

**DEPARTMENT OF EDUCATION****34 CFR Parts 668, 690, and 691**

RIN 1840-AC86

**Student Assistance General Provisions; Federal Pell Grant Program; Academic Competitiveness Grant Program; and National Science and Mathematics Access to Retain Talent Grant Program****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary is adopting as final, with changes, interim final regulations in: 34 CFR part 691 for the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs; 34 CFR part 668 (Student Assistance General Provisions); and 34 CFR part 690 (Federal Pell Grant Program). These final regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Reconciliation Act of 2005 (HERA), Pub. L. 109-171, enacted on February 8, 2006, 20 U.S.C. 1070a-1.

These final regulations for the ACG and National SMART Grant programs specify the eligibility requirements for a student to apply for and receive an award under these programs for the 2007-2008 award year. For regulations that will take effect for the 2008-2009 award year and subsequent award years, the Secretary intends to conduct negotiated rulemaking, as required under section 492 of the HEA.

**DATES: Effective Date:** These final regulations are effective July 1, 2007.

**Implementation Date:** The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA (20 U.S.C. 1089(c)(2)(A)), that institutions of higher education (institutions), State educational agencies (SEAs), and local educational agencies (LEAs) that administer title IV, HEA programs may, at their discretion, choose to implement all of the provisions of these final regulations on or after November 1, 2006, including for the 2006-2007 award year. For further information, see "Implementation Date of These Regulations" under the **SUPPLEMENTARY INFORMATION** section of this preamble.

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**SUPPLEMENTARY INFORMATION:** On July 3, 2006, the Secretary published interim final regulations (71 FR 37990) implementing the ACG and National SMART Grant programs added to the HEA by the HERA. The interim final regulations were effective on August 2, 2006. At the time the interim final regulations were published, the Secretary requested public comment on whether changes to the regulations were warranted.

The July 3, 2006, interim final regulations included a discussion of the major issues covered by the regulations. The following list summarizes those issues and identifies the pages of the preamble to the July 3, 2006, interim final regulations on which a discussion of those issues can be found:

The Secretary repeated in the ACG and National SMART Grant regulations several definitions and sections from the Federal Pell Grant Program regulations (71 FR 37990-37991).

The Secretary specified that only students who are United States citizens are eligible to receive ACG and National SMART Grants (71 FR 37991).

The Secretary detailed the requirements for institutions to follow when resolving overpayments to students under the ACG and National SMART Grant programs (71 FR 37991).

The Secretary defined *eligible major* for purposes of the National SMART Grant Program (71 FR 37991).

The Secretary defined *eligible program* for the ACG and National SMART Grant programs (71 FR 37991).

The Secretary specified the duration of student eligibility for the ACG and National SMART Grant programs by academic year (71 FR 37991).

The Secretary delineated the institutional participation requirements, including a requirement that an institution that participates in the Federal Pell Grant Program and offers an educational program that is an eligible program for the ACG or National SMART Grant programs, must participate in the ACG and National SMART Grant programs (71 FR 37992).

The Secretary specified the circumstances under which correspondence courses may be applied toward a student's full-time enrollment status in a noncorrespondence study program (71 FR 37992).

The Secretary delineated the requirements for a student to attend more than one institution and receive an ACG or National SMART Grant (71 FR 37992).

The Secretary specified the procedures that a student must follow when applying for an ACG or National SMART Grant (71 FR 37992).

The Secretary set forth the ACG and National SMART Grant general student eligibility requirements (71 FR 37992).

The Secretary specified the application of an academic year to a student's eligibility for an ACG and National SMART Grant (71 FR 37992).

The Secretary provided the grade point average (GPA) requirements for receiving an ACG or National SMART Grant (71 FR 37993).

The Secretary provided the circumstances under which a student is not eligible for an ACG in the student's first academic year of enrollment if the student previously enrolled in a program of undergraduate education (71 FR 37993-37994).

The Secretary specified the institutional requirements for documenting a student's completion of a rigorous secondary school program of study (71 FR 37994-37995).

The Secretary stated the student requirements for declaring an eligible major in order to be eligible for a National SMART Grant (71 FR 37994).

The Secretary provided guidelines for recognizing a rigorous secondary school program of study for ACG eligibility (71 FR 37994).

The Secretary delineated how eligible majors will be determined and their duration for the National SMART Grant Program (71 FR 37995).

The Secretary specified how the maximum ACG and National SMART Grants will be determined each year (71 FR 37995-37996).

The Secretary stipulated how ACG and National SMART Grant funds are treated in relation to other aid received (71 FR 37996).

The Secretary detailed how an institution calculates an ACG or National SMART Grant payment for a payment period (71 FR 37996).

The Secretary specified how an institution calculates an ACG or National SMART Grant payment for a student who transfers from another institution (71 FR 37996).

The Secretary detailed the requirements that govern an

institution's determination of a student's eligibility for a disbursement of an ACG or National SMART Grant, including provisions regarding changes in a student's GPA, payment prior to receipt of a GPA, payments for nonterm self-paced programs, and, for National SMART Grants, changes to a student's major (71 FR 37996–37997).

The Secretary specified how often an institution may pay a student (71 FR 37997).

**Implementation Date of These Regulations:** Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulations that an entity subject to the regulations may choose to implement earlier and the conditions under which the entity may implement the provisions early. The Secretary is using the authority granted to her under section 482(c) to designate all of the regulations included in this document for early implementation, beginning with the 2006–2007 award year, at the discretion of each institution, SEA, and LEA.

#### Analysis of Comments and Changes

The regulations in this document were developed through the analysis of comments received on the interim final regulations published on July 3, 2006. The Secretary invited comments on the interim final regulations, and we received 80 comments.

An analysis of the comments and of the changes in the regulations since publication of the interim final regulations follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes.

#### General Comments

**Comments:** One commenter was concerned that the ACG and National SMART Grant program requirements would intrude on the academic policies of institutions with regard to credit accrual, calculation of GPA, determinations of academic progress, the treatment of transferred credits, and academic year standing. The commenter believed that permitting institutions to follow current business processes and practices would be in accord with current delivery systems and be clear to students.

**Discussion:** The Secretary has no intention of interfering with institutions' academic policies and

administration. Many of the program requirements about which the commenter is concerned are required by the HEA. The program requirements in the regulations are necessary to deliver ACGs and National SMART Grants to students and do not mandate any changes in institutional academic policies or administration.

**Changes:** None.

#### Section 691.2 Definitions

**Comments:** Several commenters believed that the term *Scheduled Award* is inappropriately applied to the ACG and National SMART Grant programs. The commenters believed that the term is confusing because the term relates to award year eligibility for Federal Pell Grants, which are payable for part-time enrollment, but is being applied to academic year eligibility for ACGs and National SMART Grants, which are payable for full-time enrollment only. Some commenters acknowledged the Secretary's need for a term that could be applied if the grants were subject to ratable reduction, but suggested that the Secretary use a different term. Others believed that the term would introduce unnecessary complexity into the ratable reduction process.

**Discussion:** The Secretary believes that it is prudent to keep the ACG and National SMART Grant programs as similar to the Federal Pell Grant Program as possible within the constraints of the law. The Secretary believes the term *Scheduled Award* is appropriately applied to all three programs, as it refers to the amount a full-time student can be awarded for a full academic year, as in the Federal Pell Grant Program. Also, the term is appropriate as funds are allocated by award year, and the Secretary establishes the maximum *Scheduled Award* for that award year. Because the programs require only full-time enrollment as an eligibility criterion, there will not be Payment and Disbursement Schedules published as there are for the Federal Pell Grant Program, but the concept of *Scheduled Award* does apply with regard to such issues as remaining eligibility for transfer students and ratable reductions.

**Changes:** None.

**Comments:** Several commenters believed that it was unclear whether proprietary institutions could participate in the ACG and National SMART Grant programs.

**Discussion:** Under the regulations, an otherwise eligible proprietary institution that offers an *eligible program* as defined in § 691.2 may participate in the ACG and National SMART Grant programs. Section 691.2

specifies that these regulations use the definition of *eligible institution* in 34 CFR part 600. This definition includes institutions of higher education, as defined in § 600.4; proprietary institutions, as defined in § 600.5; and postsecondary vocational institutions, as defined in § 600.6.

**Changes:** None.

**Comments:** Several commenters believed that title IV-eligible certificate programs should be included in the definition of an *eligible program*. The commenters argued that, while the law provides that a student must be enrolled or accepted for enrollment in a two- or four-year degree granting institution to be eligible for an ACG, or in a four-year degree granting institution to be eligible for a National SMART Grant, it does not prohibit a student from receiving an ACG or National SMART Grant for attending a certificate program offered by such a degree-granting institution. Many commenters asserted that certificate programs are just as important, if not more important, than degree programs to the future economic growth of States and the nation, and the students just as deserving of these grants as those enrolled in degree programs. In addition, the commenters asserted that many certificate programs attract the same caliber of students as those enrolled in degree programs. Several commenters noted that many students who initially seek certificates subsequently transfer into degree programs. A few commenters suggested including in the definition of *eligible program* certificate programs that are fully transferable into baccalaureate degree programs and certificate programs that are fully acceptable for credit toward an associate's degree. One commenter believed that, if certificate programs were not considered eligible outright, then the definition of an *eligible program* should include one-year programs that are fully acceptable for credit toward an associate's degree. The commenter asserted that, as with a two-year program that is fully acceptable for credit toward a bachelor's degree, the end result is an acceptable two- or four-year degree. One commenter noted that the Department's position is counter to the longstanding policy permitting an institution to designate a program as eligible for all title IV programs.

Several commenters supported including in the definition of an *eligible program* graduate degree programs that include at least three academic years of undergraduate education. One commenter asked the Secretary to clarify a student's eligibility for a National SMART Grant if the student's

status has changed to graduate student because he or she is in the fourth year of a graduate program that contains at least three undergraduate years. One commenter believed that the definition of an *eligible program* should not include a graduate degree program that includes at least three academic years of undergraduate education. The commenter noted that this interpretation appears broader than the requirements for Federal Pell Grant eligibility for programs that include a fifth year that counts toward a graduate degree program, primarily education certification. The commenter suggested that the regulations reference § 668.8, which defines an *eligible program* for other title IV, HEA eligibility.

*Discussion:* The Secretary has determined that because the HEA limits eligibility to a student enrolled or accepted for enrollment in a two- or four-year degree-granting institution, eligibility must be limited to two- or four-year degree programs, as defined in § 691.2. Therefore, certificate programs do not qualify as eligible programs for ACGs. However, a student in a two-academic-year program acceptable for full credit toward a bachelor's degree may qualify, provided he or she meets other eligibility criteria. Because only students attending four-year institutions are eligible for National SMART Grants and a student must be enrolled in the third and fourth academic years to be eligible, the Secretary believes that a student must be enrolled in at least a bachelor's degree program to be eligible for a National SMART Grant.

Section 401A(c)(3)(C) of the HEA, in defining the term *eligible student*, refers to a student enrolled or accepted for enrollment in specific years of a program of undergraduate education. Although a graduate degree program that includes at least three years of undergraduate education may be an eligible program for ACG and National SMART Grant purposes, under section 401A(c) of the HEA, a student enrolled in such a program is eligible for an ACG or National SMART Grant only while the institution considers the student to be an undergraduate student in accordance with the definition of *undergraduate student* in § 691.2. Once a student is considered to be a graduate student, the student is no longer eligible for a National SMART Grant.

