DEPARTMENT OF EDUCATION

34 CFR Parts 668, 674, 676, 682, 685, 690, and 691

[Docket ID ED–2007–OPE–0134]

RIN 1840–AC91

Federal Student Aid Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations on Student Assistance General Provisions; Federal Perkins Loan (Perkins Loan) Program; Federal Supplemental Educational Opportunity Grant (FSEOG) Program; Federal Family Education Loan (FFEL) Program; William D. Ford Federal Direct Loan (Direct Loan) Program; Federal Pell Grant (Pell Grant) Program; and Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Programs. The proposed regulations would reduce administrative burden for program participants, provide benefits to students and borrowers, and protect taxpayers' interests.

DATES: We must receive your comments on or before September 7, 2007.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Under ''Search Documents'' go to ''Optional Step 2'' and select ''Department of Education'' from the ''Federal Department or Agency'' drop-down menu, then click ''Submit.'' In the Docket ID column, select ED–2007–OPE–0134 to add or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for submitting comments, accessing documents, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Michelle Belton, U.S. Department of Education, 1990 K Street, NW., room 8037, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov*. All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: For information related to *General definitions* and *Defining Independent Study for Direct Assessment Programs*, Michelle Belton. Telephone: (202) 502–7821 or via Internet: *michelle.belton@ed.gov*.

For information related to *Payment periods, Treatment of Title IV grant and loan funds if a recipient does not begin attendance, Post-withdrawal disbursements of grant funds directly to a student,* and *Annual loan limit progression,* Wendy Macias. Telephone: (202) 502–7526 or via Internet: *wendy.macias@ed.gov*.

For information related to all Cash Management issues and *Single disbursement provision for Perkins Loan and the FSEOG,* John Kolotos. Telephone: (202) 502–7762 or via Internet: *john.kolotos@ed.gov*.

For information related to *Minimum period for certifying a loan,* and *Pell Grant calculations,* Brian Kerrigan. Telephone: (202) 219–7058 or via Internet: *brian.kerrigan@ed.gov*.

If you use a telecommunications device for the deaf, you may call the Federal Relay Service at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the first contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

As outlined in the section of this notice entitled ''Negotiated Rulemaking,'' significant public participation, through four public hearings and three negotiated rulemaking sessions, has occurred in developing this NPRM. Therefore, in accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations within 30 days. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8037, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the first person listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain involvement in the development of the proposed regulations. After obtaining advice and recommendations from individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at:

http://www.ed.gov/policy/highered/reg/hearulemaking/2007/nr.html.

On August 18, 2006, the Department published a notice in the **Federal Register** (71 FR 47756) announcing our intent to establish up to four negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to the ACG and National SMART Grant programs. A second committee would address issues related to the Federal student loan programs. A third committee would address programmatic, institutional eligibility, and general provisions issues. Lastly, a fourth committee would address accreditation. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee. The four committees met to develop proposed regulations over the course of several months, beginning in December 2006. This notice of proposed rulemaking (NPRM) proposes regulations relating to the programmatic, institutional eligibility, and general provisions issues that were discussed by the third committee mentioned in this paragraph (the Committee or the General Provisions Committee).

The Department developed a list of proposed regulatory changes from advice and recommendations submitted by individuals and organizations in testimony submitted to the Department in a series of four public hearings held on:

- September 19, 2006, at the University of California-Berkeley in Berkeley, California.
- October 5, 2006, at the Loyola University in Chicago, Illinois.
- November 2, 2006, at the Royal Pacific Hotel Conference Center in Orlando, Florida.
- November 8, 2006, at the U.S. Department of Education in Washington, DC.

In addition, the Department accepted written comments on possible regulatory changes submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket. Transcripts of the regional meetings can be accessed at *http://www.ed.gov/policy/highered/reg/hearulemaking/2007/hearings.html.* Staff within the Department also identified issues for discussion and negotiation.

At its first meeting, the General Provisions Committee reached agreement on its protocols and proposed agenda. These protocols provided that the non-Federal negotiators would not represent the interests of stakeholder constituencies, but would instead participate in the negotiated rulemaking process based on each Committee member's experience and expertise in the Title IV, HEA programs.

The following members made up the General Provisions Committee:

- Rebecca Thompson and Justin Klander (alternate), United States Student Association and Minnesota State College Student Association, respectively.
- Elaine Neely-Eacona and Susan Little (alternate), Kaplan Higher Education and University of Georgia, respectively.
- David Glezerman and Anne Gross (alternate), Temple University and National Association of College and University Business Officers, respectively.
- Stephen Sussman and Maureen R. Budetti (alternate), Barry University and National Association of Independent Colleges and Universities, respectively.
- Linda Michalowski and Carol Mowbray (alternate), California Community Colleges and Northern Virginia Community College, respectively.
- Kay Noah Stroud and Beverly Young (alternate), Appalachian State University and California State University, respectively.
- Stacey Ludwig and Paula Luff (alternate), Western Governors University and DePaul University, respectively.
- Steven Dill, Robert Collins (alternate), and Nancy Broff (alternate), Lincoln Education Services, Inc., Apollo Group, Inc., and Career College Association, respectively.
- Mary Ann Welch, representing National Association of State Student Grant and Aid Programs.
- Starlith Chiquita Carter and Ray Testa (alternate), National Accrediting Commission of Cosmetology Arts and Sciences and National Motion Member Schools/Regis, respectively.
- Lloyd Robertson, representing Chase EdFinance.
- Brian Kerrigan, representing U.S. Department of Education.

During the later two meetings, the General Provisions Committee reviewed and discussed drafts of proposed regulations. At the final meeting in April 2007, the General Provisions Committee reached consensus on all of the proposed regulations in this document. More information on the work of this Committee can be found at: *http://www.ed.gov.policy/highered/reg/hearulemaking/2007/gp.html.*

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

General Definitions (§ 668.2)

Statute: The HEA does not include these definitions.

Current Regulations: Current § 668.2 contains definitions that are relevant to all of the Title IV, HEA Federal financial aid programs. However, separate definitions for full-time student, graduate or professional student, half-time student, three-quarter time student, and undergraduate student exist in other sections of the program regulations. Currently there is no definition for first professional degree.

Proposed Regulations: The proposed regulations would harmonize and consolidate in § 668.2 definitions for the terms, *full-time student, graduate or professional student, half-time student, three-quarter time student,* and *undergraduate student.*

The definition of *first professional degree* would be based on the definition currently used by the National Center for Educational Statistics (NCES). Under this definition a *first professional degree* would be limited to degree programs that require a level of professional skill beyond that normally required for a bachelor's degree as well as a professional license.

The definition of *full-time student* in § 668.2(b) does not adequately address students in a nonstandard term program. The proposed regulation adds the calculation that the Pell Grant Program uses to determine whether or not such students are eligible to receive a full-time award. It also adds language to clarify the Department's position concerning the status of students in correspondence programs.

The proposed regulations would move the definitions of *half-time student* and *three-quarter time* student from § 690.2(c), in the current Pell Grant regulations, to § 668.2(b). As a result, a half-time student and three-quarter time student would be defined as a student who is carrying a work load that is at least half or three-quarters, respectively, of the minimum full-time student definition contained in the regulations, rather than at least half or three-quarters, respectively, of the full-time student definition established by the institution, as it is currently defined for Title IV, HEA program loans and direct assessment programs.

The proposed regulations would move the definition of *graduate or*

professional student from § 674.2(b), in the current Perkins Loan Program regulations, to § 668.2 and rearrange the definition to highlight the Department's policy that graduate or professional students may not receive aid from undergraduate programs, such as the Pell Grant Program, while also receiving graduate or professional level aid.

The proposed definition of *undergraduate student* incorporates requirements from the definitions of *undergraduate student* currently in different program regulations. It also defines students in postbacculaureate teacher certification programs as undergraduates for purposes of the Pell Grant Program.

Upon consolidation in § 668.2(b), these definitions would be removed from the individual program regulations.

Reasons: Prior to this negotiated rulemaking, there were six definitions for half-time student, four definitions of undergraduate student, and three definitions of graduate or professional student. To eliminate this redundancy and avoid confusion, the proposed regulations consolidate these definitions in one section of the regulations.

As part of the rulemaking discussions, the Department also recommended changing the *full-time student* definition for clock hour programs by raising the required number of hours per week from 24 to 30 (this is the mathematical equivalent of 900 hours divided by 30 weeks). The Department later modified its proposal to have the clock hours per week for a full-time student be related to the weeks of instructional time associated with the academic year. For example, where 30 clock hours per week would be associated with a 30-week academic year, 35 clock hours per week would be associated with a 26-week academic year. Some non-Federal negotiators objected, arguing that the proposal would significantly increase the clock hour requirements, particularly for half-time students attending evening classes. They noted that the current requirements have been in effect for over 30 years without incident or concern. The Department withdrew its proposal.

Payment Periods (§§ 668.4, 668.22, 668.164, 682.200, 682.604, 685.301)

Payment Periods and Disbursements of Title IV Grant and Loan Funds

Statute: Section 428G(a) of the HEA requires that the interval between the first and second installment of FFEL (and, by extension, Direct Loan) payments not be less than one-half of the period of enrollment, except in the case of programs offered in semesters, quarters, or a similar division of the period of enrollment.

