security number, unless the error was the result of fraud on the part of the institution; or

(ii) Any student with respect to any error in a social security number, unless the error was a result of fraud on the part of the student; and

(e) *Statement of Educational Purpose.* Has filed a Statement of Educational Purpose with the institution, or under the FFEL Program, with the lender, in accordance with instructions of the Secretary.

(Authority: 20 U.S.C. 1091)

§ 668.34 Student debts under the HEA and to the U.S.

(a) Except as provided under paragraphs (b) through (g) of this section, a student is ineligible to receive title IV, HEA program funds if the student—

(1) Is in default on a loan made under a title IV, HEA loan program;

(2) Has inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeded the annual or aggregate loan limits under that program;

(3) Received a grant or loan overpayment under a title IV, HEA grant program; or

(4) Has property subject to a judgment lien for a debt owed to the United States.

(b) A student who is in default on a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program funds if the student—

(1) Repays the loan in full; or

(2)(i) Makes at least six consecutive monthly payments on the defaulted loan; and

(ii) Makes arrangements, satisfactory to the holder of the loan, to repay the loan balance.

(c) A student who is not in default on a loan made under a title IV, HEA loan program but has inadvertently obtained loan funds under a title IV, HEA loan program in an amount that exceeded the annual or aggregate loan limits under that program may nevertheless be eligible to receive title IV, HEA program funds if the student—

(1) Repays in full the excess loan amount; or

(2) Makes arrangements, satisfactory to the holder of the loan, to repay that excess loan amount.

(d)(1) A student who receives a grant or loan overpayment under a title IV, HEA program may nevertheless be eligible to receive title IV, HEA program funds if the student—

(i) Pays the overpayment in full; or

(ii) Makes arrangements, satisfactory to the institution, to pay the overpayment.

(2) If a student's grant or loan payments exceed the amount he or she is eligible to receive, he or she has received a grant or loan overpayment.

(e) A student who has property subject to a judgment lien for a debt owed to the United States may nevertheless be eligible to receive title IV, HEA program funds if the student—

(1) Pays the debt in full; or

(2) Makes arrangements, satisfactory to the United States, to pay the debt.

(f)(1) The Secretary considers that a student does not receive a Federal Pell Grant overpayment during an award year if the institution can eliminate that overpayment by adjusting subsequent Federal Pell Grant payments in the same award year.

(2) The Secretary considers that a student does not receive a Federal Perkins Loan, FSEOG or SSIG overpayment during an award year if the institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant) disbursements in the same award year.

(g) A student who otherwise is in default on a loan made under a title IV, HEA loan program or who otherwise owes an overpayment on a title IV, HEA program grant or loan is not considered to be in default or owe an overpayment if the student—

(1) Obtains a judicial determination that the debt has been discharged or is dischargeable in bankruptcy; or

(2) Demonstrates to the holder of the debt that—

(i) When the student filed the petition for bankruptcy relief, the loan, or demand for the payment of the grant overpayment, had been outstanding for the period required under 11 U.S.C. 523(a)(8)(A), exclusive of applicable suspensions of the repayment period for either debt of the kind defined in 34 CFR 682.402(m); and

(ii) The debt is otherwise qualifies for discharge under applicable bankruptcy law.

(Authority: 20 U.S.C. 1091 and 11 U.S.C. 523 and 525)

§ 668.35 Program-specific requirements.

A student is eligible to receive assistance under the campus-based, FFEL, William D. Ford Federal Direct Loan, and Federal Pell Grant programs if the student has financial need, if applicable, and otherwise meets the student eligibility requirements of—

(a) For purposes of the Federal Perkins Loan Program, 34 CFR 674.9;

(b) For purposes of the FWS Program, 34 CFR 675.9;

(c) For purposes of the FSEOG Program, 34 CFR 676.9;

(d) For purposes of the FFEL Program, 34 CFR 682.201;

(e) For purposes of the William D. Ford Federal Direct Loan Programs, 34 CFR 685.200;

(f) For purposes of the Federal Pell Grant Program, 34 CFR 690.75; or

(g) For purposes of the SSIG Program, 34 CFR 692.40.