With respect to the definition of an *eligible program*, it is important to define eligibility for students enrolled in a program that leads directly to a graduate degree without first awarding a bachelor's degree. Students enrolled in these programs have a period of undergraduate work for which they

should be eligible for ACG and National SMART Grant funds notwithstanding the fact that the programs are structured differently than the typical separate degree programs for undergraduate and graduate programs. For programs that start at the undergraduate level and lead directly to a graduate degree without defining when the student is considered an undergraduate and graduate student, the definition in § 691.5 allows eligible students to receive the appropriate funds from these two grant programs.

*Changes:* None.

#### *Section 691.6 Duration of Student Eligibility—Undergraduate Course of Study*

*Comments:* Many commenters objected to the Department's decision to base the duration of eligibility on an academic year as defined for purposes of the title IV, HEA programs, as measured in weeks of instructional time and, for undergraduate programs, credit or clock hours. These commenters stated that using the title IV, HEA definition of *academic year* was administratively burdensome and unworkable. Some commenters found the definition of *academic year* in part 691 to be inconsistent with other uses of the term in administering title IV, HEA programs. One commenter believed that only the credit hour portion of the definition of *academic year* should be used. Commenters also were concerned that a student's title IV, HEA academic year may not match the student's grade level used in the other title IV, HEA programs such as the FFEL and Direct Loan programs. The commenters recommended that the Secretary rely on grade level progression as in the FFEL and Direct Loan programs to determine the first, second, third, or fourth year of a student's enrollment.

*Discussion:* Under section 401A(c)(3) of the HEA, a student is eligible for an ACG in the student's "first academic year of a program of undergraduate education" and "second academic year of a program of undergraduate education" and for a National SMART Grant in the "third or fourth academic year of a program of undergraduate education." The term *academic year* is defined in section 481(a)(2) of the HEA as amended by the HERA and explicitly applies to all title IV, HEA programs. The definition provides that an academic year contains a minimum number of weeks of instructional time and a minimum number of credit or clock hours. The Secretary has no flexibility to deviate from this defined term.

Contrary to the assertions of some commenters, the Secretary believes that the interpretation of the term *academic year* in the regulations is not inconsistent with other title IV uses of the term. For example, the HEA provisions governing loan limits provide greater flexibility in this regard than does section 401A for ACGs and National SMART Grants. Specifically, section 428(b)(1)(A) of the HEA sets loan limits based on whether the student has "successfully completed" a "year" of a program of undergraduate education. The Secretary has interpreted the term "successfully completed the first year of a program of undergraduate education" in section 428 to relate to a student's grade level, as determined by the institution. The Secretary did not, in so doing, interpret the term *academic year* as referring to the borrower's year in college. Instead, the Secretary interpreted the entirely different phrase "first year." The Secretary has no flexibility to interpret section 401A in a similar fashion, because, unlike section 428, section 401A specifically uses the statutorily defined term *academic year*. The Secretary cannot limit the definition to the credit hour provisions, as was suggested by the commenters, because the statutory definition of *academic year* requires a minimum number of weeks of instructional time, in addition to the completion of a minimum number of credit or clock hours.

*Changes:* None.

*Comments:* Some commenters were concerned with the effect previous enrollment in eligible programs at other institutions and the amount of transfer credits accepted would have on a student's academic progression. One commenter questioned whether academic progression was based on attendance in each eligible program separately, or on the student's attendance in all eligible programs at any institution. Another commenter thought institutions should be allowed to count the credits that are being accepted for a transfer student in the same way credits are counted for other programs, rather than trying to monitor previous credits differently for ACGs and National SMART Grants.

*Discussion:* For purposes of ACGs and National SMART Grants, a student's academic progression is not based on the student's enrollment in each eligible program separately, but rather is based on all eligible programs in which a student has enrolled over the course of the student's undergraduate education. An institution is responsible for determining whether any previous enrollment by a student as measured in

weeks of instructional time and hours affects the student's eligibility for an academic year. If the student previously received an ACG or National SMART Grant for an academic year, or a portion of an academic year, an institution must consider the student to have completed an eligible program through that academic year, or that portion of an academic year, in weeks of instructional time and hours, unless the institution has information to the contrary. For example, if an institution accepts a transfer student who has received a first-year ACG Scheduled Award, the institution must consider the student to have completed his or her first year of ACG eligibility regardless of the number of transfer credits the institution accepts. To the extent a determination does not conflict with information related to grants previously received, when determining the appropriate academic year for a transfer student, the institution may rely on the transfer credits accepted, along with the estimated number of weeks of instructional time completed in proportion to the academic year of the student's eligible program at the institution to which the student transferred.

*Changes:* The Secretary has amended § 691.6(a) and (b) to clarify that a student's academic year progression is based on attendance in all eligible programs in which the student has enrolled over the course of the student's undergraduate education.

*Comments:* Several commenters were concerned with the treatment of Advanced Placement (AP) and International Baccalaureate (IB) credits and transfer credits. One commenter sought clarification of the treatment of AP and IB credits in relation to the requirement that a student must successfully complete the hours of an academic year along with the weeks of instructional time to progress to the next academic year. Some commenters were concerned that including AP and IB credits, along with transfer credits earned while enrolled in high school, would discourage students from taking these courses in high school if they resulted in a student being denied eligibility for a grant.

*Discussion:* AP or IB credits accepted toward a student's eligible program count toward the completion of the hours of an academic year. Because AP and IB credits are earned based on secondary school courses and subsequent tests, there are no weeks of instructional time in postsecondary education associated with these credits. A student must successfully complete both measures of an academic year to

progress to the next academic year. A student who entered college with 24 semester hours of AP credits toward an eligible program may be starting to earn hours toward completing the second academic year but would still be in the first academic year because, for purposes of an ACG or National SMART Grant, no weeks of instructional time while enrolled in an eligible program would have elapsed. Similarly, a student who entered college with 24 semester hours earned as a nonregular student in an undergraduate program while enrolled in high school, or possibly after high school, would also be in the position of starting to earn the second academic year of credits but would still be in the first academic year, because, for purposes of an ACG or National SMART Grant, no weeks of instructional time while enrolled in an eligible program would have elapsed. As a result, students will not be discouraged from enrolling in AP or IB courses in high school or in college courses as a nonregular student while in high school because doing so would not affect their eligibility for an ACG or National SMART Grant.

*Changes:* None.

*Comment:* One commenter recommended that "grade level" be determined once at the beginning of each award year and that the student maintain that level of eligibility for the year as long as the student is full-time.

*Discussion:* The Secretary does not agree that the regulations should be changed. Although a single annual determination may simplify the programs' administration, it would deny an otherwise eligible student an additional grant if the student progresses to another academic year during the award year and qualifies for another Scheduled Award.

*Changes:* None.

#### *Section 691.7 Institutional Participation*

*Comments:* Several commenters believed that the requirement that an institution participate in the ACG and National SMART Grant programs in order to continue its participation in the Federal Pell Grant Program is an infringement on institutional autonomy and is not supported by the statute. Commenters noted that even in the FFEL and Direct Loan programs—where, similar to the Federal Pell Grant, ACG, and National SMART Grant programs, one part of the law encompasses several programs—institutional choice of participation is allowed. Several commenters stated that it was their understanding that the longstanding policy for the title IV, HEA

programs allows an institution to designate a particular educational program as eligible for all title IV programs or only for some title IV, HEA programs and recommended that the Secretary continue this policy. With so little lead time for implementation, the commenters had concerns about the impact of the mandatory participation on an institution's administrative capability.

Several commenters objected to the exclusion of an administrative cost allowance for the ACG and National SMART Grant programs, particularly because of the administrative burden of the required rapid implementation. Some commenters believed that the Secretary was acting inconsistently by disallowing the administrative cost allowance for the ACG and National SMART Grant programs, as the Secretary apparently otherwise considers the Federal Pell Grant, ACG and National SMART Grant programs, all of which fall under subpart 1 of part A, to be conjoined, and section 489(a) of the HEA requires the Secretary to pay an administrative cost allowance "equal to \$5 for each student at that institution who receives assistance under subpart 1 of part A."

*Discussion:* The Secretary believes that requiring an institution to participate in the ACG and National SMART Grant programs in order to participate in the Federal Pell Grant Program when eligible programs are offered at the institution is consistent with the statute's requirement that the Secretary award grants to Pell-eligible students. The Secretary believes that Congress intended that financially needy students receive all of the grants to which they are entitled under the HEA. Requiring institutional participation, thus, assures that students otherwise eligible for ACGs and National SMART Grants receive their awards.

The Secretary believes that the mandatory participation in the Federal Pell Grant, ACG, and National SMART Grant programs is distinguishable from the flexibility given to institutions to choose whether to participate in the FFEL or Direct Loan Programs because needy students may be eligible for both a Federal Pell Grant and an ACG or a National SMART Grant concurrently, while students may only obtain loans under either the FFEL program or Direct Loan program during a term.

Under the HEA, an institution receives an administrative cost allowance for each student receiving a Federal Pell Grant. Because students receiving ACGs and National SMART Grants are receiving Federal Pell Grants,

the institution does not receive an additional administrative cost allowance.

*Changes:* None.

**Section 691.11 Payments From More Than One Institution**

*Comments:* Two commenters disagreed with the requirement that the same school disburse Federal Pell Grant funds and ACG and National SMART Grant funds when a student is attending more than one institution under a written agreement.

*Discussion:* The Secretary believes that it is appropriate to require that the same institution that administers a student's ACG or SMART Grant award administer the student's Federal Pell Grant award, because the programs are related in many ways. Several requirements related to the administration of the Federal Pell Grant Program and the ACG and National SMART Grant programs necessitate that the same institution disburse funds from these programs.

Requirements such as that a student receive a Federal Pell Grant disbursement in the same award year in which the student receives an ACG or National SMART Grant, the requirement that an institution pay only on the transaction that is the valid institutional student information record (ISIR) (and only the institution paying the Federal Pell Grant will know which ISIR is the valid one), and the requirements related to reporting of verification records for the Federal Pell Grant Program make this choice necessary. The Secretary is aware that there may be a few situations in which a student is attending more than one institution under a written agreement. However, based on these factors, in the very limited circumstances in which different institutions would choose to administer and disburse funds from different title IV, HEA programs, the regulations under this section appropriately mandate that the institution that chooses to disburse Federal Pell Grant Program funds must also disburse the ACG and National SMART Grant funds.

*Changes:* None.

**Section 691.12 Application**

*Comments:* Several commenters recommended that the 2007–2008 Free Application for Federal Student Aid (FAFSA) should request the information for a student to self-identify that he or she has successfully completed a rigorous secondary school program of study as provided for in § 691.12(b)(2).

*Discussion:* The Secretary agrees that this information should be included on the FAFSA to the extent practicable.