Current Regulations: Current regulations in § 668.4 define payment periods for Title IV, HEA program funds for three types of academic programs: (1) Programs that measure progress in credit hours and have academic terms; (2) programs that measure progress in credit hours and do not have terms; and (3) programs that measure progress in clock hours. Also, § 668.164 requires an institution to disburse Title IV, HEA program funds, except for Federal Work Study (FWS) funds, on a payment period basis. Accordingly, Pell Grant, ACG, National SMART Grant, FSEOG, Perkins Loan and some FFEL and Direct Loan funds are disbursed by the payment period. However, §§ 682.604(c) and 685.301(b) contain provisions that require an institution to disburse FFEL and Direct Loan funds on a different basis for (1) nonstandard term credit hour programs with terms that are not substantially equal in length, (2) nonterm credit hour programs, and (3) clock hour programs. A chart that illustrates the current disbursement requirements is published as Appendix A to the preamble—Current Disbursement Requirements.

Specifically, for a standard term (semester, trimester, or quarter) credit hour program or a nonstandard term credit hour program (with or without terms that are substantially equal in length), § 668.4(a) defines payment periods to be the terms. Title IV grant and loan funds are disbursed to students in these programs by the payment period—the term—except for nonstandard term credit hour programs with terms that are not substantially equal in length. For those programs, §§ 682.604(c)(7) and 685.301(b)(5) require an institution to make the second disbursement of FFEL and Direct Loan funds, respectively, at the later of (1) the calendar midpoint of the loan period, or (2) the date the student has completed half of the coursework in the loan period.

For a nonterm credit hour program, under § 668.4(b) payment periods are considered to be completed when the student has completed half of the number of credit hours and half of the number of weeks of instructional time in the academic year or program, as appropriate. Title IV grant and loan funds are disbursed to students in these programs by the payment period (i.e., a second disbursement is made when the first payment period is complete), except for FFEL and Direct Loan funds. When paying FFEL and Direct Loan funds to a student in a nonterm credit hour program, an institution may not make a second disbursement until the later of (1) the calendar midpoint of the loan period, or (2) the date that the student has completed half of the academic coursework in the loan period (§§ 682.604(c)(7) and 685.301(b)(5)). Section 668.4(b)(3) provides that, if an institution is unable to determine when a student in a nonterm credit hour program has completed half of the credit hours in a program, academic year, or remainder of a program in order to determine when a student begins a new payment period, the student is considered to begin the second payment period at the later of the date, as determined by the institution, when the student has completed half of the academic coursework in the program, academic year, or remainder of a program, or the calendar midpoint of the program, academic year, or remainder of a program.

For a clock hour program, § 668.4(c) defines the payment period as the point when a student has completed half of the clock hours in the academic year or program, as appropriate. Again, Title IV grant and loan funds are disbursed to students in these programs by the payment period, except for FFEL and Direct Loan funds. When paying FFEL and Direct Loan funds to a student in a clock hour program, an institution may not make a second disbursement until the later of (1) the calendar midpoint of the loan period, or (2) the date that the student has completed half of the clock hours in the loan period (§§ 682.604(c)(8) and 685.301(b)(6)). Section 668.164(b)(3) contains requirements that address when an institution may count excused absences as completed clock hours for purposes of determining completion of a payment period.

Currently, for the remainder of a program equal to or less than one-half of an academic year for clock hour programs and nonterm credit hour programs, the remainder of the program is the payment period (§ 668.4(b)(2)(iii) and (c)(2)(iii)).

The regulations contain a few exceptions to these disbursement regulations. Section 668.4(d) allows an institution to choose to have more than the defined two payment periods for nonterm credit hour programs and clock hour programs. In addition, the FFEL and Direct Loan regulations in §§ 682.604(c)(6)(ii) and 685.301(b)(3)(ii) require that, for a loan period that is one payment period, the loan funds must be paid in two installments, the second not being delivered until the calendar midpoint of the loan period, unless the institution is exempt under the cohort

default rate exception in § 682.604(c)(10) or § 685.301(b)(8). In addition, FSEOG, Pell Grant, ACG, and National SMART Grant regulations permit an institution to pay the grant funds for the payment period in installments to best meet the student's needs (§§ 676.16(a)(3), 690.76, and 691.76).

Proposed Regulations: By making a number of changes to the payment period definitions and disbursement requirements, these proposed regulations would, with a few exceptions, align disbursements for all Title IV grant and loan programs. A chart that illustrates the proposed disbursement requirements is published as Appendix B to the preamble—Proposed Disbursement Requirements.

Section 668.164(b) would now specify that an institution must disburse all Title IV grant and loan funds on a payment period basis, and would require, generally, that an institution disburse all Title IV grant and loan funds once each payment period. As a result, FFEL and Direct Loan funds would now be disbursed using the payment period definitions in § 668.4 for all types of programs.

To facilitate this change, several changes to the payment period definitions in § 668.4 would be necessary. First, the proposed regulations would divide nonstandard term credit hour programs into two categories. Nonstandard term credit hour programs with terms that are substantially equal in length would, along with standard term programs, continue to use the academic term as the payment period for both Title IV grant and loan funds.

Payment periods for nonstandard term credit hour programs with terms that are not substantially equal in length would be addressed in new § 668.4(b). The proposed regulations would specify two sets of payment periods for these programs: one for Title IV grant and Perkins Loan funds, and one for FFEL and Direct Loan funds. The payment periods for Title IV grant and Perkins Loan funds would be the academic term, as in current regulations. The proposed FFEL/Direct Loan payment periods are based on the current FFEL/Direct Loan disbursement requirements found in §§ 682.604(c)(7) and 685.301(b)(5). However, an institution would not be permitted to make a second disbursement until a student had successfully completed half of the coursework and half of the weeks of instructional time rather than making that disbursement at the later of the calendar midpoint, or the student's completion of half of the coursework. The definition of terms that are *substantially equal in length* (if no term in the program is more than two weeks of instructional time longer than any other term in the program) would be moved from §§ 682.604(c)(7)(ii) and 685.301(b)(5)(ii) to new § 668.4(h)(1).

The second change to § 668.4 would add a time component to the definition of payment periods for clock hour programs so that, in addition to requiring a student to complete half of the clock hours, the proposed regulations would require that a student complete half of the weeks of instructional time before a second disbursement may be made. As a result of this change and the change requiring FFEL and Direct Loan funds to be disbursed on a payment period basis, proposed § 668.4(c) would require that all Title IV grant and loan funds, including FFEL and Direct Loan funds, for students in nonterm credit hour and clock hour programs be disbursed when the student successfully completes half of the weeks of instructional time and half of the credit hours/clock hours in the academic year/program. The added time component (for clock hour programs) would be new for second disbursements of Title IV grant and Perkins Loan fund disbursements, and second disbursements of FFEL and Direct Loan funds would no longer be disbursed at the later of the calendar midpoint of the loan period, or the student's successful completion of half of the coursework/clock hours for nonterm credit hour and clock hour programs, respectively.

In addition, the proposed regulations would remove current § 668.4(d) so that an institution would no longer be permitted to choose to have more than the defined two payment periods for nonterm credit hour programs and clock hour programs. The proposed regulations would require that, for example, an institution with a clock hour program of 900 hours, must disburse funds using two 450-hour payment periods, not three 300-hour payment periods. The requirements that address when an institution may count excused absences as completed clock hours for purposes of determining completion of a payment period would be moved from § 668.164(b)(3) to new § 668.4(e).

Originally, the Department suggested changing the payment period definition for a remainder of a program equal to or less than one-half of an academic year for clock hour programs, nonterm credit hour programs, and nonstandard term credit hour programs with terms that are not substantially equal in length. Rather than treating the entire remainder of a program as the payment period, the Department suggested dividing the remainder into two payment periods to be consistent with how the HEA requires that FFEL and Direct Loan funds be disbursed. Some non-Federal negotiators felt that such a change would not be in the best interest of students who currently benefit from receiving the entire Title IV grant or Perkins Loan amount for the payment period up front. Ultimately, the Committee agreed to continue to define the payment period for a remainder of a program equal to or less than one-half of an academic year to be the remainder of the program for nonstandard term credit hour programs with terms that are not substantially equal in length, nonterm credit hour programs, and clock hour programs (see proposed §§ 668.4(b)(2)(ii) and 668.4(c)(2)(iii)).

Disbursements of FFEL and Direct Loan funds for these payment periods would still have to be made in two installments. The regulations in §§ 682.604(c)(6)(ii) and 685.301(b)(3)(ii) would continue to require that, for a loan period that is one payment period, the loan funds must be paid in two installments, unless the institution is exempt under the cohort default rate exception in § 682.604(c)(10) or § 685.301(b)(8). However, instead of requiring that the institution not deliver a second installment until the calendar midpoint of the loan period, these proposed regulations would require an institution to wait until the student has successfully completed half of the number of credit hours or clock hours, as appropriate, and half of the number of weeks of instructional time in the payment period.

Section 668.164(b) would include cross-references to this FFEL/Direct Loan exception to the requirement that an institution disburse Title IV grant and loan funds once each payment period. In addition, § 668.164(b) would include cross-references to the other existing exceptions to these regulations, whereby an institution is permitted to disburse a student's FSEOG, Pell Grant, ACG, and National SMART Grant for the payment period in installments to best meet the student's needs (§§ 676.16(a)(3), 690.76, and 691.76).

Changes would be made to the definitions of payment periods for nonterm credit hour programs, clock hour programs and, with respect to the FFEL/Direct Loan payment periods definition, for nonstandard term credit hour programs with terms that are not substantially equal in length, to require that a student successfully complete half of the credit hours or clock hours, as appropriate, to progress to the next

payment period. This same change would also be made to the requirement that, for a loan period that is one payment period, the loan funds must be paid in two installments; and the second installment may not be delivered until the student has successfully completed half of the number of credit hours or clock hours, as appropriate, and half of the number of weeks of instructional time in the payment period.