(Authority: 20 U.S.C. 1091)

§ 668.36 Selective Service notification, administrative review, and liability.

(a) *General.* Before denying aid to any student under any title IV, HEA program who is required by law to register with the Selective Service, but fails to do so, the institution shall inform that student in writing that he or she will be denied title IV, HEA program assistance.

(b) *Selective Service notification.* (1) A student notified under paragraph (a) of this section who has not registered, although required to do so, may establish his eligibility for title IV, HEA program assistance for the award year in which he was notified under paragraph (a) of this section by registering with Selective Service before the end of that award year.

(2) A student notified under paragraph (a) of this section who is not required to register with the Selective Service may establish his or her eligibility for title IV, HEA program

assistance for the award year in which he was notified under paragraph (a) of this section by providing evidence of exemption within 30 days of the receipt of the notice or the end of the same award year, whichever is later.

(c) *Administrative review.* (1) A student who is required to register with Selective Service, claims that he is registered with Selective Service, and has been denied title IV, HEA program assistance because he has not proven to the satisfaction of the institution that he has complied with that requirement, may seek a hearing from the Secretary by filing a request in writing with the Secretary. The student must submit with that request—

(i) A statement that he is in compliance with registration requirements;

(ii) A concise statement of the reasons why he has not been able to prove that he is in compliance with those requirements; and

(iii) Copies of all material that he has already supplied to the institution to verify his compliance.

(2) The Secretary provides an opportunity for a hearing to a student who—

(i) Asserts that he is in compliance with registration requirements; and

(ii) Files a written request for a hearing in accordance with paragraph (c)(1) of this section within the award year for which he was denied title IV, HEA program assistance or within 30 days following the end of the payment period, whichever is later.

(3) An official designated by the Secretary shall conduct any hearing held under paragraph (c)(2) of this section. The sole purpose of this hearing is the determination of compliance with registration requirements. At this hearing, the student retains the burden of proving compliance, by credible evidence, with the requirements of the Military Selective Service Act. The designated official may not consider challenges based on constitutional or other grounds to the requirements that a student state and verify, if required, compliance with registration requirements, or to those registration requirements themselves.

(4) Any determination of compliance made under this section is final unless reopened by the Secretary and revised on the basis of additional evidence.

(5) Any determination of compliance made under this section is binding only for purposes of determining eligibility for title IV, HEA program assistance.

(d) *Liability.* An institution is liable for any title IV aid provided to a student who was required to register, but who was not registered, if—

(1) The institution made its determination that the student was not required to register on the basis of ambiguous information regarding his status under registration law; or

(2)(i) The institution had conflicting information about whether the student was required to register; and

(ii) Its determination that the student was not required to register was not reasonable in the light of all available information.

(Authority: 50 U.S.C. App. 462)

9. Section 668.133 is amended by revising paragraph (b) to read as follows:

§ 668.133 Conditions under which an institution shall require documentation and request secondary confirmation.

* * * * *

(b) *Exclusions from secondary confirmation.* (1) An institution may not require the student to produce the documentation requested under § 668.33(a)(3) and may not request that INS perform secondary confirmation, if—

(i) The student demonstrates eligibility under the provisions of § 668.33(a)(4); and

(ii) The institution does not have conflicting documentation or reason to believe that the student's claim of eligible noncitizen status is incorrect.

(2) An institution receiving documentation required under § 668.33(a)(3) from a student need not request that INS perform secondary confirmation for that student, if—

(i) The documents submitted by the student are identical to documents received by the institution in a previous award year and for which secondary confirmation was performed;

(ii) Based on the results of secondary confirmation, the institution determined the student to be an eligible noncitizen for a previous award year; and

(iii) The institution does not have conflicting documentation or reason to believe that the student's claim of eligible noncitizen status for the current award year is incorrect.