The 2007–2008 electronic FAFSA form (FAFSA on the Web) collects this information, and students are able to provide the necessary information as a part of the application. More than 90 percent of all students apply electronically using FAFSA on the Web or through their institutions. The small minority of applicants using a paper FAFSA currently receive notification by mail or, if an e-mail address is provided, an e-mail that the student may call a toll-free telephone number or go to a web site to provide the necessary information. The 2007–2008 FAFSA has already been approved by OMB under the Paperwork Reduction Act, but we will consider future improvements to the paper FAFSA during the next clearance cycle.

*Changes:* None.

*Comments:* Two commenters recommended that the regulations clarify that an institution has the authority to request additional application information, similar to the Secretary's authority.

*Discussion:* Under section 483(a) of the HEA only the Secretary has the authority to require a student to provide information concerning the student's need and eligibility for the title IV, HEA programs, and the Secretary is required to collect the student's information on the FAFSA. Institutions may not use any additional application data collection beyond the FAFSA to determine a student's title IV eligibility. However, an institution does have the authority under 34 CFR 668.16(f) and 668.54(a)(3) of the Student Assistance General Provisions to require a student to provide any information or documentation necessary to resolve any concerns regarding a student's eligibility or application information as well as the authority to require documentation directly from a cognizant authority regarding the completion of a rigorous secondary school program of study under § 691.15(b)(2)(ii). The Secretary does not believe that these authorities need to be repeated in § 691.12.

*Changes:* None.

*Comments:* One commenter recommended that all application requirements appear only in the Federal Pell Grant regulations to eliminate the possibility of conflicting language.

*Discussion:* Section 691.12, while similar to the Federal Pell Grant Program regulations when possible, does include provisions specific only to the ACG and National SMART Grant programs. The Secretary believes that regulations specific to the ACG and National SMART Grant programs should not be included in the Federal

Pell Grant Program regulations, as it may cause confusion.

*Changes:* None.

**Section 691.15 Eligibility To Receive a Grant**

**Citizenship**

*Comments:* Several commenters objected to the requirement that students must be U.S. citizens in order to qualify for an ACG or National SMART Grant. One commenter stated that preventing permanent residents from receiving a National SMART Grant excludes from consideration more than twenty percent of Federal Pell Grant recipients who are majoring in the National SMART Grant fields of study.

*Discussion:* Section 401A(c)(1) of the HEA specifies that only U.S. citizens are eligible for ACG and National SMART Grants. The Secretary does not have the authority to change this requirement through regulations.

*Changes:* None.

**Federal Pell Grant Eligibility**

*Comments:* A number of commenters objected to the requirement that an eligible student must be receiving a Federal Pell Grant disbursement for the same payment period in which he or she will receive the ACG or National SMART Grant. They stated that the statute only requires that a student be eligible for a Federal Pell Grant, not receiving a Federal Pell Grant for the same payment period. These commenters believed that the Secretary exceeded her statutory authority and arbitrarily denied a Federal entitlement to otherwise eligible students. The commenters were especially concerned about eligibility for payment periods that cross award years, pointing out that there are various situations in which students who attend college year-round may have exhausted their Federal Pell Grant eligibility yet still have remaining eligibility for an ACG or National SMART Grant. For these Pell-eligible students who have already received a full scheduled Federal Pell Grant award, the receipt of an ACG or National SMART Grant may be of critical importance. In addition, some students attending low-cost institutions may have substantial outside scholarship assistance that reduces their need and resultant ACG or National SMART Grant during the regular fall through spring academic calendar, but may have unmet need during the summer term. Some commenters suggested that it would be more reasonable to define Federal Pell Grant eligibility for this purpose in terms of an expected family contribution (EFC) within the range for

a Federal Pell Grant award for the award year in which the payment period is placed.

*Discussion:* The Secretary agrees with the commenters that students should not have to receive a Federal Pell Grant during the same payment period to be eligible for an ACG or National SMART Grant. Rather, students who would otherwise be eligible for an ACG or National SMART Grant award but have already exhausted their Federal Pell Grant eligibility for the award year should be eligible to receive an ACG or National SMART Grant award as long as they received a Federal Pell Grant in the same award year.

*Change:* Section 691.15(a)(2) has been revised to require that a student receive a Federal Pell Grant in the same award year, rather than the same payment period, to be eligible for an ACG or National SMART Grant. The Secretary has made conforming changes in §§ 691.65(a)(2) and 691.80(a) to reflect this change in the ACG and National SMART Grant student eligibility requirements. In addition, the Secretary has also made conforming changes to Subpart E of the Student Assistance General Provisions on verification of student aid application information by amending 34 CFR 668.51, 668.52, 668.54, 668.55, 668.58, 668.59, 668.60, and 668.61. These changes are necessary to clarify that these sections apply to the ACG and National SMART Grant programs to ensure the synchronous administration of these programs.

#### Full-Time Enrollment

*Comments:* One commenter expressed concern that the ACG and National SMART Grant regulations do not serve nontraditional students. The commenter believed that assistance from these programs should be available to students who enroll less than full-time.

*Discussion:* Section 401A(c) of the HEA requires that a student must be enrolled full-time in order to be eligible to receive assistance under the ACG and National SMART Grant programs. The Secretary does not have the authority to change this requirement through regulations.

*Changes:* None.

#### Rigorous Secondary School Program of Study Eligibility

*Comments:* One commenter asked whether a student who has completed his or her secondary school coursework in December but who graduated after January 1, 2005, or 2006, is eligible for an ACG. Another commenter was concerned that students who are not of traditional college age would not be eligible for an ACG.

*Discussion:* The requirement that a student have successfully completed a rigorous secondary school program of study after January 1, 2006, for a first-year student and after January 1, 2005, for a second-year student in order to receive an ACG is in section 401A(c)(3) of the HEA. The Secretary interprets the statute as requiring a student to have graduated in order to complete a rigorous secondary school program of study. For example, if a student completed the coursework of a rigorous secondary school program in December 2005, but actually graduated from the program after January 1, 2006, the student is eligible to receive a first year ACG. Although in the early years of the ACG program eligible students will be of traditional college age, as time goes by, students who are not of traditional college age may establish eligibility provided they have completed a rigorous secondary school program of study after the dates provided in the statute.

*Changes:* None.

#### Grade Point Average

*Comments:* Several commenters claimed that how and when to compute a cumulative GPA is confusing. One commenter wanted clarification on whether GPA for the student's eligible program meant cumulative GPA, major GPA, or something else. This commenter suggested removing the reference to eligible program if the Secretary intended a cumulative GPA computation. Some commenters supported the Secretary's interpretation of the GPA calculation for National SMART Grant eligibility in § 691.15(c)(3). One commenter pointed out that, for National SMART Grants, the Secretary did not follow the language from section 401A(c)(3)(C)(ii) of the HEA, which provides that GPA is determined in the coursework required for the major, but instead required GPA to be determined for the coursework required for a student's eligible program. The commenter supported the burden reduction in this case, but objected to the regulatory approach. Another commenter believed that the GPA for ACGs should be defined the same way it is for National SMART Grants. Yet another commenter indicated that, for National SMART Grants, institutions should have the flexibility to review academic major and GPA no more frequently than is required by institutions to monitor students under their Satisfactory Academic Progress (SAP) policy, so as to align these two academically related monitoring policies.

*Discussion:* As discussed in the preamble to the interim final regulations, the Secretary believes that a student's GPA for purposes of eligibility for the ACG and National SMART Grant programs should be calculated using the same standards that are used to calculate GPA for other academic and title IV purposes at the institution. The Secretary does not believe scores on tests in AP, IB, or College Level Examination (CLEP) programs should be converted to grades for any purpose under the ACG or National SMART Grant programs. For National SMART Grants in particular, the Secretary believes that the student must meet the GPA requirement based on all courses required for the student's eligible program, not just those required for the eligible major. The Secretary believes this approach is appropriate because it minimizes institutional burden when determining whether a student meets the GPA requirement and is in accord with other title IV, HEA program requirements related to GPAs. GPA cannot be computed the same way for the ACG Program as it is for the National SMART Grant Program because section 401A(c)(3) of the HEA requires a student to meet the necessary GPA only at the end of the student's first academic year for an ACG, but throughout the student's third and fourth academic years for a National SMART Grant.

The Secretary believes that the monitoring requirements for SAP would not be adequate to determine eligibility for an ACG or National SMART Grant based on cumulative GPA. Under § 668.32(f), although a student may be making satisfactory progress according to the institution's published SAP standards under § 668.16(e), and if applicable, under § 668.34, these standards allow a student to maintain a GPA below the 3.0 (on a 4.0 scale) GPA required to be eligible for an ACG or National SMART Grant. In addition, § 668.16(e)(4) provides that an institution must determine whether a student is making satisfactory progress at the end of each increment, which must not exceed the lesser of one academic year or one-half the published length of the program. In contrast, section 401A(c)(3)(C)(ii) of the HEA requires that a student meet the GPA requirement throughout the student's third and fourth academic year. Review of a student's GPA under the standards set forth in § 668.16(e) would not ensure that a student is meeting the requirements of the National SMART Grant Program.

*Changes:* None.

## Transfer Student GPA

*Comments:* We received several comments related to the GPA of transfer students. One commenter supported the Secretary's interpretation for transfer GPA calculations. Another commenter asked for clarification on how to treat GPA in the case of transfer students who are admitted for summer and then take a 3-credit summer course. Three commenters requested an option to use the GPA earned at prior colleges as the indicator of sufficient academic performance for payment for the first term at the new college to determine eligibility for an ACG or National SMART Grant because, at many colleges, it would require a significant reengineering of the business process to calculate a GPA based solely on courses accepted toward the program. The commenters believed that cumulative GPA from other institutions should sufficiently demonstrate academic achievement. Another commenter questioned the fairness of the transfer hours GPA policy. The commenter was concerned that students who do poorly at the first institution could transfer to gain ACG or National SMART Grant eligibility, because only the hours accepted by the new institution would be considered and all poor grades excluded. The student who does poorly and stays at the first institution would not be eligible, but the student who transfers could be.

*Discussion:* The interim final regulations explain that, in the case of a transfer student, for the first payment period, institutions must rely on the grades of the courses from the prior institution accepted toward the student's eligible program. Transfer credits that were awarded through programs such as AP, IB, or CLEP programs should not be converted to grades to determine a student's GPA for purposes of eligibility for an ACG or National SMART Grant in the student's initial payment period after transferring. Once a student has the grades for a payment period at the new institution for coursework taken toward the eligible program, the institution may use the GPA calculated from those grades only, unless there is an institutional policy that a student's GPA at the new institution include transfer grades. While the Secretary agrees that cumulative GPA from a prior institution does serve as an academic performance indicator, the purpose of calculating GPA based solely on coursework accepted toward the eligible program is to ensure student eligibility for the ACG or National SMART Grant programs. Because this GPA calculation is used

solely to determine a student's eligibility under these programs for the initial payment period of enrollment, there is no intrusion into institutional grading policy by the Secretary. Finally, the Secretary believes that the transfer hours GPA requirement in § 691.15(d) of the interim final regulations is an equitable means of establishing a transfer student's eligibility. Students who perform poorly overall will likely still transfer in a GPA that is below 3.0. Thus, these students would not be significantly more likely to receive a grant than a student who did poorly but stayed at the same institution.

*Changes:* None.