Successfully completes would be defined in § 668.4(h)(2) to have occurred when the institution considers the student to have passed the coursework associated with those hours.

Another change to the payment period definitions in § 668.4 would extend to clock hour programs the provision that addresses how to identify the end of a payment period when an institution is unable to determine when a student in a nonterm credit hour program has completed half of the credit hours in a program, academic year, or remainder of a program. In addition, the measure of time used to make the determination would be changed from the calendar midpoint to completion of half of the weeks of instructional time. Thus, under new § 668.4(c)(3), if an institution is unable to determine when a student in a nonterm credit hour program or a clock hour program has completed half of the hours in a program, academic year, or remainder of a program in order to determine when a student begins a new payment period, the student is considered to begin the second payment period at the later of (1) the date, as determined by the institution, when the student has completed half of the academic coursework in the program, academic year, or remainder of a program, or (2) the date, as determined by the institution, when the student has completed half of the number of weeks of instructional time in the program, academic year, or remainder of the program.

Finally, a new paragraph (d) would be added to § 668.4 to make clear that, when an institution qualifies for the cohort default rate exemption in § 682.604(c)(10) or § 685.301(b)(8) for a nonstandard term credit hour program, a nonterm credit hour program, or a clock hour program, the payment period for purposes of FFEL or Direct Loan funds is the loan period for those portions of the program to which the cohort default rate exemption applies. For example, if the loan period for a nonterm credit hour program is three months in length and the institution meets the cohort default rate exemption, that three-month loan period is the payment period and only one disbursement of the loan is required for that period.

Reasons: The Department seeks to align disbursements for all Title IV grant and loan programs to the extent possible. Inconsistent requirements for disbursing Title IV grant and loan funds for certain types of programs can result in a student receiving the second or subsequent disbursements of his or her grant funds or Perkins Loan funds at a different point in time than second disbursements of his or her FFEL or Direct Loan funds. Changes to the regulations that would achieve greater consistency in the timing of the disbursements of Title IV grant and loan funds are proposed to reduce this burden and confusion for institutions and students. These proposed changes include—(1) Modifying § 668.164(b) to specify that an institution must disburse all Title IV grant and loan funds on a payment period basis; (2) requiring, generally, that an institution disburse all Title IV grant and loan funds once each payment period; (3) adding a time component to the payment period definitions for clock hour programs to make the disbursements of Title IV grant and Perkins Loan funds conform with the disbursements of FFEL and Direct Loan funds, which must, by law, include a time component; (4) using weeks of instructional time as the time component for determining all Title IV grant and loan disbursements; (5) removing the institutional option to have more than two payment periods for nonterm credit hour programs and clock hour programs; and (6) extending to clock hour programs the provision that addresses how to identify the end of a payment period when an institution is unable to determine when a student in a nonterm credit hour program has completed half of the credit hours in a program, academic year, or remainder of a program.

Where these proposed regulations would deviate from this alignment, they would do so for the reasons that follow.

Traditionally, for credit hour term based programs, including nonstandard term credit hour programs with terms that are not substantially equal in length, the payment periods have been the terms. Because, under section 428G(a) of the HEA, disbursements of FFEL funds (and, by extension, Direct Loan funds) for these programs must be disbursed in two equal installments for the period of enrollment, Title IV grant and loan disbursements have not always aligned. To align them in all cases, Title IV grant and Perkins Loan funds would have to be disbursed on the same basis as FFEL and Direct Loan funds. However, the Committee agreed that inconsistency was acceptable in this case because of the benefit students receive from receiving Title IV grant and Perkins Loan funds more frequently. For this same reason, the Committee ultimately decided to define payment periods for the remainder of a program less than half of an academic year to be the remainder of the program for nonterm credit hour programs, clock hour programs, and, for FFEL and Direct Loan funds, nonstandard term credit hour programs with terms that are not substantially equal in length. Terms that are substantially equal in length would continue to be defined as they were in the FFEL and Direct Loan regulations.

To continue to allow an institution some flexibility to meet a student's individual circumstances, no change would be made to the FSEOG, Pell Grant, ACG, and National SMART Grant regulations that permit an institution to pay the grant amount for the payment period at such times and in such installments in each payment period as the institution determines will best meet the student's needs. So, although, an institution with a 900 clock hour program that currently has three 300 clock hour payment periods would be required to change to two 450 clock hour payment periods, the institution could choose to pay FSEOG, Pell Grant, ACG, or National SMART Grant funds in, for example, two installments each payment period if it determines that apportioning those funds best meets the student's needs.

New paragraph (d) would be added to § 668.4 to reflect the statutory provisions that affect disbursements for institutions that qualify for the cohort default rate exemption in § 682.604(c)(1) or § 685.301(b)(8) for a nonstandard term credit hour program, a nonterm credit hour program, or a clock hour program.

The proposed regulations would incorporate the Department's longstanding policy that a student must successfully complete half of the clock hours or credit hours, as appropriate, to progress to the next payment period for clock hour programs, for nonterm credit hour programs, and, under the FFEL/Direct Loan payment periods definition, for nonstandard term credit hour programs with terms that are not substantially equal in length. So that these requirements would be consistently applied by institutions, some non-Federal negotiators asked, and the Committee agreed, to add a definition of *successfully completes* to the proposed regulations. The proposed regulations base the definition on when the institution considers the student to

have passed the coursework associated with those hours, rather than requiring a passing grade, because not all institutions assign grades to completed coursework.

Transferring to a New Program at the Same Institution

Statute: The HEA does not specifically address the issue of payment period requirements for students transferring to a new program at the same institution.

Current Regulations: The payment period regulations in § 668.4(f) require an institution to calculate new payment periods for students who re-enter a program after 180 days or transfer to a new program at a different institution or the same institution at any time.

Proposed Regulations: The payment period requirements for students who re-enter a program after 180 days or transfer to a new program would be amended to add in new § 668.4(g)(3) guidance currently found in the Federal Student Aid (FSA) Handbook available at: *http://ifap.ed.gov/IFAPWebApp/currentSFAHandbooksPag.jsp.* The proposed regulations would permit an institution to consider a student who transfers into another program at the same institution to remain in the same payment period if four conditions are met: (1) The student is continuously enrolled at the institution; (2) the coursework in the payment period the student is transferring out of is substantially similar to the coursework the student will be taking upon beginning the new program; (3) the payment periods are substantially equal in length in weeks of instructional time and credit hours or clock hours, as applicable; and (4) there are little or no changes to the charges to the student for the payment period.

Reasons: The Committee made this change to address situations where a student's transfer to a new program at the same institution results in very little change to the student's academic circumstance—for example, a change that is really nothing more than a change in majors. The Committee believes that when this occurs it is appropriate to spare the institution the burden of withdrawing a student, performing a Return of Title IV Funds calculation to determine how much of the student's Title IV grant or loan funds he or she has earned, potentially returning Title IV grant or loan funds, and awarding Title IV, HEA program funds for the new payment period(s).

Disbursements of FFEL and Direct Loan Funds to Less Than Full-Time Students

Statute: Section 428G(a) of the HEA requires that the interval between the first and second installment of FFEL funds (and, by extension, Direct Loan funds) may not be less than one-half of the period of enrollment, except in the case of programs offered in semesters, quarters, or a similar division of the period of enrollment.

Current Regulations: Current disbursement requirements in §§ 682.604(c)(6), (7), and (8) and 685.301(b)(3), (5), and (6) use calendar time as the time component for determining when second disbursements of FFEL and Direct Loan funds are made to students in nonstandard term credit hour programs with terms that are not substantially equal in length, nonterm credit hour programs, and clock hour programs. In addition, §§ 682.200(b) and 685.102(b) require that a *period of enrollment* coincide with a bona fide academic term for which institutional charges are generally assessed, including a semester, trimester, quarter, or length of the student's program or academic year.

As a result of the use of calendar time as the time component, second disbursements of FFEL and Direct Loan funds for less than full-time students in nonstandard term credit hour programs with terms that are not substantially equal in length, nonterm credit hour programs, and clock hour programs may be made at the midpoint of the period of enrollment in calendar time, even if the student has not completed half of the hours in the period of enrollment. That is, a less than full-time student in one of these programs may receive the annual loan limit for the period of enrollment regardless of his or her enrollment status. However, the student is not eligible for another loan until he or she has completed all the credit hours or clock hours, as applicable, and the weeks in the period of enrollment.

Proposed Regulations: The proposed use of weeks of instructional time, rather than calendar time, as the time component for disbursements of Title IV grant and loan funds (see the discussion of this change under ''Payment periods and disbursements of Title IV grant and loan funds''), would affect significantly the timing of second disbursements to less than full-time students in nonterm credit hour programs, clock hour programs, and, for the FFEL/Direct Loan payment periods definition, for nonstandard term credit hour programs with terms that are not substantially equal in length.

Instead of receiving the second disbursement at the calendar midpoint of the period of enrollment (the academic year or program, as applicable), the student would receive the second disbursement after he or she completes half of the credit hours or clock hours, as applicable, and half of the weeks of instructional time in the payment period. An example of the effects of this change is published as Appendix C to the preamble—Title IV disbursements—Less-than-full-time enrollment. The example shows that, under current requirements, the student would receive the second loan disbursement at the calendar midpoint of the period of enrollment (the academic year). Under the proposed change, the student would receive the second disbursement after completion of half of the credit hours and half of the weeks of instructional time in the academic year. Because the student in the example is a half-time student, this would not occur until the student has successfully completed 24 credit hours and 30 weeks of instructional time.

A conforming change would be made to the definition of *period of enrollment* in §§ 682.200(b) and 685.102(b) to specify that a period of enrollment is measured in weeks of instructional time. By definition an academic year is measured in weeks of instructional time, so no change would be necessary to that example of a period of enrollment.