* * * * *

10. Section 668.164 is amended by revising paragraph (a) to read as follows:

§ 668.164 Maintaining funds.

(a) *General.* (1) The requirements in this section apply only to title IV, HEA program funds an institution receives under the campus-based, William D. Ford Federal Direct Loan, Federal Pell Grant, and SSIG programs. An institution that receives FFEL program funds through electronic funds transfer or by master check must maintain those funds as provided under 34 CFR 682.207(b).

(2)(i) Except as provided in paragraph (e) of this section, an institution is not required to maintain a separate account for title IV, HEA program funds. For funds an institution receives under the campus-based, William D. Ford Federal Direct Student Loan, Federal Pell Grant, and SSIG programs, an institution must maintain a bank account that meets the requirements under paragraphs (b) or (c) of this section. In establishing the bank account, an institution must—

(ii) Ensure that the name of the account discloses clearly that Federal funds are maintained in that account; or

(iii)(A) Notify the bank of the accounts that contain Federal funds and retain a record of that notice in its recordkeeping system; and

(B) Except for an institution that is backed by the full faith and credit of a State, file with the appropriate State or municipal government entity a UCC-1 statement disclosing that the account contains Federal funds and maintain a copy of that statement in its records.

* * * * *

11. Section 668.165 is amended by revising paragraph (b)(1); by removing the word "and" at the end of paragraph (b)(3)(iv)(A); by removing the period at the end of paragraph (b)(3)(iv)(B) and adding in its place "; and"; and by adding new paragraph (b)(3)(iv)(C) to read as follows:

§ 668.165 Disbursing funds.

* * * * *

(b) *Crediting a student's account—(1) General.* In crediting the student's account with title IV, HEA program funds, the institution may apply those funds only to allowable charges described under paragraph (b)(3) of this section. An institution must notify expeditiously a student or parent borrower, in writing, electronically, or by other means that the institution has credited the student's account with FFEL or William D. Ford Federal Direct Loan program funds.

* * * * *

(3) * * *

(iv) * * *

(C) Provided that a student has or will have a title IV, HEA credit balance as determined under paragraph (b)(2) of this section, minor institutional charges assessed the student in a prior award year or period of enrollment. For purposes of this paragraph, minor institutional charges are limited to an amount that does not, or will not, monetarily impair the student from paying for his or her room, board, transportation, or other education-related expenses.

* * * * *

§ 668.1 [Amended]

12. In § 668.1, paragraph (c)(11), remove “FDSL” and add in its place “William D. Ford Federal Direct Loan Programs”.

§ 668.2 [Amended]

13. In § 668.2, paragraph (b) in the definitions of “Federal Direct PLUS loan” and “Federal Direct Stafford loan” remove “Federal Direct Student Program” and add in its place “William D. Ford Federal Direct Loan Programs”; in the definition of “Federal Direct Student loan” remove “Federal Direct Student loan” and add in its place “William D. Ford Federal Direct loan”; and in the definition of “Federal Direct Student Loan (FDSL) program” remove “Federal Direct Student Loan (FDSL) program” and add in its place “William D. Ford Federal Direct Loan Programs”; and remove the definition of “Income Contingent Loan (ICL) program”.

§ 668.13 [Amended]

14. In § 668.13, paragraph (a)(4)(i) remove “Federal Pell Grant Program, the campus-based programs, the FDSL program, or the Federal Stafford Loan, Federal SLS, or Federal PLUS Program” and add in its place “campus-based programs, the Federal Stafford Loan, Federal PLUS programs, the William D. Ford Federal Direct Loan Programs, or the Federal Pell Grant Program”.

§ 668.21 [Amended]

15. In § 668.21, in the heading and in paragraph (a)(1), respectively, remove “Pell Grant, SEOG, ICL, and Perkins Loan” and add in its place “Federal Perkins Loan, FSEOG, and Federal Pell Grant”.

§ 668.22 [Amended]

16. In § 668.22, paragraphs (c)(2)(ii) and (g)(2)(ii)(B) remove “Federal Direct Student Loan Program” and add in its place “William D. Ford Federal Direct Loan Programs”.