*Comments:* One commenter asked the Secretary to clarify whether an institution is required to follow its standards for academic and title IV, HEA program purposes to determine a transfer student's GPA once it has established eligibility using grades in coursework that the institution accepts for the student's first payment period. For example, if an institution normally does not use grades on transferred credit for SAP or other purposes, does the institution have the option of using such grades for ACG and National SMART Grant recipients only?

*Discussion:* An institution's policies for the administration of the title IV, HEA programs generally must be the same for all title IV, HEA programs. An institution may not establish a SAP policy that treats grades on transferred credits one way for ACG and National SMART Grant recipients, but another way for recipients of other title IV aid.

*Changes:* None.

## Prior Enrollment in a Postsecondary Educational Program

*Comments:* Several commenters believed that students who attended postsecondary programs while completing high school should be considered first-year students for ACG eligibility purposes. Two commenters noted that some colleges offer the opportunity for a high school student to earn an associate's degree while completing high school. One commenter stated that it was possible for some of these students to enroll in college programs that only accept some of the credits the student has earned while in high school and, given the institution's definition of an academic year, the student may qualify as a first-year student. The commenter believed that, if the institution was treating the student as a first-year student, the student should be eligible for a first-year ACG.

One commenter asked the Secretary to clarify whether a student who attended a postsecondary institution as part of a

State-recognized dual-enrollment program is considered to have been enrolled as a regular student for purposes of determining prior enrollment. A few commenters asked for clarification of the Secretary's policy on prior enrollment. One commenter requested clarification as to whether a student who earned an associate's degree at the same time as he or she earned a high school diploma would be eligible for a second-year ACG, provided the transfer credits were less than what would be required to establish the student as a junior. The commenter also wanted to know if the same student would be eligible for a first-year ACG if he or she did not earn the associate's degree, and the transfer credits were less than what would be required to establish the student as a sophomore.

Several commenters believed these final regulations should reflect guidance from the Department that prior enrollment in an undergraduate program after completion of high school would not affect a student's first year eligibility for an ACG and asked the Secretary to specify an effective date for this guidance.

*Discussion:* The Secretary agrees that the regulations should be clarified to reflect that only enrollment as a regular student in an eligible program while in secondary school disqualifies a student from receiving a first-year ACG in the student's first academic year of postsecondary education. Under the Department's interpretation of section 401A(c)(3)(A), the term "previously" in the phrase "previously enrolled in a program of undergraduate education" in section 401A(c)(3)(A)(ii) relates to completion of a rigorous secondary school program of study in section 401A(c)(3)(A)(i).

A student is considered to have been previously enrolled in an eligible program if the student was admitted into that program as a regular student while still enrolled in a secondary school program of study. A regular student is a person who is enrolled or accepted for enrollment at a postsecondary educational institution for the purpose of obtaining a degree, certificate, or other recognized postsecondary educational credential offered by that institution. Therefore, a high school student who was enrolled in a dual-enrollment program with the purpose of obtaining an associate's degree is considered to have been enrolled as a regular student, whether the student actually earned the associate's degree or not. Thus, the student was previously enrolled in an eligible program of undergraduate education and is not eligible for a first-

year ACG. Such a student may be eligible for a second-year ACG if his or her transfer credits were less than what would be required to establish the student as enrolled for the student's third title IV, HEA academic year. However, if an otherwise eligible student took courses that were part of an associate's degree program, but was not enrolled for the purpose of obtaining the associate's degree (*i.e.*, was not a regular student), the student would be eligible for a first-year ACG.

*Changes:* Section 691.15(b)(1)(ii)(B) has been revised to clarify that a student is not eligible for a first-year ACG if the student was previously enrolled as a regular student in an eligible program while still enrolled in a secondary school program of study.

#### Documenting Completion of a Rigorous Secondary School Program of Study

*Comments:* Many commenters expressed concern that the requirements for determining and documenting a student's completion of a rigorous secondary school program of study are too onerous. Several commenters asserted that it is unduly burdensome for institutions to determine by means of a postgraduation high school transcript whether a student has met the definition of a rigorous secondary school program of study under § 691.16(d). Commenters noted that this requirement will be a substantial new undertaking for institutions and they will have to come up with the resources or processes to comply.

Several commenters noted that many community colleges do not collect high school transcripts as part of their admissions process; instead, they use testing to determine readiness. Other commenters noted that the transcripts they are evaluating for ACGs reflect only six or seven semesters of high school coursework. These commenters were concerned that there would be a problem with the timing of admissions decisions and initial financial aid package offers, which occur in the winter or spring prior to enrollment in the fall, because there may be uncertainty about whether a student would complete a rigorous secondary school program of study. The commenters proposed several options to ameliorate the burden of documenting completion of a rigorous secondary school program of study. The commenters suggested adding an option for defining a rigorous secondary school program of study that could be applied at the midpoint of a student's final year in high school, noting that this option would provide greater assurance that the initial financial aid award package

for the student would materialize for the student when the final high school transcripts are reviewed and also would provide some measure of administrative ease for colleges when evaluating the final secondary school transcripts. One commenter noted that, in the few cases when the student substantially deviates from the level of academic achievement on the partial transcript, institutions could withdraw the admissions offer. In addition, one commenter suggested adding an option to define a rigorous secondary school program of study as a total of 16 subject years of study within the five defined subject areas. The commenter noted that this definition would reflect a higher subject year count than the current minimum course requirements and a broader curriculum than the AP and IB option demonstrates by requiring certain scores in only two courses. The commenter believed that this alternative would be acceptable if coupled with confirmation of graduation and successful completion of senior year courses. Similarly, one commenter asked that an institution whose academic policy required the same coursework from all admitted students that the Secretary requires for rigorous secondary school programs of study under § 691.16(d) be permitted to assume that an otherwise-eligible student had completed a rigorous secondary school program of study, without requiring the institution to retrieve and review every transcript.

One commenter requested clarification as to whether there is a minimum score required for rigorous programs like AP and, if so, whether it is the minimum required by, for example, the institution or the State. Finally, one commenter asked for clarification as to whether it is necessary to have documentation such as for AP scores in the Financial Aid office or if maintaining documentation at the Admissions or Registrar's Office would be acceptable.

*Discussion:* The Secretary believes the current regulations appropriately balance statutory requirements with institutional burdens raised by commenters. While the Secretary agrees that there is a concern with respect to the timing of the availability of complete high school transcripts and admissions and financial aid package offers for first-year ACGs, section 401A(c)(3)(A)(i) and (c)(3)(B)(i) of the HEA requires a student to complete, and graduate from, a rigorous secondary school program of study in order to be eligible for an ACG. The Secretary believes that a rigorous secondary school program of study continues

through a student's fourth year of high school.

Institutions do not always withdraw admissions offers when a student's final high school transcript differs significantly from the partial transcript. In the case of an ACG, the purpose of the transcript is to document the completion of a rigorous secondary school program of study. The Secretary does not regulate the admissions standards of postsecondary institutions. When a student substantially deviates from the level of academic achievement on the partial transcript, the Secretary cannot regulate to require institutions to withdraw their admissions offers. The Secretary's concern, for purposes of awarding an ACG, would be that the transcript documented the student's completion of a rigorous secondary school program of study.

While institutions are responsible for maintaining documentation at the institution, no specific location is required. If an institution requires the same coursework that the Secretary requires for a rigorous secondary school program of study from an admitted student, and the financial aid office is certain that the transcript or equivalent document confirming completion of a rigorous secondary school program of study is kept at the admissions office or some other part of the institution, it could assume a student met the rigorous secondary school program of study criterion.

Finally, it should be noted that the minimum scores for AP exams were published in § 691.16(d)(5) of the interim final regulations.

*Changes:* None.

#### Declaring an Eligible Major

*Comments:* One commenter believed that the Federal Government should not insert itself into the process of determining when a student declares a major as this action usurps an institution's prerogative to establish its own academic requirements. Another commenter requested clarification on how to document intent to declare an eligible major and how to determine when a student is no longer displaying an intent to declare an eligible major. One commenter suggested that, when an institution's academic requirements do not allow a student to declare an eligible major in time to qualify for a National SMART Grant, the student should be allowed to meet the declaration of eligible major requirement by enrolling in the courses deemed by the institution to be consistent with fulfilling the requirements of an intended eligible major and declaring an intention to

complete a major in an eligible field of study.

*Discussion:* The Secretary does not agree that the regulations intrude on an institution's prerogative to establish its own academic requirements. In addition, the Secretary believes that documentation of intent to declare an eligible major should be determined by institutional policy. The regulations permit a student to fulfill the requirement that he or she declare an eligible major by enrolling in the courses deemed by the institution to be consistent with fulfilling the requirements of an intended eligible major and declaring an intention to complete a major in an eligible field of study if that is the institutional policy.

*Changes:* None.

*Section 691.16 Recognition of a Rigorous Secondary School Program of Study*

*Comments:* A few commenters supported the multiple options for demonstrating completion of a rigorous secondary school program of study, while other commenters believed that additional secondary school programs of study should be recognized as rigorous. One commenter believed that the recognized State secondary school programs of study should be the single standard for a rigorous secondary school program of study, as it would greatly reduce the administrative burden for institutions. A few commenters believed that the minimum course requirements in § 691.16(d)(2) are too strict and would unfairly eliminate from eligibility students who should be eligible for an ACG. Two commenters believed that some students who meet their admissions requirements but who do not or cannot take the required courses in high school should not be eliminated from eligibility. For example, one commenter noted that advanced students who reduce their high school classes, such as English, during their last year of high school to take college classes may not qualify, even though their secondary school programs of study were quite rigorous. Another commenter gave the example of a student who otherwise qualified as a student who had completed a rigorous secondary school program of study, but who attended a high school that did not offer physics.

One commenter believed that the Secretary should ensure that all approved State programs use wording consistent with the minimum course requirements under § 691.16(d)(2) to the extent possible so that institutions will know that differences are not just semantic. For example, the commenter

questioned whether a particular State standard requiring three years of math (at the algebra I level or higher) is intended to be different from the Federal standard requiring three years of math (including algebra I and a higher level course such as algebra II, geometry, or data analysis and statistics). A few commenters were concerned with the lack of uniformity in secondary school course descriptions, noting that States often combine courses into one general course; such as combining algebra I and geometry into a math I course offered over two academic years. The commenters believed that it is unreasonable to expect an institution to be familiar with the graduation requirements for all school districts in order to determine whether a student's courses meet the definition of a rigorous secondary school program of study.

One commenter believed that the rigorous secondary school programs of study established by States and recognized by the Secretary should not be revised annually as significant changes would create confusion for students and undue burden for institutions.

*Discussion:* Section 401A(f) of the HEA requires the Secretary to recognize at least one rigorous secondary school program of study in each State. As there is no statutory requirement for States to submit programs for recognition, the Secretary believed it was necessary to develop additional options for completion of a rigorous secondary school program of study that would ensure that students in each State have the opportunity to qualify for an ACG. The Secretary believes that the breadth of the options provides the vast majority of students for whom this grant program was intended with sufficient means to demonstrate eligibility for an ACG. To the extent that these options do not provide sufficient means to demonstrate eligibility, the Secretary encourages individuals, high schools, and postsecondary institutions to work together with States so that States may submit additional or revised programs for recognition. As for an advanced student who reduces his or her high school classes to take college classes, the Secretary reminds commenters that completion of college courses that meet the minimum course requirements for a rigorous secondary school program of study count toward completion of a rigorous secondary school program of study if they are accepted toward the student's high school diploma.