Reasons: Under the current approach, the period of time between a less than full-time student's first and second disbursement of an FFEL or Direct Loan would be relatively short compared to the period of time between the point when the student receives all of his or her first loan and when the student is eligible for a second loan. The Committee proposes that the disbursement of FFEL and Direct Loan funds be in line with our general approach that a student's award is paid in approximately equal increments over the course of the student's program—like the disbursement requirements for Perkins Loan and Title IV grant funds—as we believe it is more fiscally responsible and equitable between programs.

Return of Title IV Funds Calculated on a Payment Period Basis

Statute: Section 484B of the HEA provides that earned Title IV grant and loan funds for a student who withdraws from an institution may be calculated on a payment period or period of enrollment basis.

Current Regulations: Section 668.22(e)(5) provides that, for students

who withdraw from a nonstandard term credit hour program, nonterm credit hour, or clock hour program, an institution has the choice of calculating earned Title IV aid on either a payment period basis, as that term is defined in § 668.4, or on a period of enrollment basis. When an institution is not disbursing all types of Title IV, HEA program assistance for these programs by the same payment period (either because the regulations prohibit it or because the institution chooses to disburse this way), and it uses the payment period for a Return of Title IV Funds calculation, it must attribute any aid that should be associated with the payment period used, but that is not disbursed on that payment period, to the payment period used. Section 668.4(d) allows an institution to choose to have more than the defined two payment periods for nonterm credit hour programs and clock hour programs.

Proposed Regulations: As noted under ''Payment periods and disbursements of Title IV grant and loan funds'' these proposed regulations would remove current § 668.4(d) so that an institution would no longer be able to choose to have more than the defined two payment periods for nonterm credit hour programs and clock hour programs. As a result, payment periods for nonterm credit hour programs and clock hour programs would always be the same for all Title IV grant and loan programs.

For nonstandard term credit hour programs with terms that are not substantially equal in length, the proposed regulations would specify two sets of payment periods: One for Title IV grant and Perkins Loan funds, and one for FFEL and Direct Loan funds (again, see the discussion under ''Payment periods and disbursements of Title IV grant and loan funds''). As only one payment period may be used for determining earned Title IV grant and loan funds for a student who withdraws, the institution would have to choose, or the regulations could provide, which payment period to use. Changes to § 668.22(e)(5) would require an institution to always use the payment period during which the student withdrew that ends later, for Return of Title IV Funds calculations for a credit hour program that is measured in nonstandard terms that are not substantially equal in length, when the student receives aid under both payment period definitions. Aid that is disbursed for the payment periods that overlap the payment period that ends later would have to be attributed to the payment period that ends later.

An example of this change is published as Appendix D to the preamble—Return of Title IV Funds—Payment periods for nonstandard term credit hour programs with terms not substantially equal in length. The student in this example withdrew on the 50th day after the start of classes. The student's FFEL/Direct Loan funds were disbursed for the first FFEL/Direct Loan payment period—i.e., the first half of the academic year. The student's Pell Grant funds were disbursed for the first Pell Grant payment period—i.e., the first term, which is 10 weeks in length. The FFEL/Direct Loan payment period is the payment period during which the student withdrew that ends later, so that is the payment period that the institution would be required to use for the Return of Title IV Funds calculation under these proposed regulations. The first two Pell Grant payment periods overlap with the first FFEL/Direct Loan payment period, so aid that was disbursed or could have been disbursed for those two payment periods would be attributed to the first FFEL/Direct Loan payment period. All of the first Pell Grant payment period falls within the first FFEL/Direct Loan payment period, so all of the Pell Grant funds that were disbursed for the first payment period would be included in the calculation. The second Pell Grant payment period of six weeks overlaps with the first FFEL/Direct Loan payment period for five of those weeks. To determine the amount of Pell Grant funds that could have been disbursed that are attributable to the five weeks, the institution would take the full amount of Pell Grant funds that could have been disbursed for the second Pell Grant payment period, and multiply it by five-sixths.

If a student who withdraws from a nonstandard term credit hour program with terms that are not substantially equal in length is disbursed aid or could have been disbursed aid using only one of the two payment period definitions, that is the payment period that would be used for the calculation of earned aid, and no attribution of funds would be necessary.

Reasons: To simplify the Return of Title IV Funds calculation and ease administrative burden, we believe that institutions should use consistent FFEL/Direct Loan and Title IV grant/Perkins Loan payment periods to the extent permitted under the law and regulations. Removing the provision that allows an institution to choose to have more than the defined two payment periods for nonterm credit hour programs and clock hour programs would result in the use of the same payment period definition for Title IV grant and Perkins Loan funds and FFEL/Direct Loan funds for nonterm credit hour programs and clock hour programs. Because the payment periods would coincide for nonterm credit hour programs and clock hour programs, the calculation of a Return of Title IV Funds would be less burdensome as an institution would not have to attribute any Title IV, HEA program funds.

In the one case where an institution would not be allowed to use consistent disbursement periods, i.e., for a credit hour program that is measured in nonstandard terms that are not substantially equal in length (see the discussion under ''Payment periods and disbursements of Title IV grant and loan funds''), the Department originally suggested that § 668.22 be changed to require an institution to select and consistently use either the Title IV grants/Perkins loan payment period or the FFEL/Direct Loan payment period for the Return of Title IV Funds calculations and attribute to that payment period the aid that was disbursed or could have been disbursed for the overlapping payment periods. However, under this proposal, if the payment period that ended sooner is used and funds for the overlapping payment period that ended later had already been disbursed, an institution would have to return immediately the amount of Title IV funds attributed to a period beyond the payment period being used. Using the example in Appendix D to the preamble—Return of Title IV Funds—Payment periods for nonstandard term credit hour programs with terms not substantially equal in length, if the institution chose to use the Pell Grant payment period during which the student withdrew for the Return of Title IV Funds calculation, the funds from the FFEL/Direct Loan payment period, which ends five weeks after the Pell Grant payment period, would have to be attributed. To determine the amount of FFEL/Direct Loan funds attributable to the Pell Grant payment period, the institution would multiply the full amount of the FFEL/Direct Loan disbursement by ten-fifteenths (two-thirds). The remaining amount of the disbursed FFEL/Direct Loan would be attributed to the second Pell Grant payment period. Because the second Pell Grant payment period is after the period used in the Return of Title IV Funds calculation, all funds attributed to that period would have to be returned.

Such a result would raise issues such as how soon the institution would have to return those funds, would the institution be required to return any amount disbursed directly to the

student, or would the institution be required to help collect those funds from the student. As a result, the Department subsequently suggested requiring an institution to always use the payment period that ends later for Return of Title IV Funds calculations for a credit hour program that is measured in nonstandard terms that are not substantially equal in length. This was considered a simpler approach that would still treat students in an equitable manner. The Committee agreed with this approach.

Defining Independent Study for Direct Assessment Programs (§ 668.10)

Statute: The HEA does not include a definition of independent study.

Current Regulations: The current regulations mention independent study, but the term is not defined.

Proposed Regulations: The proposed regulations would define *independent study* as a course of study with predefined objectives where a student works with a faculty member to decide how those objectives will be met. In this context, the student and faculty member must agree on what the student will do, how the student's work will be evaluated, and the relative timeframe for completing the required work. In addition, the course of study would need to include regular and substantive interaction between the student and faculty member to assure that the student is progressing within the course or program. This definition would apply only to direct assessment programs.

Reasons: Under § 668.10(a)(3)(iii) the term *independent study* is specifically identified as an educational activity in a direct assessment program, but that term is not currently defined in the regulations. The proposed regulations address this omission.

The Department initially proposed a definition of *independent study* that would apply not only to direct assessment programs but to other courses and programs offered by institutions under other pedagogical methods. Several non-Federal negotiators were concerned about the last sentence in the proposed definition that would require ''a student to interact with a faculty member on a regular and substantive basis to assure progress with the course or program.'' The negotiators opined that it should be the sole responsibility of an institution to establish the level and frequency of the interaction between a student and a faculty member, and not left to the Department or another compliance entity to determine later that the interaction was inadequate. The Committee agreed to narrow the scope of the definition so that it would apply only to direct assessment programs.

The phrase ''regular and substantive interaction,'' which is also used in the definition of *telecommunications course* in § 600.2, is not meant to dictate a particular teaching method. Rather, it is meant to establish a general requirement that interaction about academic issues between students and faculty members take place at regular intervals.

Treatment of Title IV Grant and Loan Funds if a Recipient Does Not Begin Attendance (§§ 668.21, 682.604, and 685.303)

Statute: The HEA does not specifically address the issue of the treatment of Title IV grant and loan funds if a recipient does not begin attendance at an institution.

Current regulations: Section 668.21 prescribes the general regulations for the treatment of funds disbursed to a student who leaves the institution before beginning class. These regulations apply to all the Title IV program funds except for FFEL, Direct Loan, and FWS funds. Under these requirements, an institution must return any Perkins Loan, FSEOG, Pell Grant, ACG, and National SMART Grant funds that were disbursed to a student before the student begins attendance, even if those funds were disbursed directly to the student. There is no existing timeframe for returning these Title IV funds. A student is considered not to have begun attendance if the institution is unable to document the student's attendance at any class.

The treatment of FFEL and Direct Loan funds when a student leaves the institution before beginning class is addressed in §§ 682.604(d)(3) and (4) and 685.303(b)(3), respectively. An institution must return any loan proceeds credited to the student's account, as well as the amount paid to the institution by or on behalf of the student, not to exceed the total amount of loan funds disbursed. If any FFEL funds have been disbursed to the institution but have not been delivered to the student, the institution must return those funds in accordance with the Title IV cash management requirements in § 668.167.