§ 668.23 [Amended]

17. In § 668.23, paragraphs (a) introductory language and (c)(1)(i) remove “FDSL” and add in its place “William D. Ford Federal Direct Loan”.

§ 668.26 [Amended]

18. In § 668.26, paragraph (b)(4) remove “FDSL” and add in its place “William D. Ford Federal Direct Loan”; in paragraph (b)(6) remove “National Defense/Direct Student Loan and ICL.” and add in its place “National Defense Student Loan and Direct Loan programs”; in paragraph (d)(1) remove “or PAS Program”; in paragraph (d)(3) remove “FDSL” and “Federal Direct Student loan”, respectively, and add in

its place “William D. Ford Federal Direct Loan”, respectively; in paragraph (d)(3)(i) remove “FDSL” and add in its place “William D. Ford Federal Direct Loan”; and in paragraph (e)(1) remove “and PAS programs” and add in its place “Program”.

§ 668.43 [Amended]

19. In § 668.43, paragraph (c)(6) remove “Federal Direct Student Loan” and add in its place “William D. Ford Federal Direct Loan”.

§ 668.51 [Amended]

20. In § 668.51, paragraph (a) remove “FDSL” and add in its place “William D. Ford Federal Direct Loan”.

§ 668.52 [Amended]

21. In § 668.52, in the definition of “Student aid application” remove “Federal Direct Loan” and add in its place “William D. Ford Federal Direct Loan”.

§ 668.54 [Amended]

22. In § 668.54, paragraph (a)(2)(i) remove “Federal Pell Grant, Federal Direct Student Loan, campus-based, and Federal Stafford Loan” and add in its place “campus-based, Federal Stafford Loan, William D. Ford Federal Direct Loan, and Federal Pell Grant”.

§ 668.55 [Amended]

23. In § 668.55, paragraph (c) remove “Federal Pell Grant, campus-based, Federal Stafford Loan, or FDSL” and add in its place “campus-based, Federal Stafford Loan, William D. Ford Federal Direct Loan, or Federal Pell Grant”; in paragraphs (c)(1) and (c)(2) remove “Federal Pell Grant, campus-based, or FDSL”, respectively, and add in its place “campus-based, William D. Ford Federal Direct Loan, or Federal Pell Grant”, respectively.

§ 668.58 [Amended]

24. In § 668.58, paragraph (a)(1)(i) remove “Federal Pell Grant, campus-based, or need-based ICL” and add in its place “campus-based, or Federal Pell Grant”; in paragraph (a)(2)(i) remove “Federal Pell Grant and campus-based” and add in its place “campus-based and Federal Pell Grant”; and in paragraph (a)(2)(iii)(A) add “origination of the applicant’s” before “William”; and add “originate the” before “William”.

§ 668.59 [Amended]

25. In § 668.59, paragraph (d)(1) add “s” to “Program”.

§ 668.60 [Amended]

26. In § 668.60, paragraph (b) remove “FDSL” and add in its place “William D. Ford Federal Direct Loan”; in

paragraphs (b)(1)(i)(A) and (b)(1)(iii), respectively, remove “FDSL, or FSEOG” and add in its place “FSEOG, or William D. Ford Federal Direct Loan”, respectively; and in paragraph (d) remove “FDSL, or Federal Stafford Loan” and add in its place “Federal Stafford Loan, or William D. Ford Federal Direct Loan”.

§ 668.61 [Amended]

27. In § 668.61, paragraph (a)(2)(ii)(B) remove “Federal Pell Grant, Federal Perkins Loan, FDSL, or FSEOG” and add in its place “Federal Perkins Loan, FSEOG, William D. Ford Federal Direct Loan, or Federal Pell Grant”.

§ 668.161 [Amended]

28. In § 668.161, paragraph (a)(4) remove “Federal Pell Grant, PAS, FSEOG, Federal Perkins Loan, FWS, Direct Loan, and FFEL” and add in its place “Federal Perkins Loan, FWS, FSEOG, FFEL, William D. Ford Federal Direct Loan, and Federal Pell Grant”.