The Secretary understands the commenters' concerns with inconsistent wording in State programs and a lack of

clarity of course descriptions. However, the Secretary does not believe that it is appropriate to establish a national standard for the wording of State submissions of rigorous secondary school programs of study or course descriptions and recommends that concerns with consistency of wording be taken up with States and secondary schools.

The Secretary believes it is imperative that there be an annual opportunity for States to submit changes to their rigorous programs of study because, to the extent that these changes result in a more rigorous program of study, students from that State graduating in that year would be held to the new standard when applying for an ACG. If, however, these changes result in a less rigorous program of study, the Secretary may deny recognition if the Secretary determines the level of rigor has fallen below the HEA's intended level.

*Changes:* None.

*Comments:* A few commenters questioned whether coursework taken prior to high school counts toward the minimum course requirements under § 691.16(d)(2). Specifically, one commenter asked whether a student who is otherwise eligible under § 691.16(d)(2), and who took a foreign language in 8th grade but did not take one later is eligible for an ACG.

Another commenter noted that many students take algebra I prior to high school; therefore, it does not appear on the student's high school transcript. The commenter asked the Secretary to clarify under what circumstances such a student can be considered to have completed algebra I for the minimum mathematics course requirements under § 691.16(d)(2). In particular, the commenter wanted to know if an institution may assume that a student has completed algebra I if it is not included on the transcript, but geometry, algebra II, or calculus are included.

*Discussion:* If a student completed the secondary school curriculum in a school system in which the high school does not include other secondary school grades, e.g., the high school does not include grade eight or nine, institutions should use their normal processes for determining whether coursework completed in earlier grades is included. However, an institution may make certain assumptions, as appropriate, based on its knowledge of a school system's curriculum. For example, if a high school transcript covering only grades 10–12 shows completion of three years of English, the institution may assume that the student completed a year of English in the ninth grade.

*Changes:* None.

*Comments:* One commenter recommended that the minimum science course requirements in § 691.16(d)(2) be changed to recognize other challenging science coursework. The commenter believed that a student who completed physical science in ninth grade, biology in tenth grade, environmental science in eleventh grade and anatomy and physiology in twelfth grade should be considered to have met the minimum science course requirement.

*Discussion:* The Secretary believes that the minimum coursework requirements in the regulation are appropriate. These standards are patterned after the recommendations for the essentials of a strong curriculum in the National Commission on Excellence in Education's report, *A Nation at Risk: The Imperative for Educational Reform* available on the Department's Web site at <http://www.ed.gov/pubs/NatAtRisk/index.html>. As previously noted, to the extent that these options do not provide sufficient means to demonstrate eligibility, the Secretary encourages individuals, high schools, and postsecondary institutions to work together with States so that States may submit additional or revised programs for recognition.

*Changes:* None.

*Comments:* One commenter recommended that an exception be made to the foreign language course requirement under § 691.16(d)(2) for students with physical limitations such as hearing loss. The commenter noted that, because of language deficits that accompany hearing loss, most deaf students do not take languages other than English as a part of their secondary programs, and few schools for the deaf require or encourage foreign language as a part of their curriculum. The commenter added that even if American Sign Language (ASL) meets the definition of a foreign language, most deaf students are already ASL users and do not need to study it in secondary school.

*Discussion:* While the Secretary understands the concerns raised by the commenters, she believes that a change to this requirement is unnecessary. The Secretary considers one year of ASL to meet the requirement of one year of a language other than English necessary to meet the minimum course requirements under § 691.16(d)(2). Also, as stated previously, the Secretary believed it was necessary to develop additional options for completion of a rigorous secondary school program of study that would ensure that students in States that did not submit programs for recognition

have the opportunity to qualify for an ACG. The Secretary believes that the breadth of the options, including participation in honors programs established by States or completion of AB or IB courses and the earning of a minimum score on the exams for those courses, provides the vast majority of students for whom this grant program was intended with sufficient means to demonstrate eligibility for the ACG.

*Changes:* None.

*Comments:* One commenter questioned whether students attending an institution with a "bridging year" program and completing their senior year of high school at the postsecondary institution would be eligible for a second year ACG if they do not receive a high school diploma, but instead earn a General Education Development (GED) certificate. One commenter believed that the Department was interpreting the regulations to mean that a student who obtains a GED is automatically ineligible for an ACG or National SMART Grant simply because he or she has obtained a GED. The commenter noted that some home-schooled students, who otherwise qualify as having completed a rigorous secondary school program of study, are advised to take the GED to meet college admission requirements. The commenter asked the Department to make clear that such students who obtain the GED are not automatically ineligible.

*Discussion:* A student who obtained a GED is not automatically ineligible for an ACG or National SMART Grant. However, a student who obtains a GED in lieu of a high school diploma cannot use the GED, alone, to demonstrate completion of a rigorous secondary school program of study. The Department believes that completion of a GED program alone does not demonstrate the academic achievement of a rigorous secondary school program of study. Such a student can nonetheless qualify for an ACG with a GED by completing one of the rigorous secondary school programs of study recognized under § 691.16.

*Changes:* None.

*Comments:* Two commenters asked the Department to clarify which level of IB examination, standard or higher, a student must take to qualify for an ACG. One commenter believed that the regulations confuse the IB Diploma program with a stand-alone IB course. The commenter believed that the regulations should be changed to make clear that a student is considered to have completed a rigorous secondary school program of study if he or she completes and achieves the required minimum score for the exam on at least

two IB courses, whether or not they are part of an IB Diploma Program.

*Discussion:* A score of "4" or higher on either the standard level or higher level IB examination for at least two IB courses meets the exam portion of the IB standard for completion of a rigorous secondary school program of study. The Secretary agrees that a student who completes and achieves the required minimum score for the exam on at least two IB courses, whether or not they are part of an IB Diploma Program, should be considered to have completed a rigorous secondary school program of study.

*Changes:* Section 691.16(d)(4) has been changed to clarify that a student who completes and achieves the required minimum score for the exam on at least two IB courses, whether or not they are part of an IB Diploma Program, is considered to have completed a rigorous secondary school program of study.

*Comments:* One commenter believed that high scores on standardized achievement tests, such as the SAT and ACT, should be recognized as a rigorous secondary school program of study. The commenters believed that this recognition would be consistent with the inclusion of completion of IB or AP courses with high test scores as rigorous programs because they establish that a student has attained a level of ability in completing his or her secondary school program that is commensurate with completing a rigorous secondary school program of study. The commenter believed that this proposal would reduce burden on institutions, as these test scores are readily accessible. The commenter believed that States and test owners could work together to determine the qualifying test score.

*Discussion:* The Secretary does not agree that high scores on standardized achievement tests should be recognized as a rigorous secondary school program of study. Unlike the IB and AP tests, there are no specific courses or curriculum that correspond to the standard achievement tests. The Secretary believes that both components are necessary to demonstrate that a student has successfully completed a rigorous secondary school program of study.

*Changes:* None.

#### *Section 691.17 Determination of Eligible Majors*

*Comments:* Several commenters whose institutions do not offer programs in the eligible majors were concerned that their institutions were excluded from the National SMART Grant Program. In one case, the institution

offered majors with concentrations in the eligible fields. The commenter requested clarification on whether students in these types of programs would be eligible. In another case, the institution offered intensive instruction in math and science as part of a liberal arts degree. Two commenters from this institution requested that this institution be included among eligible institutions and one of these commenters also requested an alternative means for students whose institution does not offer eligible majors to qualify.

*Discussion:* Section 401A(c)(3)(C) of the HEA requires a student to pursue a major in the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or a critical foreign language in order to be eligible for a National SMART Grant. No alternative categories of majors are indicated in the HEA, and the Secretary does not have the authority to provide alternative categories through regulations in those cases where ineligible majors include concentrations in eligible fields or where liberal arts degrees do not provide eligible majors but do include some intensive instruction in eligible fields.

*Changes:* None.

*Comments:* Several commenters addressed the determination of eligible majors. One commenter expressed concern that a number of scientific fields were omitted and that the eligible languages were too narrowly identified for purposes of available undergraduate majors. Another commenter was concerned that Evolutionary Biology was omitted from the eligible majors list. One commenter was concerned that teaching degrees in the science and math fields were not included in the list of eligible majors. Another commenter suggested taking a more thorough look at the majors, especially in areas of national need, such as nursing and public health. Yet another commenter was concerned about the consultation process and thought that the Department should consult directly with organizations such as the National Academy of Sciences and other professional scientific organization to receive input on the determination of eligible majors.

One commenter recommended that, if the Department was unable to supply the list of eligible majors by February 1 preceding the academic year for which determinations of eligibility must be made, the Department should permit an institution to use the current list for first-time determinations of National SMART Grant eligibility. One

commenter requested clarification on whether a student would still be eligible for a National SMART Grant if that student's major is removed from the list of approved majors at any time subsequent to the student's first National SMART Grant payment, when the student's payment was based on the student's intent to declare an eligible major as described in § 691.15(c)(2)(i)(B). Finally, one commenter requested clarification on an institution's responsibility to ensure that qualifying majors are being actively pursued.

*Discussion:* Section 401A(c)(3)(C) of the HEA specifies that a student must pursue a major in the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations); or a critical foreign language in order to be eligible for a National SMART Grant. Evolutionary Biology was omitted from the original list of eligible majors in error; a revised list including this major and Exercise Physiology, which was also omitted in error, has been posted.

The list of eligible majors will be reviewed annually; however, section 401A(c)(3)(C)(i)(II) of the HEA only requires consultation on the list of critical foreign languages with the Director of National Intelligence. The current list of critical foreign languages was developed in consultation with the Director of National Intelligence as required.

The Secretary will continue to identify a list of eligible majors, including critical foreign languages, annually for an award year to ensure that the most current information is used and will publish the list in time for institutions to plan awards accordingly. Because a student's intent to declare an eligible major as described in § 691.15(c)(2)(i)(B) serves as a proxy for actually declaring an eligible major until the declaration is permitted by an institution, under § 691.17(c) a student would still be eligible if a student's major is removed from the list of approved majors at any time subsequent to the student's first National SMART Grant payment, when the student's payment was based on the student's intent to declare an eligible major as described in § 691.15(c)(2)(i)(B) as well as when the student's payment was based on a declared eligible major under § 691.15(c)(2)(i)(A). Finally, it is the institution's responsibility to ensure that qualifying majors are being actively pursued. The institution is responsible for ensuring this active pursuit of eligible majors and may use any

institutional process that it chooses to document this intent.

*Changes:* None.

*Section 691.61 Submission Process and Deadline for a Student Aid Report or Institutional Student Information Record*

*Comments:* One commenter noted that § 691.61(b) cross-referenced §§ 668.60 and 668.164 and that conforming changes were made to § 668.164, but that § 668.60 was not amended to include the ACG and National SMART Grant programs. Therefore, the commenter stated that it is unclear which provisions of § 668.60 apply to the ACG and National SMART Grant programs.