Proposed regulations: Section 668.21 would be changed to consolidate all the requirements addressing the treatment of Title IV funds (except FWS) when a student does not begin attendance in a payment period or period of enrollment by moving the requirements for FFEL and Direct Loan funds from §§ 682.604 and 685.303, respectively, to § 668.21. As under current regulations, an institution would be required to return any Perkins Loan, FSEOG, Pell Grant, ACG, and National SMART Grant funds that are disbursed to a student for a payment period or period of enrollment before the student begins attendance, even if those funds were disbursed directly to the student.

The regulations for FFEL and Direct Loan funds would mirror existing requirements whereby, in addition to being required to return the amount of FFEL and Direct Loan funds credited to the student's account, an institution would be responsible for returning the amount paid to the institution by or on behalf of the student, not to exceed the total amount of loan funds disbursed. Also in accordance with current requirements, an institution would not be responsible for returning any FFEL and Direct Loan funds that are disbursed directly to a student before the student begins attendance, other than as noted above. The proposed regulations would specify that an institution must notify the lender or Secretary, as appropriate, of amounts disbursed directly to the student that are outstanding, so that the lender or Secretary can issue a 30-day demand letter to the student as required under current regulations. Institutions would not be responsible for returning loan funds that are disbursed directly to the student by the lender for a student in a study-abroad program or for a student attending a foreign school.

A new requirement would be added to require an institution to return FFEL or Direct Loan funds that it disbursed directly to a student if the institution knew that the student would not begin attendance prior to disbursing the funds directly to the student. This would apply, for example, if a student notified the institution that he or she would not be attending or if the institution expelled the student prior to directly disbursing the funds.

The proposed regulations would require an institution to return those funds as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not attend or has not begun attendance. The proposed regulations would specify when a return is considered to have been made in a timely manner. Specifically, the regulations would provide that an institution returns funds when it— (1) Deposits or transfers the funds into the bank account it maintains for Federal funds; (2) initiates an electronic funds transfer (EFT) to transfer the funds; (3) initiates an electronic transaction that instructs an FFEL lender to adjust a borrower's loan for the amount of the ''returned funds;'' or (4) issues a check.

However, if a check is used to return funds, the proposed regulations would also require that (1) the institution's records show that the check was issued no more than 30 days after the date it became aware that the student will not attend or has not begun attendance; or (2) the check must be received by an FFEL lender or the Secretary no later than 45 days after the institution became aware that the student will not attend or has not begun attendance.

The regulations would make clear that, as with the current requirements in § 668.21, these provisions apply if an institution is unable to document the student's attendance at any class. Finally, § 682.604 has been changed to clarify how to handle FFEL funds that an institution has delivered, versus those that were disbursed to the institution, but were not delivered by the institution.

Reasons: The current FFEL and Direct Loan regulations for the treatment of Title IV funds when a student does not begin attendance are complex and contain numerous cross references, making them hard to follow. By consolidating the FFEL and Direct Loan regulations with those of the other Title IV programs in this area, as well as rewriting the FFEL and Direct Loan regulations, we hope to achieve greater consistency and clarity.

The Department originally suggested changing the FFEL and Direct Loan requirements to mirror those applicable to Title IV grant and Perkins Loan funds. That is, an institution would be responsible for returning any FFEL and Direct Loan funds that were disbursed to a student before the student began attendance, even if the institution had disbursed the funds directly to the student. Some non-Federal negotiators felt, and the Department agreed, that such a change would cause institutions to reduce their potential liability by refusing to disburse FFEL and Direct Loan funds prior to the start of classes, thereby denying funds needed by students to begin classes. As a result, the Committee agreed to language that would reflect the current regulations for the treatment of FFEL and Direct Loan funds when a student does not begin attendance, with one addition. The Committee agreed that an institution should be liable for any FFEL and Direct Loan funds that the institution disbursed to a student if the institution knew that the student would not be beginning attendance because the institution should have known not to make the disbursement.

The establishment of a 30-day timeframe for the return of funds for which an institution is responsible would ensure that institutions return Title IV funds in a timely manner. Some negotiators felt that the timeframe should be consistent with the 45-day timeframe for the return of funds by an institution in accordance with the ''Return of Title IV Funds'' requirement in § 668.22, which prescribes the requirements for returning Title IV grant and loan funds when a student withdraws during a payment period or period of enrollment. The Department stated that it does not believe the additional 15 days is necessary because, unlike the Return of Title IV Funds requirements, no calculation is required to determine the amount of funds an institution must return.

The timely return requirements are the same as those currently found in § 668.173 and were added to provide consistency with the requirements applicable to returns made in accordance with the Return of Title IV Funds requirements in § 668.22 for students who withdraw during a payment period or period of enrollment.

Post-Withdrawal Disbursements of Grant Funds Directly to a Student (§ 668.22)

Statute: Section 484B(a)(4) of the HEA requires an institution to contact a borrower before making a post-withdrawal disbursement of Title IV loan funds to a student who has withdrawn, including post-withdrawal disbursements that would be disbursed directly to the student. No such statutory requirement exists for Title IV grant funds.

Current regulations: Under § 668.22(a)(5), prior to making any disbursement of Title IV loan funds, an institution is required to notify and obtain the withdrawn student's (or parent's, for a parent PLUS loan) permission to make that disbursement regardless of whether the funds are credited to the student's account or disbursed directly to the student or parent, for a parent PLUS loan. For Title IV grant funds that make up a post-withdrawal disbursement, § 668.22(a)(5) requires an institution to notify and obtain the student's permission prior to making any disbursement directly to the student. An institution is not required to obtain the student's permission prior to crediting Title IV grant funds to the student's account.

In accordance with § 668.22(a)(5)(iii)(C), if an institution receives confirmation from the student, or parent for a PLUS loan, that he or she wants the Title IV loan funds credited to the student's account or paid directly to the student or parent, the institution must make the post-withdrawal disbursement within 120 days of the date that it determined that the student withdrew.

Proposed regulations: Under proposed § 668.22, an institution would no longer be required to notify and obtain the student's permission prior to making a direct disbursement of any Title IV grant funds that make up a post-withdrawal disbursement. An institution would be required to make a direct disbursement of Title IV grant funds that make up a post-withdrawal disbursement as soon as possible, but no later than 30 days after the date of the institution's determination that the student withdrew (as defined in current § 668.22(l)(3)).

A corresponding change would make clear that, after receiving confirmation from a student, or parent in the case of a PLUS loan, that he or she wants a post-withdrawal disbursement of Title IV loan funds credited to his or her account, or disbursed directly, an institution must make the post-withdrawal disbursement as soon as possible, but no later than 120 days after the date of the institution's determination that the student withdrew (as defined in current § 668.22(l)(3)).

Reasons: Non-Federal negotiators felt, and we agreed, that permission was not necessary to disburse Title IV grant funds directly to a student as potentially harmful consequences to the student do not exist, as may be the case when a student who withdraws incurs a loan debt. We believe that 30 days from the date that the institution determines that a student withdrew is an appropriate amount of time for an institution to make a direct disbursement of a post-withdrawal disbursement of grant funds. Although an institution has 45 days to return any unearned Title IV funds for which it is responsible when a student withdraws, the administrative functions that institutions have indicated they must perform with such a return do not apply to the direct disbursement of funds to a student. Therefore, the timeframe for making a direct disbursement need not be as long.

Although the non-Federal negotiators agreed that it is implied that required institutional actions must be done as soon as possible, the Committee agreed that it was beneficial to specify this in the regulations. Prompt action is more likely to ensure that contact will be made with a student who is no longer in attendance at the institution.

Cash Management—Recovery of Unclaimed Title IV Funds (§ 668.161)

Statute: Under section 487(a) of the HEA, when an institution enters into a

program participation agreement with the Secretary the institution agrees, in part, to use the funds it receives under any Title IV, HEA program (and any interest or other earnings on those funds) solely for the purpose of that program.

Current Regulations: An institution's fiduciary responsibilities for using funds it receives under the Title IV, HEA programs are currently described in §§ 668.14(b)(1) and 668.161(b). The regulations provide that Title IV, HEA program funds are held in trust for the intended student beneficiary, the Secretary, FFEL lender, or guaranty agency and cannot be used for any other purpose.

Proposed Regulations: The proposed regulations would incorporate in § 668.164 timeframes for returning Title IV, HEA program funds that an institution attempts to disburse directly to a student or parent, but the student or parent does not receive or negotiate those funds.

If an institution issues a check but the check is not cashed or is returned as undeliverable to the institution, the proposed regulations would require the institution to send the funds back to the Secretary or FFEL lender no later than 240 days after the date the check was issued.

In cases where an institution attempts to disburse the funds by issuing a check or initiating an EFT to the student's or parent's bank account, and the check or EFT is returned as undeliverable, the proposal would allow the institution to make subsequent attempts to disburse the funds as long as those attempts are made within 45 days of the date the check or EFT were returned. If the institution makes a subsequent attempt by issuing a check, and that check is not cashed or is returned as undeliverable, the institution would be required to send the funds back to the Department or lender no later than 240 days after the date it initially attempted to disburse the funds.

In addition, the proposed regulations would make clear that Title IV, HEA program funds never escheat to a State, regardless of any State law.