§ 668.162 [Amended]

29. In § 668.162 in the definition of “Disburse” in paragraph (1)(i) add “William D. Ford Federal” before “Direct”; in paragraph (1)(ii) remove “Direct Loan or FFEL” and add in its place “FFEL or William D. Ford Federal Direct Loan”; and in the definition of “Period of enrollment” add “William D. Ford Federal” before “Direct”.

§ 668.165 [Amended]

30. In § 668.165, paragraph (c)(2)(ii) remove “Direct Loan and FFEL” and add in its place “FFEL and William D. Ford Federal Direct Loan”; and in paragraph (c)(3) add “William D. Ford Federal” before “Direct”.

§ 668.166 [Amended]

31. In § 668.166, paragraph (b)(3) add “William D. Ford Federal” before “Direct”.

* * * * *

PART 674—FEDERAL PERKINS LOAN PROGRAM

32. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087ii and 20 U.S.C. 421-429, unless otherwise noted.

33. Section 674.2 paragraph (a) is amended by adding, in alphabetical order, “Full-time student”.

34. Section 674.2 paragraph (b) is amended by removing the definitions of “Full-time graduate or professional student” and “Full-time undergraduate student”; and by revising the definition of “Making of a loan” to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Making of a loan: When the borrower signs the promissory note and the loan funds are disbursed.

* * * * *

35. Section 674.16 is amended by revising paragraph (d) to read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(d)(1) The institution shall disburse funds to a student or the student's account in accordance with 34 CFR 668.165.

(2) The institution shall obtain the borrower's signature on a promissory note for each award year before it disburses any loan funds to the borrower under that note for that award year.

* * * * *

§ 674.17 [AMENDED]

36. Section 674.17 is amended by removing paragraph (a) and by redesignating paragraphs (b)(1), (b)(1)(i), (b)(1)(ii), (b)(1)(iii), (b)(2), (b)(3), (b)(4), (b)(4)(i), (b)(4)(ii), and (5) as paragraphs (a), (a)(1), (a)(2), (a)(3), (b), (c), (d), (d)(1), (d)(2), and (e), respectively.

37. Section 674.19 is amended by revising paragraph (e)(4)(v) to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(4) * * *

(v) An institution may keep the records required in this section on microforms, optical disk, other machine readable format, or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy, microforms, optical disk, or other machine readable format, the source documents supporting the computer input.

* * * * *

38. Section 674.31 is amended by redesignating paragraph (a)(2) as paragraph (a)(3); and by adding a new paragraph (a)(2) to read as follows:

§ 674.31 Promissory note.

* * * * *

(a) * * *

(2) The Secretary provides sample promissory notes to participating institutions. The institution may not change the substance of these sample notes.

* * * * *

§ 674.33 [Amended]

39. Section 674.33, paragraph (a)(2) is amended by removing "\$15" and adding in its place "\$25".

40. Section 674.47 is amended by revising paragraph (g) and by adding a new paragraph (h) to read as follows:

§ 674.47 Costs chargeable to the fund.

* * * * *

(g) *Cessation of collection activity of defaulted accounts.* (1) An institution may cease collection activity of a defaulted account with a balance of less than \$25, including outstanding principal, accrued interest, collection costs, and late charges.

(2) An institution that ceases collection activity under paragraph (g)(1) of this section may no longer include the amount of the account as an asset of the Fund.

(h) *Write-offs of accounts of less than \$1.* Notwithstanding any other provision in this subpart, an institution may write off an account with a balance of less than \$1, including outstanding principal, accrued interest, collection costs, and late charges.

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

41. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2571-2756b, unless otherwise noted.

§ 675.2 [Amended]

42. Section 675.2, paragraph (a) is amended by adding in alphabetical order, "Full-time student".

43. Section 675.2, paragraph (b) is amended by removing the definitions of "Full-time graduate or professional student" and "Full-time undergraduate student".