*Discussion:* The Secretary agrees that the requirements in § 668.60 that apply to the ACG and National SMART Grant programs need clarification.

*Changes:* Section 668.60 is revised to clarify how it applies to the ACG and National SMART Grant programs.

*Comments:* One commenter stated that § 691.61(a) appears to place the responsibility on institutions to review the record of all FAFSA filers to identify eligible students rather than just those FAFSA filers identified by the Secretary as potentially eligible students. The commenter suggested that the institution should be allowed to rely on information on the Student Aid Report (SAR) or ISIR as to whether the student is potentially eligible to receive an ACG or National SMART Grant. That is, if the student's SAR or ISIR does not indicate that the student is potentially eligible to receive an ACG or National SMART Grant, the institution would not be required to check its own records or take any other action to determine whether the student is potentially eligible. Rather, the institution could assume that the student is not eligible for the ACG or National SMART Grant and take no further action.

*Discussion:* To implement the ACG Program, the Secretary has instituted procedures for students to self-identify that they have completed a rigorous secondary school program of study and institutions, at their option, may generally rely on this self-identification process. Most potentially eligible students will have had an opportunity to self-identify through the FAFSA (application) process on this matter and will have a positive indication on their SAR or ISIR with regard to completion of a rigorous secondary school program of study. Under § 691.61, an institution is allowed to rely on the information on a student's SAR or ISIR as to whether the student is potentially eligible for an ACG, unless the institution has

information from another source indicating that the student is potentially eligible. For example, if a student whose SAR or ISIR does not indicate potential eligibility for the ACG (because the student has not yet self-certified as to his or her completion of a rigorous secondary school program of study) informs the institution that he or she has completed such a secondary school program of study, and is thus potentially eligible for the ACG, then the institution must follow up on that information and determine whether the student is eligible for the ACG.

Outside of the eligibility requirements common to both the ACG and the National SMART Grant programs found in § 691.15(a), *i.e.*, the general eligibility requirements from 34 CFR part 668, subpart C; U.S. citizenship; receiving a Federal Pell Grant; and being enrolled full-time, the primary eligibility requirements for receipt of a National SMART Grant relate to pursuit of an eligible major and having the requisite GPA. Information about these eligibility factors will not be found on the SAR or ISIR. Thus, for the National SMART Grant Program, there is not the same issue of determining eligibility for students who do not have eligibility information on their SAR or ISIR as there is for the ACG Program. However, it should be noted that an institution does have to determine whether its students meet the eligibility requirements for the National SMART Grant Program, including which of its students are in eligible majors, and award those students, if otherwise eligible, a National SMART Grant.

*Changes:* None.

#### Section 691.62 Calculation of a Grant Ratable Reduction

*Comments:* Two commenters expressed concern over the potential for ratable reductions to the awards. One of the commenters inquired as to when award maximums would be considered final for the year. The other commenter offered multiple suggestions for avoiding ratable reductions.

*Discussion:* Section 401A(d)(1)(B)(ii) of the HEA requires the Secretary to ratably reduce the maximum grant amounts for both programs when the funds available for a given award year are less than the amount needed to fund full awards for all eligible students. The Secretary establishes the ACG and National SMART Grant Scheduled Awards based on the availability of funds appropriated and the anticipated number of eligible students. Scheduled Awards for the ACG and National SMART Grant programs will be

announced annually in conjunction with the announcement of Scheduled Award amounts for the Federal Pell Grant Program. Historically, these announcements have occurred between December and February prior to the beginning of the award year.

The Secretary uses multiple data sources to best predict the number of eligible recipients for the ACG and National SMART Grant programs and will monitor disbursements from both programs based on current year reports received from postsecondary institutions. Every effort will be made to avoid ratable reductions. However, if ratable reductions are necessary, the Secretary will notify the community promptly of the new Scheduled Awards and the procedures for ratably reducing the ACG and National SMART Grant awards.

*Changes:* None.

#### Packaging

*Comments:* Several commenters objected to the requirement that the amount of an ACG or National SMART Grant for an academic year, in combination with the student's EFC and any other student financial assistance available to the student, cannot exceed the student's cost of attendance for that academic year. One commenter suggested that grants from both programs be awarded, similar to Federal Pell Grants, without regard to either the student's financial need or the amount of other student financial assistance received. Another commenter proposed that the grants be allowed to replace EFC, but not to exceed the student's cost of attendance when combined with other student financial assistance received.

An additional set of commenters requested that a \$300 overaward threshold be added to the ACG and National SMART Grant programs, similar to the threshold allowed under § 673.5(d) for the campus-based programs. One of these commenters also believed that there is confusion over which definition of estimated financial assistance applies to the ACG and National SMART Grant programs. Yet another commenter requested that Chapter 31 veterans' education benefits be excluded from all definitions of estimated financial assistance.

*Discussion:* The Secretary believes that the packaging requirement is appropriate. As noted in the preamble to the interim final regulations, ACGs and National SMART Grants are need-based grants in that the HEA requires recipients to be eligible for Federal Pell Grants. Section 471 of the HEA defines the amount of need of any student as

cost of attendance minus EFC minus estimated financial assistance. Need-based grant assistance cannot replace a family's expected contribution toward a student's postsecondary expenses.

The overaward threshold allowed under the campus-based programs exists to assist institutions with the variations of earnings under the Federal Work-Study program and the estimates institutions must make in projecting utilization of Federal Perkins Loan and Federal Supplemental Educational Opportunity Grant funds as well as the bearing of collections on the availability of funds under the Federal Perkins Loan Program. Because these issues do not exist for the ACG and National SMART Grant programs, an overaward threshold is not necessary.

Regarding the confusion over which definition of *estimated financial assistance* applies to the ACG and National SMART Grant programs, the Secretary agrees that the differences among the three definitions can cause confusion. Because the definitions in §§ 682.200(b) and 685.102(b) have exclusions based on statutory language that does not apply to the ACG and National SMART Grant programs, we intend to modify the language in § 691.62(c) to reference the definition of *estimated financial assistance* in § 673.5(c).

Chapter 31 veterans' education benefits may not be excluded from the definition of *estimated financial assistance* because there is no statutory basis for exclusion of Chapter 31 benefits. Section 428(a)(2)(C)(ii) authorizes only Chapter 30 veterans' education benefits and AmeriCorps benefits and awards to be excluded when determining subsidized loan eligibility. Further, when determining a student's eligibility for an ACG or National SMART Grant, an institution may exclude from estimated financial assistance any portion of a subsidized Federal Stafford Loan that is equal to or less than the amount of the student's Chapter 30 veterans' education benefits and AmeriCorps education awards or post-service benefits.

*Changes:* Section 691.62(c) has been revised to provide that other student financial assistance is *estimated financial assistance* as defined in § 673.5(c).

#### Section 691.63 Calculation of a Grant for a Payment Period

*Comments:* One commenter suggested that the Department review the Federal Pell Grant formulas (and thus, these formulas in § 691.63) to simplify the payment period calculations. The commenter also asked the Secretary to

consider revising the academic year definition for clock hour programs from 30 weeks to 26 weeks due to the change made by the HERA.

*Discussion:* Given the time constraints associated with the development of regulations resulting from the enactment of the HERA (especially with respect to the implementation of the ACG and the National SMART Grant programs), the Secretary does not believe that it would be prudent to attempt to change formulas used in the calculation of grants for the Federal Pell Grant, the ACG, and the National SMART Grant programs at this time. While such a review and possible revision of those formulas may prove to be beneficial at a later time, the Secretary believes that, since the formulas have been used for a long time and are familiar to the financial aid community, it would be unwise to revise them now when the aid community already has to deal with the changes resulting from the HERA.

To reflect the change made by the HERA, a change to the definition of an *academic year* for programs offered in clock hours was made in previously published regulations. Section 668.3 now contains a definition of an academic year that provides that 26 weeks of instructional time is the minimum number of weeks of instructional time in an academic year for a clock hour program, while retaining 30 weeks of instructional time as the minimum number of weeks of instructional time for a credit hour program. That definition also retains the provision that, under certain conditions, the Secretary may approve an academic year with a minimum of 26 weeks of instructional time for a credit-hour program.

*Changes:* None.

*Comments:* One commenter believed that the determination of enrollment status is an eligibility criterion and not a factor in the calculation of the grant payment and that for payments for payment periods calculated under § 691.63(d), commonly referred to as Formula 3, it would seem much simpler just to direct the institution to use the same enrollment status determined for a Federal Pell Grant to determine eligibility for an ACG or National SMART Grant award. The commenter suggested that a cross-reference to the Federal Pell Grant Program regulations could be used to determine a student's enrollment status for an ACG or National SMART Grant.

*Discussion:* The Secretary believes that the public will benefit from a complete set of regulations to implement the ACG and National SMART Grant programs, rather than

providing cross-references to the Federal Pell Grant Program regulations throughout the ACG and National SMART Grant regulations.

*Changes:* None.

#### *Section 691.75 Determination of Eligibility for Payment*

*Comments:* With respect to the institution's determination about whether a student is pursuing an eligible major at the beginning of a payment period, one commenter suggested changing "is no longer pursuing a required major" in § 691.75(b)(3) to "is not pursuing a required major" to cover not only those situations in which the student had at one time (before the beginning of the payment period) been pursuing an eligible major, but stopped doing so, but also situations in which the student had never pursued, and is still not pursuing, an eligible major.

*Discussion:* The Secretary agrees with the commenter's suggestion. With this change, all situations in which the institution determines that the student is not pursuing a required major at the beginning of the payment period will be covered. Then, as the regulations go on to address, if the institution reverses a determination before the end of the payment period, the institution may pay the student a National SMART Grant for the entire payment period.

*Changes:* Section 691.75(b)(3) and (c) has been revised to change "is no longer pursuing a required major" to "is not pursuing a required major."

*Comments:* One commenter asked how the financial aid office should deal with eligibility for a student for a National SMART Grant if the student was one hour short of being a junior at the beginning of one term, but reached junior status by the next term. The commenter asked if the aid office should start paying such a National SMART Grant in the middle of the academic year. The commenter also asked whether the aid office should pay a student for the spring and summer terms only, if the student does not have at least a 3.0 GPA before fall starts but does before spring. The commenter also asked about the National SMART Grant eligibility of a student who changed to an ineligible major. The commenter asked whether the aid office would stop paying the student at the point at which the student changed to an ineligible major or would retroactively take the National SMART Grant away from the student entirely.

Another commenter asked what should be done if a student has a 3.0 GPA when the fall term starts but drops below that average after (the previous

term's) grades are posted. The commenter also wanted to know what would happen if the student's GPA was back up to at least 3.0 by the spring term. Another commenter asked how grades of incomplete are to be considered with respect to the GPA requirement. Another commenter asked for clarification of how an institution should determine GPA and academic year level when the institution first becomes aware of a student's prior postsecondary attendance after the student's transfer credits for fall attendance (for which no aid was received) are received late in the spring semester.

Finally, several commenters raised an issue related to eligible students who, in fact, did meet during the payment period in question with the eligibility requirements for an ACG or a National SMART Grant associated with the GPA or with the declaration of an eligible major, but for whom the institution erred when it determined that the students failed to meet those requirements and did not discover its mistake until after the end of that payment period. The commenters suggested that these students should receive a grant for the completed payment period.