Reasons: These proposed regulations would establish for the first time in regulations timeframes for returning unclaimed or undeliverable funds for two reasons. First, as a program integrity matter the Department believes that Title IV, HEA program funds should not remain outstanding for long periods, which increases the risk the funds will be used for other purposes or that the funds would escheat to the State. Second, the Department believes it increases the likelihood that a student will receive the benefit of the funds in a more timely manner; either a concerted effort is made by an institution to disburse the funds (particularly for funds that are returned undeliverable) or the funds are returned more quickly to a lender or the Department to reduce the student's loan balance.

Originally the Department proposed a 180-day timeframe for returning funds. The non-Federal negotiators noted that this timeframe would be difficult to meet since many checks are valid for 180 days. Instead, they suggested timeframes ranging from 210 days to one year or more (the 210-day timeframe would accommodate a typical 180-day check and allow for one monthly bank reconciliation to see if the check was still outstanding). The Department agreed that more time was needed and subsequently proposed a maximum 240-day timeframe. The Committee agreed to this timeframe.

With regard to a check or EFT that is returned as undeliverable, the Department originally proposed that an institution could make one more attempt. This proposal was later modified to allow as many attempts as an institution wanted to make as long as it made those attempts promptly (within 45 days after the date the check or EFT is returned).

Cash Management—Minor Prior-Year Charges (§ 668.164)

Statute: Under Part E—Need Analysis of the HEA (particularly sections 471 through 473), a student's need for most Title IV, HEA program funds is determined by subtracting the expected family contribution (EFC) and other estimated financial assistance from the student's cost of attendance. The cost of attendance is based on current year educational expenses. The EFC is the amount that can reasonably be contributed toward meeting the student's educational expenses for the academic year for which a need determination is made.

Current Regulations: Under § 668.164(d)(2), an institution may use a student's current year Title IV, HEA program funds to pay for minor prior-award year charges if the charges are less than $100, or the charges are $100 or more and the payment of those charges does not prevent the student from paying his or her current educational costs. In either case, the institution must first obtain the student's permission.

Proposed Regulations: The proposal would amend the regulations in three ways. First, the amount of prior-year charges that could be paid with current year funds would increase to not more than $200. Second, an institution would not have to obtain the student's permission to pay for prior-year charges for tuition and fees, or room or board. Finally, the provision allowing an institution to pay for prior-year charges of $100 or more (now more than $200) would be removed.

Reasons: The non-Federal negotiators recommended revising these regulations. They argued that the $100 prior-year threshold, established approximately 10 years ago, should be increased to account for inflation. In addition, they questioned the need to obtain a student's permission to pay for prior-year tuition and fees, or room or board charges since the regulations allow an institution to pay these charges for the current year without getting the student's permission. The Department agreed. However, the Department proposed to limit the payment of prior-year charges to truly minor charges (i.e., those of not more than $200) to avoid potential conflicts with the statutory intent that current year awards are used for current year educational expenses. The Committee agreed to this $200 limitation.

Cash Management—Electronic Disbursements of Title IV Funds (§§ 668.164(c) and 668.165(b)(i))

Statute: The HEA does not address the issue of electronic disbursement of Title IV funds.

Current Regulations: The current regulations in § 668.164(c) provide that an institution issues a check on the date it releases or mails the check to a student, or on the date it notifies a student that the check is available for immediate pickup. The regulations also allow an institution to make a direct payment to a student by initiating an EFT to the student's bank account or by paying the student in cash. If an institution wishes to make an EFT, it must obtain the student's authorization under § 668.165(b)(1)(i).

Proposed Regulations: The proposed regulations would modify the provisions for issuing a check and add new provisions expanding the use of EFTs to bank accounts that underlie stored-value cards and other transaction devices. In addition, § 668.165(b) would be amended to remove the requirement that an institution obtain a student's authorization to make an EFT payment and add a provision allowing an institution to issue a stored-value card or similar device.

The proposed regulations would require an institution to identify in its notice to a student the specific location at the institution where the student can

pick up his or her check. A student would have 21 days to pick up the check, after which the institution would have to mail the check to the student, initiate an EFT to the student's bank account, or return the funds to the appropriate Title IV, HEA program account.

With regard to bank accounts, an institution may not require or rely on a student to open an account. In cases where the institution opens a bank account on behalf of a student, establishes a process the student follows to open a bank account, or similarly assists the student in opening the account, the institution would need to satisfy the following provisions:

1. It must obtain written consent from the student to open the bank account.
2. It must inform the student of the terms and conditions of accepting and using the account.
3. It must not make any claims against the funds in the account unless it obtains the student's permission or the institution is correcting an error in transferring funds in accordance with banking protocols.
4. It must ensure that the student does not incur any costs in opening the account or initially receiving any type of automated teller machine (ATM) card, stored-value card, or other similar device that is used to access funds in the account.
5. It must ensure that the student has convenient access to a branch office of the bank or ATMs of the bank in which the account was opened (or ATMs of another bank) so that the student does not incur any cost in making cash withdrawals.
6. It must ensure that the debit card, stored-value card, ATM card, or other device can be widely used (the institution may not limit the use of the card or device to particular vendors).
7. It must not market or portray the account, card, or device as a credit card or subsequently convert it to a credit card.

As used in the context of these proposed regulations, ''bank account'' means a Federal Deposit Insurance Corporation (FDIC) insured account such as a checking or savings account, or a similar account that underlies a stored-value card or other transaction device.

Also, the proposed regulations would amend the provision under which an institution (with the student's permission) holds credit balance funds for a student by providing that the institution may issue a stored-value card or other similar device that enables the student to access those funds.

Reasons: The Department proposes the changes to issuing a check in response to situations where an institution notifies a student that a check is available for immediate pickup, but there is no check. Instead, the student is directed to take other actions to get his or her credit balance, and in some cases does not receive the credit balance until those actions are completed. We wish to make clear that under the current or proposed regulations, a student is not required to take any actions to obtain his her credit balance. It is the sole responsibility of the institution to pay, or make available, any Title IV credit balance within the 14-day regulatory timeframes.

To address this situation, the Department initially proposed to the non-Federal negotiators that a check is issued on the date it is mailed, or handed over, to the student. The non-Federal negotiators argued that this approach was too limiting and would unnecessarily force institutions to mail checks to students who intended to pick up their checks or to students who did not update their mailing address. A compromise was reached under which the check pickup provision would be maintained, but if the student did not pick up the check within 21 days the institution would have to immediately disburse the credit balance funds some other way or return the funds.

With regard to expanding the use of EFTs for making direct payments to students, the proposal generally mirrors the guidance published in the Department's Dear Colleague Letter GEN–05–16 of October 17, 2005, questions and answers 18 through 21, by identifying certain provisions that an institution must satisfy when it makes an EFT to a student's bank account. The Dear Colleague Letter is available at *http://ifap.ed.gov/dpcletters/GEN0516.html*. However, under the proposal these provisions would apply only to an institution that is purposefully and actively involved in opening bank accounts for or on behalf of students, or facilitating the opening of such bank accounts, including accounts underlying transaction devices. An institution that merely recommends a bank where a student might open an account, or simply invites banks to its campus to present their services to students and where students can open bank accounts, would not be subject to these provisions.

Finally, in response to questions from the non-Federal negotiators relating to school-issued smart cards, or similar transaction devices, the proposal would allow the use of such cards where an institution already has the student's permission to hold Title IV credit balance funds on his or her behalf.

Cash Management—Late Disbursements (§ 668.164(g))

Statute: The HEA does not specifically address the issue of late disbursements.

Current Regulations: Section 668.164(g) allows a student who is no longer eligible to receive Title IV, HEA program funds to qualify for those funds if certain conditions are satisfied. If a student qualifies, an institution has 120 days from the date the student becomes ineligible to disburse the funds to the student. In cases where the institution does not disburse the funds within the 120-day period, and the reason the funds were not disbursed was not the student's fault, the institution may request approval from the Secretary to disburse the funds.

Proposed Regulations: The proposed regulations would extend from 120 to 180 days the period within which an institution would be allowed to make a late disbursement, but would eliminate an institution's ability to request funds after that period expires.

Reasons: We believe the current provision allowing an institution to request a late disbursement after 120 days is not always in keeping with the institution's fiduciary responsibilities to (1) promptly identify students who should have but did not receive their funds either while they were eligible or within four months after they ceased to be eligible, and (2) make disbursements to students in a timely manner. However, we recognize that in some cases, despite the best efforts of an institution, more time may be needed to resolve a complicated situation before a disbursement can be made.

The Department initially proposed to maintain the current 120-day late disbursement period but eliminate any subsequent requests. Some non-Federal negotiators argued that the post 120-day late disbursement provision benefited students who did everything they were asked to do and should be maintained in its current form or as part of some type of appeal procedure. Other non-Federal negotiators believed that the 120-day period afforded institutions adequate time to make late disbursements. If the disbursements were not made, the negotiators stated that the institution should assume responsibility and use its own funds to make the disbursements. In the end, an agreement was reached providing 180 days to make a late disbursement.

Loan Cancellation Notice and Affirmative Confirmation of a Loan (§ 668.165(a))

Statute: Section 432(m)(1)(D)(i) of the HEA provides that a master promissory note (MPN) must allow eligible borrowers to receive initial and subsequent loans through a student confirmation process approved by the Secretary.

Current Regulations: Section 682.401(d)(4)(vi) requires an institution and a lender to develop and document a confirmation process in accordance with guidelines established by the Secretary for loans made under the multi-year feature of an MPN. The guidelines allow an institution to use either an active or passive confirmation process.

In addition, the regulations in § 668.165(a)(2) provide that an institution must notify a student whenever it credits a student's account with funds from a Title IV, HEA program loan. The institution must send the notice no earlier than 30 days before, and no later than 30 days after, it credits the student's account. A student then has 14 days to inform the institution if he or she wishes to cancel all or a portion of the loan or loan disbursement. If the institution receives a cancellation request within this 14-day period, it must comply with the student's request and cancel the loan, return the loan proceeds, or do both.