§ 675.17 [Removed]

44. Section 675.17 is removed and reserved.

45. Section 675.19 is amended by revising paragraph (c)(3) to read as follows:

§ 675.19 Fiscal procedures and records.

* * * * *

(c) * * *

(3) An institution may keep the records required in this section on microforms, optical disk, other machine readable format, or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy, microforms, optical disk, or other machine readable format, the source

documents supporting the computer input.

* * * * *

Appendix B to Part 675—[Removed]

46. Appendix B to part 675—Model Off-Campus Agreement is removed.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

47. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b-1070-3, unless otherwise noted.

§ 676.2 [Amended]

48. Section 676.2, paragraph (a) is amended by adding in alphabetical order, "Full-time student".

49. Section 676.2, paragraph (b) is amended by removing the definition of "Full-time undergraduate student".

§ 676.17 [Removed]

50. Section 676.17 is removed and reserved.

51. Section 676.19 is amended by revising paragraph (c)(3) to read as follows:

§ 676.19 Fiscal procedures and records.

* * * * *

(c) * * *

(3) An institution may keep the records required in this section on microforms, optical disk, other machine readable format, or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy, microforms, optical disk, or other machine readable format, the source documents supporting the computer input.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

52. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

53. Section 682.201, paragraph (b) is amended by redesignating paragraphs (b)(1) through (b)(8) as paragraphs (b)(1)(i) through (b)(1)(viii), respectively; by redesignating the introductory sentence as paragraph (b)(1); and by adding a new paragraph (b)(2) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(b) * * *

(2) For purposes of paragraph (b)(1) of this section, a "parent" includes the

individuals described in the definition of the term "parent" in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets are taken into account when calculating a dependent student's expected family contribution.

§ 682.600 [Removed]

54. Section 682.600 is removed and reserved.

§ 682.602 [Removed]

55. Section 682.602 is removed and reserved.

56. A new § 682.611 is added to read as follows:

§ 682.611 Foreign schools.

A foreign school shall comply with the regulations in this part except to the extent that the Secretary states in these regulations or in other official publications or documents that those schools do not have to comply.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1078-3, 1082, 1088, and 1094)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAMS

57. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1078a *et seq.*, unless otherwise noted.

58. Section 685.200, paragraph (b) is amended by redesignating paragraphs (b)(1) through (b)(7) as paragraphs (b)(1)(i) through (b)(1)(vii), respectively; by redesignating the introductory sentence as paragraph (b)(1); and by adding a new paragraph (b)(2) to read as follows:

§ 685.200 Borrower eligibility.

* * * * *

(b) * * *

(2) For purposes of paragraph (b)(1) of this section, a "parent" includes the individuals described in the definition of the term "parent" in 34 CFR 668.2 and the spouse of a parent who remarried, if that spouse's income and assets are taken into account when calculating a dependent student's expected family contribution.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

59. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

§ 690.7 [Amended]

60. Section 690.7, paragraph (a)(1) is removed and paragraph (a)(2) is redesignated as paragraph (a).

§ 690.71 [Amended]

61. Section 690.71 is amended by removing the second sentence.

§§ 690.72, 690.73, 690.74 [Removed]

62. Sections 690.72, 690.73, and 690.74 are removed and reserved.

§ 690.83 [Amended]

63. Section 690.83 is amended by removing paragraph (c); by redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively; by removing in redesignated paragraph (c), "paragraphs (a), (b) or (c) of this section" and adding, in its place, "paragraphs (a) or (b) of this section"; and by removing in redesignated paragraph (d)(1), "Notwithstanding paragraphs (a), (b), (c)(1) or (2), or (d) of this section" and adding, in its place, "Notwithstanding paragraphs (a), (b), or (c) of this section"; by removing in redesignated paragraph (d)(1) "(e)" and adding, in its place, "(d)"; by adding in redesignated paragraph (d)(2) "or program review," after "34 CFR 668.23(c).", and "or program review" after "audit" in the last sentence.

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