*Discussion:* Section 691.75 addresses the factors that an institution must consider to determine that a student is eligible each time it makes a payment to a student of an ACG and a National SMART Grant. Section 691.75(a)(1) provides that the institution has to determine that the student meets the eligibility criteria listed in § 691.15. For a National SMART Grant, one of those eligibility criteria is that the student be in the third or fourth academic year of an eligible program. (Note that the third academic year of the student's program is not necessarily synonymous with the junior year of the student's program.) Nevertheless, if the student is one hour short of starting his or her third academic year at the beginning of a term (e.g., the fall term), but begins the third academic year by the next term (the spring term) (presumably at the beginning of that term), then the student, if otherwise eligible, qualifies for a National SMART Grant for that spring term. The student would not qualify for a National SMART Grant payment for the fall term in this example but may qualify for any remaining second-academic-year ACG eligibility for this fall term. The institution would start paying the National SMART Grant in the middle of the institution's year, i.e., at the beginning of the spring term. This issue is further clarified in § 691.63(h), which

provides that, in the case of a payment period with two academic years, an institution must calculate the payment for the payment period using the ACG or National SMART Grant Scheduled Award of the academic year being completed.

With regard to a student who does not have at least a 3.0 GPA (for the first academic year for a second-year ACG, and for the most recently completed payment period in the student's eligible program for a National SMART Grant) before fall starts, but does before spring, § 691.75(b)(2) and (3) indicates that the student, if otherwise eligible, can receive an ACG or National SMART Grant for the entire fall term if the institution determines that the student has the required minimum 3.0 GPA before the end of the fall term. On the other hand, if the institution does not make the determination that the student has at least a 3.0 GPA until after the end of the fall term, then, under § 691.75(c), the student cannot receive an ACG or National SMART Grant for the fall term.

With respect to an eligible student who is receiving a National SMART Grant, but then changes to an ineligible major (and does not change back to an eligible major), the institution may not make any additional National SMART Grant payments (for the payment period in which the change of majors took place or for future payment periods) to the student once the student has changed to the ineligible major, regardless of whether that change is made at the end of a payment period or during the payment period. However, any payments that were made to an eligible student before he or she changed to an ineligible major are legitimate payments and do not have to be repaid.

When a student has a 3.0 GPA when the fall term begins, but that GPA at that time does not include grades from the previous term, the institution may not have all of the information it needs to determine whether the student is eligible for an ACG or National SMART Grant. For the ACG for the second academic year of the student's eligible program, the HEA requires that the student have at least a 3.0 GPA for the first academic year of his or her eligible program. For the National SMART Grant, the requirement is that the student have at least a 3.0 GPA for his or her courses in the eligible program up through the most recently completed payment period (term in this example). For either program, if there are courses that have been taken in the previous term that are part of the coursework for which the student must have at least a 3.0 GPA and grades for those courses are

not yet available, § 691.75(d) provides that the institution may make one interim disbursement for a payment period. However, when those grades become available, they must be factored into the GPA. At that time, if the student does not have the required GPA, the payment made by the institution before the student's GPA could be calculated becomes an overpayment that must be repaid by the institution. These provisions would apply, as well, to any applicable coursework for which the student initially received a grade of incomplete.

If information about a student's transfer of credit from another institution comes to the institution's attention late in, or after, a term, the institution may have already made a determination of eligibility that did not consider that information. If that information affects a student's GPA or academic year level and thus could affect the student's eligibility for an ACG or National SMART Grant, the institution must factor it into its determination of the student's eligibility and take appropriate action.

Regarding erroneous determinations by an institution that, for a particular payment period, an otherwise eligible student did not have the required GPA or had not declared an eligible major, if such a student in fact had satisfied those requirements during that payment period, that student would be eligible for a payment of the applicable grant regardless of whether the institution discovered its mistake before or after the completion of that payment period.

*Section 691.78 Method of Disbursement—By Check or Credit to a Student's Account*

*Comments:* Several commenters noted that § 691.78(b), which addresses the return of funds paid to a student who leaves the institution before the first day of classes, seems duplicative of § 668.21. In addition, the commenters also found references to award year in § 691.78(c) confusing, as ACG and National SMART Grant awards are determined on an academic year basis.

*Discussion:* The Secretary agrees that § 691.78(b) is redundant. The use of the term "award year" in § 691.78(c) is appropriate even though a particular student's eligibility is determined based on the student's completion of an academic year not an award year. Funds for the ACG and National SMART Grant are appropriated for an award year, which is separate and distinct from the eligibility determination. The language in § 691.78(c) addresses what actions must occur when delivering funds to a student during an award year.

*Changes:* The Secretary has removed § 691.78(b) and made a conforming change by removing the provision from § 690.78 of the Federal Pell Grant Program regulations.

*Section 691.80 Redeterminations of Eligibility for a Grant Award*

*Comments:* One commenter asked the Secretary to clarify how ACG and National SMART Grant funds should be handled if a student receives the funds prior to dropping to a less than full-time enrollment status. Specifically, the commenter wanted to know whether the institution must remove the funds from the student's account, or prorate the funds as an institution would be required to do with Federal Pell Grant funds.

*Discussion:* According to § 691.80(b), when there is a change in the student's enrollment status, the institution's policy for recalculating awards takes effect. For example, an institution's policy may establish a recalculation date at the end of its drop-add period (also known as a census date) by which the student's enrollment status for the term will be finalized. The enrollment status is, thus, defined as the number of credit hours the student is enrolled in at the census date. Under such a policy, if a student was enrolled full-time at the beginning of the term but, by the census date, the student had dropped to half-time enrollment status, the institution must use the half-time enrollment status to determine eligibility for the ACG or National SMART Grant. Because the HEA requires full-time enrollment, the student in this example would not be eligible for the ACG or National SMART Grant for that term, and any ACG or National SMART Grant funds disbursed for that term would have to be repaid by the student. On the other hand, if the student dropped below full-time enrollment after the recalculation date, his or her ACG or National SMART Grant award would be based upon full-time enrollment.

Situations in which information is received after a determination of eligibility has been made are governed by § 668.16(f), which states that an institution must identify and resolve discrepancies that arise from the institution's receipt of any information that has bearing on a student's eligibility for funds under the title IV, HEA programs. If that information affects the amounts and or types of title IV aid the student is receiving or may be eligible to receive, the institution must take appropriate actions.

*Changes:* None.

*Section 691.83 Submission of Reports*

*Comments:* Several commenters asked the Secretary to clarify whether the Secretary intends to include the academic year level of a grant in the payment data submitted by institutions. The commenters noted that, without this information in the National Student Loan Data System (NSLDS), an institution would not know whether a transfer student had already received grant funds at a given award level, as the grant level will not always be apparent from the award (for example, if the grant amount has been reduced to avoid an overaward).

*Discussion:* In addition to data similar to what is submitted to the Secretary through the Common Origination and Disbursement (COD) system, institutions will also provide the academic year for the award for both the ACG and National SMART Grant programs. This information will be available to institution through the NSLDS, which will reflect the academic year completed by the student.

Institutions will also provide information on the rigorous secondary school program of study that was used to confirm eligibility for an ACG and the student's academic major (using CIP codes) for a National SMART Grant. Specifications for this COD reporting has been posted to the Department's Information for Financial Aid Professionals Web site.

*Changes:* None.

**Executive Order 12866**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Under section 3(f) of Executive Order 12866, the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also

referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(4) of Executive Order 12866. The Secretary accordingly has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

**Need for Federal Regulatory Action**

As noted above, these final regulations are needed to implement two programs created in the HERA. The ACG program provides need-based grants to encourage students to complete rigorous secondary school programs of study. The National SMART Grant Program provides need-based grants to encourage students to major in certain scientific and technical fields or foreign languages deemed vital to national security. Section 401A(c)(3)(B)(ii) and (3)(C)(ii) of the HEA specifically requires the Secretary of Education to issue regulations implementing these programs.

The Secretary had limited discretion in implementing these grant programs; the number of recipients and aid awarded is largely driven by statutory eligibility requirements such as that students be eligible to receive a Federal Pell Grant, be United States citizens, attend two-or four-year degree-granting institutions on a full-time basis, and, in some cases, maintain a 3.0 GPA. The Secretary has exercised discretion in the areas of program eligibility relating to the definition of a rigorous secondary school program of study in the case of the ACG Program and, for the National

SMART Grant Program, the definition of qualifying fields of study. In both these cases, the Secretary has regulated to reflect clear congressional intent.

**Benefits**

By facilitating the implementation of these new programs, these final regulations will support the provision of over \$4 billion in need-based student aid over the next five years. The ACG Program will benefit society by providing an incentive for students to complete a rigorous secondary school program of study, which research indicates increases the likelihood of successful completion of postsecondary education. The National SMART Grant Program will encourage students to major in technical fields or critical foreign languages. In the case of technical fields, these majors will benefit both national and individual competitiveness, increasing the nation's economic security. With respect to foreign languages, increases in the number of fluent speakers of Arabic, Farsi, Uzbek, and other critical languages would broaden understanding of important cultures and contribute significantly to ongoing efforts to combat international terrorism. In addition, awards under both programs serve to reduce a student's net cost of education. Research indicates that reduction in a student's cost of education correlates with increased student persistence and degree attainment. Data consistently show that postsecondary degree holders have substantially higher lifetime earnings than high school graduates.

**Costs**

These programs are supported with \$4.5 billion in mandatory appropriations: \$790 million for fiscal year 2006, \$850 million for fiscal year 2007, \$920 million for fiscal year 2008, \$960 million for 2009, and \$1,010 million for 2010. Funds not expended in one year may be carried forward to support awards in the subsequent year. If the estimated number of recipients exceeds the available funding for a given fiscal year, award levels would be ratably reduced.

TABLE 1.—ESTIMATED PROGRAM PARTICIPATION

	Estimated number of recipients	Estimated avg. award	Total amount of aid awarded (expected) (in millions)
Award Year 2006–2007:			
AC Grants—1st year .....	310,000	\$657	\$200
AC Grants—2nd year .....	110,000	1,245	140
National SMART Grants—3rd year .....	40,000	3,718	150

TABLE 1.—ESTIMATED PROGRAM PARTICIPATION—Continued

	Estimated number of recipients	Estimated avg. award	Total amount of aid awarded (expected) (in millions)
National SMART Grants—4th year .....	40,000	3,875	160
Award Year 2007–2008:			
AC Grants—1st year .....	330,000	682	230
AC Grants—2nd year .....	130,000	1,255	160
National SMART Grants— 3rd year .....	40,000	3,718	150
National SMART Grants—4th year .....	40,000	3,875	160

The average awards displayed in Table 1 are less than the statutory maximum awards due to the cost of attendance limit on ACG and National SMART Grant awards. In addition, average awards also reflect students who are eligible for an ACG or National SMART Grant for less than the full award year. Figures in Table 1 may not add due to rounding.

Because these programs are title IV, HEA programs and eligibility for these programs is linked to Federal Pell Grant eligibility, participating institutions must already meet Federal student aid institutional eligibility requirements. In addition, the delivery system and many program operational requirements for the new programs are patterned after those that institutions are already using for Federal Pell Grants. Accordingly, institutions wishing to participate in the new programs have already absorbed most of the administrative costs related to implementing these final regulations. Marginal costs over this baseline are primarily related to initial, and ongoing eligibility determinations are minimal. Most data needed to make these determinations, such as student citizenship, full-time status, major, and GPA, are generally already available to institutions.