Proposed Regulations: These proposed regulations would condition the loan cancellation provisions in § 668.165 on whether an institution obtains affirmative (active) confirmation from a student that he or she wants a loan.

If the institution obtains affirmative confirmation, then it would continue to comply with the current loan cancellation provisions.

If the institution does not obtain affirmative confirmation, it would be required to notify the student no earlier than 30 days before, but no later than seven days after, it credits the student's account with loan funds. Moreover, the institution would be required to give the student 30 days (instead of the current 14 days) to cancel all or a portion of the loan or loan disbursement.

The proposed regulations would define *affirmative confirmation* as a process under which an institution obtains written confirmation of the types and amounts of Title IV, HEA program loans that a student wants for an award year before the institution credits the student's account with those loan funds. Also, the proposed regulations would clarify that, if an institution received a loan cancellation request, it would not have to return loan proceeds that the institution disbursed directly to a student or parent.

Reasons: Under the current loan certification or origination processes, other than for the initial loan under an MPN, a student can continue to receive subsequent loans without doing anything. We believe that the process for obtaining a loan should, as an added consumer protection, provide the student with more control over the types and amounts of loans he or she wants.

For this reason, we initially proposed that as part of the process for notifying a student of the amounts and types of loans he or she was eligible to receive for an award year, or through another process, the institution would obtain affirmative confirmation from the student for those loans. Some of the non-Federal negotiators noted that there are already several disclosures made to students regarding their loans and opined that affirmative confirmation was either not needed or that any marginal benefit would be outweighed by the cost and complexity of implementing it. Other non-Federal negotiators stated that their institutions currently use an affirmative confirmation process.

In lieu of affirmative confirmation we then proposed to modify the loan cancellation provisions by (1) requiring an institution to notify a student no later than the date that loan funds were credited to his or her account (instead of up to 30 days after that), and (2) giving the student more time (30 days instead of 14) to cancel all or a portion of the loan. Some of the non-Federal negotiators countered by suggesting that the Department give institutions a choice between doing affirmative confirmation or complying with the expanded loan cancellation regulations. We agreed to provide this choice.

Cash Management—Excess Cash (§ 668.166)

Statute: The HEA does not specifically address the issue of excess cash.

Current Regulations: Under § 668.166, excess cash is defined as any amount of Title IV, HEA program funds (except for Perkins Loan funds) an institution receives from the Secretary that is not disbursed to students or parents by the end of the third business day following the date the institution received those funds.

An institution is allowed to maintain excess cash for seven days under two tolerance options. Under the first option, the institution may maintain excess cash for an amount up to one percent of the total amount of funds it drew down in the previous year. Under the second option, the institution may maintain excess cash for an amount up to three percent of its prior-year drawdowns, if the funds are drawn down during a period of peak enrollment.

In instances where the Secretary finds that an institution maintains excess cash for an amount or time period greater than that allowed under the tolerance options, the regulations prescribe the method used to calculate a liability for maintaining those funds and provide that the Secretary may initiate a proceeding to fine, limit, suspend, or terminate the institution's participation in the Title IV, HEA programs.

Proposed Regulations: The proposed regulations would expand the definition of excess cash to include Title IV, HEA program funds received from the Secretary that are deposited or transferred into the institution's Federal bank account as a result of an award cancellation, adjustment, or recovery.

Also, the proposed regulations would eliminate the three percent excess cash tolerance option and simplify the provisions addressing the consequences for maintaining excess cash.

Reasons: The proposed regulations clarify that any Title IV, HEA program funds that an institution has and does not use to make disbursements to students within three business days are considered excess cash.

We initially proposed to eliminate both tolerance options in view of the progress the Department and institutions have made over the last 10 years in moving more and more to a student-level reporting and authorization process, and the timeliness and predictability of transferring funds electronically. Some of the non-Federal negotiators objected, arguing that some tolerance is still needed. We agreed to keep the one percent tolerance option.

With regard to the consequences for maintaining excess cash, we believe the current regulations are unnecessarily complex in specifying the method used to calculate an interest liability. In addition, the provision alerting institutions that the Secretary may initiate an adverse action for maintaining excess cash is redundant, since the Secretary may take an adverse action for any finding, depending on the gravity and materiality of the violation. Instead, and perhaps more likely, we note that the Secretary may place an institution on cash monitoring or reimbursement.

Single Disbursement for Perkins and FSEOG Awards (§§ 674.16 and 676.16)

Statute: The HEA does not specifically address single disbursements for Perkins and FSEOG awards.

Current Regulations: Under §§ 674.16(g) and 676.16(e), an institution may make a single disbursement of a Perkins Loan or FSEOG award if the total amount of that award for an academic year is less than $501.

Proposed Regulations: We propose to eliminate these single disbursement provisions.

Reasons: These regulations are no longer needed—they were published in 1978 in response to administrative burdens and costs associated with paying students small amounts each payment period by check and maintaining manual accounting records.

Minimum Period for Certifying a Loan (§§ 682.603 and 685.301)

Statute: The HEA does not specifically address the issue of the minimum period for certifying a loan.

Current Regulations: The current regulations indicate the minimum period of enrollment for which a school may certify (for an FFEL loan) or originate (for a Direct Loan Program loan) a loan. The minimum period is based on whether the program (1) measures academic progress in credit hours and uses a semester, trimester, or quarter credit hour system, or (2) measures progress in credit hours but does not use a semester, trimester, or quarter credit hour system or measures progress in clock hours. For the first category, the school may certify or originate a loan for a single term. For the second category, the school may certify or originate a loan for the lesser of the length of the program or the academic year.

Proposed Regulations: The proposed regulations make several changes. First, with respect to allowing a school to make a loan for a single term, the proposals in §§ 682.603(f)(1)(i) and 685.301(a)(9)(i) treat terms that are substantially equal in length with no term less than nine weeks in length in the same way that semesters, trimesters, or quarters are treated. Terms are considered substantially equal in length if no term is more than two weeks longer than any other term. Second, with respect to programs that measure progress in credit hours but do not use a semester, trimester, or quarter system and do not have terms that are substantially equal in length with no term less than nine weeks in length, or measure progress in clock hours, the proposal clarifies that the school may certify a loan for the remaining portion of the program. Third, the proposal indicates that, under certain specified conditions, a school may certify or originate a loan for the remaining portion of the program or academic year for a transfer student. This would be allowed at a school that measures academic progress in credit hours but does not have terms that are substantially equal in length with no term less than nine weeks in length, or at a school that measures progress in clock hours, where there would be overlapping loan periods for the student at the two schools involved. The loan at the new school could not exceed the remaining balance of the student's annual loan limit, taking into consideration the amount of loan proceeds that the student had received at the prior school. Fourth, the proposal indicates that, under certain specified conditions, a school may certify or originate a loan for the remaining portion of the academic year for a student who completes a degree program at a school and then immediately begins a new degree program at the same school. This would be allowed at a school that measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, where the loan to complete the student's first degree program had been for less than an academic year. The second loan may not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program. For example, if a student in his or her third year at such a school received $1,500 for less than an academic year to complete his or her associate's degree program, and then immediately enrolled in a bachelor's degree program at the same school, the school could certify or originate a loan for $4,000 for the remainder of the academic year ($5,500 − $1,500 = $4,000). Once that period of time (the remainder of the academic year) is completed, the school could certify or originate a new loan for the next full academic year.

Reasons: The Department proposed in §§ 682.603(f)(1)(i) and 685.301(a)(9)(i) to treat terms that are substantially equal in length with no term less than nine weeks in length in the same way as semesters, trimesters, or quarters for purposes of allowing schools to make a full loan for a single term. A quarter often is as short as 10 weeks long in a three-quarter, 30-week academic year. If a school were to have three substantially equal terms (i.e., no term more than two weeks longer than any other term) in a 30-week academic year, it would have to have three terms of nine weeks, 10 weeks, and 11 weeks. Such terms would be substantially similar to quarters. Therefore, the Department believes that the school should be allowed to make a full loan for such a single term in the same way that it can for a single quarter. However, several negotiators, while agreeing that there should be a minimum number of weeks associated with this concept, suggested that the minimum should be eight weeks for programs that had four eight-week terms in a 32-week academic year. After some discussion, the Committee agreed to the original Departmental proposal to consider nine weeks to be the minimum length for such a term to be a period for which a full loan could be made.

Another topic addressed by the Committee was the minimum period of time for which a loan may be certified or originated for transfer students. Currently transfer students in a program that measures academic progress in credit hours but does not use a semester, trimester, or quarter system or measures progress in clock hours are allowed to borrow only the remaining balance of their loan amounts when they have already had a loan for an academic year (or a program of less than an academic year) made to them at a previous school where the loan period at the previous school overlaps the loan period at the school the students transfer into. Since the minimum period of time for which a school can certify a loan is the lesser of the program (or remaining portion of the program) or the academic year, transfer students with one academic year or more remaining in their program often are eligible to borrow only a small amount of money (the remaining balance) for a period of time associated with the first full academic year (usually 30 weeks) remaining in their program.

One non-Federal negotiator believed that this was unfair, and suggested that transfer students in these types of programs should be allowed to obtain loans for the remaining portion of the program or academic year, instead of for the whole program or academic year when the prior school certified or originated a loan for a period of enrollment that overlaps the period of enrollment at the new school. That negotiator and other non-Federal negotiators argued that this should be the case because the new school is only certifying or originating a loan for the remaining balance of the students' annual loan amount, not for the entire

annual loan limit. After discussion of this topic, the Committee agreed with this position.