In response to the public comment on the interim final regulations, the Department has made changes in these final regulations. The only significant change with economic impact is to permit students to receive an ACG or National SMART Grant for a payment period during which they are not receiving a Federal Pell Grant. This change will enable 32,000 more students to receive grants in 2006. It will also increase the cost of the programs by \$27 million in 2006 and by \$145 million between 2006–2010. The Secretary requested comments on the regulatory impact analysis in the interim final regulations, but received none.

**Assumptions, Limitations, and Data Sources**

Because these final regulations largely restate statutory requirements that would be self-implementing in the absence of regulatory action, cost estimates provided above reflect a prestatutory baseline in which the ACG and National SMART Grant programs do not exist. Given the limited data available, estimates for 2007–2008 do not assume program benefits will induce increased student participation. Costs have been quantified for only two years because the Secretary plans to revise these final regulations through negotiated rule-making, after which more comprehensive cost analyses for subsequent years will be developed.

In developing these estimates, data from the 2004 National Postsecondary Student Aid Survey was used to derive the percentage of students meeting initial eligibility requirements for ACG and National SMART Grant awards, including enrollment status, Federal Pell Grant eligibility, citizenship, academic major, and GPA. The 1994 National Education Longitudinal Study, 1996 Beginning Postsecondary Student Survey, and 2000 National Assessment of Educational Progress High School Transcript Study were used to derive the percentage of students otherwise eligible for an ACG who had successfully completed a rigorous secondary school program of study. All these studies were conducted by the National Center for Education Statistics.

**Regulatory Alternatives Considered**

In defining eligibility requirements, particularly those related to rigorous secondary school programs of study, these final regulations strike a balance between complete State discretion, which could create confusion and regional inequalities and result in overly generous criteria that dramatically reduce award levels, and an overly prescriptive national determination that would significantly alter the traditional State role in determining secondary school curricula.

More specifically, in considering the definition of a rigorous secondary school program of study, the Secretary considered a variety of combinations of coursework and other possible measures. For example, at the time of the release of the President’s fiscal year 2007 budget, preliminary estimates assumed a rigorous program of study would consist of four English, three social science, three science, three mathematics, and two foreign language courses. Under this scenario, an estimated 439,000 students would receive \$400 million in ACG awards in 2006–2007—compared with \$340 million to 420,000 students under these final regulations. In subsequently considering the recognition of rigorous secondary school programs, the Secretary determined it would be more appropriate to include as one option secondary school programs of study with specific coursework requirements, such as, for mathematics, algebra I and a higher level course such as algebra II, geometry, or data analysis and statistics, and for science, at least two years with one year each of biology, chemistry or physics, as well as an advanced or honors program. In addition, the Secretary included students who complete secondary school programs and receive specified scores on the Advanced Placement or International Baccalaureate examinations. The latter provisions offer additional flexibility to individual students attending private or home schools.

This approach is consistent with the programs’ statutory purpose of creating incentives for certain student behaviors. To achieve this purpose, the grant level must be large enough to provide a meaningful incentive, yet at the same time, program flexibility must be sufficient to allow States and participating institution to recognize broad differences in secondary school and higher education academic structures.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated

with information collection requirements. See the heading Paperwork Reduction Act of 1995.

**Accounting Statement**

As required by OMB Circular A-4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the increase in Federal student aid payments as a result of these final regulations. All expenditures are classified as transfers to postsecondary students.

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[in millions]	
Category	Transfers
Annualized Monetized Transfers. From Whom To Whom?	\$694. Federal Government To Postsecondary Students.

**Paperwork Reduction Act of 1995**

We received no comments on the Paperwork Reduction Act portion of the interim final rule.

OMB has approved the information collection requests identified in the interim final regulations and has assigned the following numbers to the collection of information in these final regulations: 1845-0001, 1845-0039, 1845-0078.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

**Assessment of Educational Impact**

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

**Electronic Access to This Document**

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(Catalog of Federal Domestic Assistance Numbers: 84.375 Academic Competitiveness Grants; 84.376 National SMART Grants)

**List of Subjects in 34 CFR Parts 668, 690, and 691**

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: October 25, 2006.

**Margaret Spellings**,  
*Secretary of Education.*

■ For the reasons discussed in the preamble, the Secretary amends parts 668, 690, and 691 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. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

**§ 668.2 [Amended]**

■ 2. Section 668.2 is amended in paragraph (b) in the definition of “Valid institutional student information report” by removing the word “report” and adding in its place the word “record” each place it appears.

**§ 668.51 [Amended]**

■ 3. Section 668.51 is amended in paragraph (a) by adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

■ 4. Section 668.52 is amended by:

- A. Revising the definition of “Institutional student information report”.
- B. Revising the definition of “Student aid application.”

The revisions read as follows:

**§ 668.52 Definitions.**

\* \* \* \* \*

*Institutional student information record* as defined in 34 CFR 690.2 and 691.2 for purposes of the Federal Pell Grant, ACG, National SMART Grant, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, and William D. Ford Federal Direct Loan programs.

*Student aid application* means an application approved by the Secretary and submitted by a person to have his or her EFC determined under the Federal Pell Grant, ACG, National SMART Grant, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, and William D. Ford Federal Direct Loan programs.

\* \* \* \* \*

**§ 668.54 [Amended]**

■ 5. Section 668.54 is amended in paragraph (a)(2)(i) by adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

**§ 668.55 [Amended]**

- 6. Section 668.55 is amended by:
  - A. In the introductory text to paragraph (c), adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.
  - B. In paragraph (c)(1), adding the words “, ACG, National SMART Grant,” immediately after the words “Federal Pell Grant”.
  - C. In paragraph (c)(2), adding the words “, ACG, National SMART Grant,” immediately after the words “Federal Pell Grant”; and by removing the punctuation “,” after the word “campus-based”.

**§ 668.58 [Amended]**

- 7. Section 668.58 is amended by:
  - A. In paragraph (a)(1)(i), adding the words “, ACG, National SMART Grant,” immediately after the words “Federal Pell Grant”.
  - B. In paragraph (a)(2)(i), adding the words “ACG, National SMART Grant, or” immediately after the words “Federal Pell Grant,”.
  - C. In paragraph (a)(2)(ii)(A), adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

**§ 668.59 [Amended]**

- 8. Section 668.59 is amended by:
  - A. In the introductory text to paragraph (a), removing the words “Federal Pell Grant Program” and adding, in their place, the words “Federal Pell Grant, ACG, and National SMART Grant programs”.

- B. In paragraph (a)(1)(i), adding the words “, ACG, or National SMART Grant” immediately after the words “Federal Pell Grant”.
- C. In paragraph (a)(2) introductory text, adding the words “, ACG, or National SMART Grant” immediately after the words “Federal Pell Grant”.
- D. In the introductory text to paragraph (b), removing the words “Federal Pell Grant Program” and adding, in their place, the words “Federal Pell Grant, ACG, and National SMART Grant programs”.
- E. In paragraph (b)(1), adding the words “, ACG, or National SMART Grant” immediately after the words “Federal Pell Grant”.
- F. In paragraph (b)(2)(i)(B), adding the words “, ACG, or National SMART Grant” immediately after the words “Federal Pell Grant”.
- G. In paragraph (b)(2)(ii)(A), adding the words “, ACG, or National SMART Grant” immediately after the words “Federal Pell Grant”.

**§ 668.60 [Amended]**

- 9. Section 668.60 is amended by:
  - A. In the introductory text to paragraph (c), removing the words “Federal Pell Grant Program” and adding, in their place, the words “Federal Pell Grant, ACG, and National SMART Grant programs”.
  - B. In paragraph (c)(1), adding the words “and 691.61” immediately after the regulatory citation “690.61”.
  - C. In paragraph (c)(2)(i), adding the words “, ACG, or National SMART Grant” immediately after the words “Federal Pell Grant”.
  - D. In paragraph (c)(2)(ii), adding the words “, ACG, or National SMART Grant” immediately after the words “Federal Pell Grant”.
  - E. In paragraph (d) by adding the words “ACG, or National SMART Grant program assistance,” immediately after the words “Federal Pell Grant,”.

**§ 668.61 [Amended]**

- 10. Section 668.61 is amended in paragraph (a)(2)(ii)(B) by adding the words “ACG, National SMART Grant,” immediately after the words “Federal Pell Grant,”.

**PART 690—FEDERAL PELL GRANT PROGRAM**

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

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

**§ 690.78 [Amended]**

- 12. Section 690.78 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

**PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS**

- 13. The authority citation for part 691 continues to read as follows:

**Authority:** 20 U.S.C. 1070a–1, unless otherwise noted.

- 14. Section 691.6 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 691.6 Duration of student eligibility—undergraduate course of study.**

(a) A student is eligible to receive up to one ACG Scheduled Award during each of the student’s first and second academic years of enrollment over the course of the student’s undergraduate education in all eligible programs as defined in § 691.2(d).

(b) A student is eligible to receive up to one National SMART Grant Scheduled Award during each of the student’s third and fourth academic years of enrollment over the course of the student’s undergraduate education in all eligible programs as defined in § 691.2(d).

\* \* \* \* \*

- 15. Section 691.15 is amended by:
  - A. In paragraph (a)(2), removing the words “for the same payment period” and adding, in their place, the words “in the same award year”.
  - B. Revising paragraph (b)(1)(ii)(B).
  - C. In paragraph (b)(1)(iii)(C), removing the words “at least”.
  - D. In paragraph (c)(3), removing the words “at least”.

The revision reads as follows:

**§ 691.15 Eligibility to receive a grant.**

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*

(B) Has not previously been enrolled as a regular student in an eligible program while enrolled in high school;  
\* \* \* \* \*

- 16. Section 691.16 is amended in paragraph (d)(4) by removing the words “in the” and adding, in their place, the words “from an”.

**§ 691.62 [Amended]**

- 17. Section 691.62 is amended in paragraph (c) by removing the regulatory citations “, 682.200(b), and 685.102(b)”.

**§ 691.65 [Amended]**

- 18. Section 691.65 is amended in paragraph (a)(2) by removing the words “for the same payment period” and adding, in their place, the words “in the same award year”.

**§ 691.75 [Amended]**

- 19. Section 691.75 is amended by:
  - A. In paragraph (b)(3), removing the words “is no longer pursuing” and adding, in their place, the words “is not pursuing”.
  - B. In paragraph (c), removing the words “is no longer pursuing” and adding, in their place, the words “is not pursuing”.

**§ 691.78 [Amended]**

- 20. Section 691.78 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).
- 21. Section 691.80(a) is revised to read as follows:

**§ 691.80 Redetermination of eligibility for a grant award.**

(a) Change in receipt of Federal Pell Grant. If, after the beginning of an award year, a student otherwise eligible for an ACG or a National SMART Grant begins or ceases to receive a Federal Pell Grant in that award year, the institution must redetermine the student’s eligibility for an ACG or a National SMART Grant in that award year.

\* \* \* \* \*

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