Another non-Federal negotiator pointed out that often when students complete a degree program at a school that measures academic progress in credit hours but does not use a semester, trimester, or quarter system, and then immediately start another degree program, they are allowed to borrow only the remaining balance of their annual loan amount for the first academic year of their second degree program. This occurs when the last loan made to complete the first degree program had been for less than an academic year. Since the minimum period of time for which a school can certify a loan is the lesser of the program (or remaining portion of the program) or the academic year, students finishing one degree program and starting a second degree program in the situation noted above are eligible to borrow only a small amount of money (the remaining balance) for a period of time associated with the first full academic year (usually 30 weeks) of their second degree program.

Therefore, the Committee agreed that, for these students in these types of programs, where the school certified or originated a loan for less than an academic year for the completion of one degree program, it should be allowed to certify or originate a loan for the beginning of the second degree program for the remaining portion of the academic year, instead of for the whole academic year.

Annual Loan Limit Progression (§§ 682.603 and 685.301)

Statute: A student must complete an academic year to progress to the next FFEL or Direct Loan annual loan limit. Section 428(b)(1)(A) of the HEA authorizes insurance on a subsidized Stafford loan for any academic year. Unsubsidized Stafford loans, at the increased loan limits for such loans, are subject to the academic year limits in section 428(b)(1) of the HEA. Section 481(a)(2) of the HEA requires an academic year to be (1) a 26-week minimum period of instructional time for clock hour programs and a 30-week minimum period of instructional time for credit hour programs, unless the Secretary authorizes a reduced period of not less than 26 weeks as specified in regulations; and (2) for an undergraduate program, at least 24 semester or trimester credit hours, 36 quarter credit hours, or 900 clock hours.

Current regulations: None.

Proposed regulations: Under current policy, for a standard term based program, a student progresses to the next annual loan limit if he or she completes an academic year in calendar time. So, once the calendar time period associated with all of the terms in the academic year has elapsed, a student gains eligibility for a new annual loan limit. For nonstandard term credit hour, nonterm credit hour, and clock hour programs, a student does not progress to the next loan limit until he or she completes an academic year in both time and hours. The proposed regulations would incorporate this policy with one change. As in a standard term based program, a student would progress to the next loan limit if he or she completes an academic year in calendar time in a nonstandard term credit hour program if the terms in that program are substantially equal in length and are at least nine weeks in length.

Reasons: The Department seeks to incorporate in regulations current policy regarding progression to the next annual loan limit to provide for greater clarity of the requirements. The change to apply the policy applicable to standard term credit hour programs to nonstandard term credit hour programs if the terms in those programs are substantially equal in length and are at least nine weeks in length would provide consistency with final regulations published in the **Federal Register** on November 1, 2000 (65 FR 65616), whereby the Department applied the disbursement requirements for standard term-based programs to credit hour programs measured in nonstandard terms that are substantially equal in length. The Committee agreed that the inclusion of these changes was desirable.

Calculation of a Pell Grant (§§ 690.63 and 690.66)

Statute: Section 401(e) of the HEA indicates that the Secretary will promulgate regulations to ensure that an eligible student is paid a Pell Grant for each academic year in the amount for which that student is eligible.

Current Regulations: The current regulations provide institutions with a number of formulas for calculating a Pell Grant on a payment period basis depending on the academic calendar of the program that is being taken. Section 690.63(a)(1) indicates which formulas can be used for programs using standard terms with at least 30 weeks of instructional time, and provides the specific criteria that must be used to determine whether a program falls under that category. The section limits programs in that category to traditional semester, trimester, or quarter credit hour programs. Section 690.63(b), (c), and (d) provides the formulas that are used for programs that use credit hours and academic terms. Section 690.63(e) provides the formula for programs using clock hours or credit hours without terms. And § 690.66 provides formulas for correspondence study programs.

Proposed Regulations: The proposed regulations make several changes. First, the proposed regulations in § 690.63(a)(1) place semester, trimester, and quarter programs that have terms for different cohorts of students that start periodically (e.g., each month) in the same category as the traditional semester, trimester, or quarter programs and, thus, allow institutions with those types of programs to use the same formulas for those programs as are used for the traditional term programs. Second, the proposed regulations in § 690.63(e) would modify the calculation for programs using clock hours or credit hours without terms. The resulting calculation would determine the percentage of the academic year that would be used to determine the award amount for the payment period, considering both the hours and the weeks of instructional time in the payment period. The calculations would call for the student's scheduled award (the amount a full-time student would get for a full academic year) to be multiplied by the lesser of two fractions that represent (1) the credit or clock hours in the payment period divided by the credit or clock hours in the academic year, and (2) the weeks of instructional time in the payment period divided by the weeks of instructional time in the academic year. Third, the proposed regulations in § 690.66(a) make a similar modification to the calculation for correspondence study programs without terms.

Reasons: The formula most often used for traditional semester, trimester, or quarter credit hour programs is specified in current § 690.63(b). These programs also have the option of using the formula specified in current § 690.63(d). Under the formula in § 690.63(b), a student's Pell Grant is calculated for a payment period (a term). The formula provides for a determination of the student's enrollment status for the term and use of the Payment Schedule or Disbursement Schedule associated with that enrollment status to determine the annual amount that the student would get at that enrollment status. The annual amount is then divided by the number of terms associated with the program's academic year. For example, for a full-time student in the fall semester in a traditional semester program, the

formula calls for the Scheduled Award (the amount a full-time student would get for a full academic year) to be divided by two (the number of semesters associated with the academic year for that program). Or, for a half-time student in the fall quarter in a traditional quarter program, the formula calls for the annual amount from the half-time Disbursement Schedule to be divided by three (the number of quarters associated with the academic year for that program). Traditional term-based programs are allowed to use this formula if they meet the criteria in current § 690.63(a)(1).

Under the proposed change to § 690.63(a)(1), traditional programs would continue to be allowed to use this formula. However, several non-Federal negotiators suggested that, because certain other programs (i.e., those that start their semesters, trimesters, or quarters on a periodic (e.g., monthly) basis for different cohorts of students) are substantially similar in nature to traditional semester, trimester, or quarter programs, they also should be allowed to use this formula. These negotiators suggested that this issue be added to the negotiated rulemaking agenda, and the Committee agreed to do so. After discussion of this issue, the Committee members agreed that, if these programs meet the criteria applicable to them in proposed § 690.63(a)(1), they should be allowed to use the same formulas that traditional semester, trimester, or quarter programs are allowed to use.

The formula used for programs using credit hours without terms or clock hours is specified in current § 690.63(e). It is used for such programs regardless of the program length and it generally works well when applied to programs that are an academic year or more in length; however, a non-Federal negotiator pointed out that, for certain short programs (less than an academic year in length), application of the formula results in the student qualifying for less of an award than might be deemed appropriate based on the length of the program. For example, a student with a Scheduled Pell Grant Award of $4050, generally receives $4050 for a program that is one academic year in length (e.g., a program of 900 clock hours scheduled to be taken over a 30-week period). Such a student might expect to receive two-thirds of that Scheduled Award ($2700) for a shorter program that is two-thirds as long, e.g., a program of 600 clock hours scheduled to be taken over a 20-week period. However, currently such a student would receive only four-ninths of the Scheduled Award ($1800) instead of two-thirds of the Scheduled Award ($2700) for such a program. Therefore, the non-Federal negotiator suggested that this issue be added to the agenda, and the Committee agreed to do so.

During negotiations, it was noted that the above result occurs because of the way the current formula addresses the fact that an academic year is measured in both (credit or clock) hours and weeks of instructional time. Consider, for example, the 600-hour, 20-week program mentioned above. Even though the program is less than an academic year long, it must have a defined academic year, and we will assume here that its defined academic year is 900 clock hours and 30 weeks of instructional time. Because the definition of *academic year* includes hours and weeks, the Pell Grant formula calls for a reduction based on both factors when the program is less than an academic year in both hours and weeks. In this example, the first part of the calculation reduces the full Scheduled Award of $4050 to two-thirds of that amount ($2700) to address the fact that the program consists of only 20 weeks; and then it reduces that figure ($2700) by another two-thirds to account for the fact that the program is only 600 hours. Note that the calculations are actually performed on a payment period basis and, while the numbers here show the result for the whole program, the program would actually be divided into two payment periods, and two separate calculations—each for one-third of the program—would actually be done.

In response, the Department proposed an alternative calculation. This alternative continues to address the fact that an academic year is defined by both (credit or clock) hours and weeks of instructional time. However, the proposed calculation multiplies the student's Scheduled Award by only one of the two fractions that address reductions in program length and hours (the lesser of the two where the fractions are not the same), instead of multiplying the Scheduled Award by the two fractions sequentially. Note that while one of the two fractions used in the proposed regulations is slightly different than one of the two fractions in the current regulations, the two fractions in both the proposed and the current regulations basically attempt to account for (1) the weeks of instructional time for which the student is being paid compared to the weeks of instructional time in the academic year, and (2) the credit or clock hours for which the student is being paid compared to the credit or clock hours in the academic year. The first fraction in the current regulations was primarily designed to address course compression—that is, for example, to the extent that a one academic year program (in terms of credit or clock hours) was scheduled to be completed in fewer weeks of instructional time than was a similar program taken over the full 30 weeks in the defined academic year, the student's award was going to be reduced. However, to the extent that there would be a full complement of credit or clock hours in the program compared to the credit or clock hours in the academic year, the second fraction would not result in a further reduction. While this formula generally worked as intended for longer programs that were compressed, it ended up penalizing students in shorter programs that had not been compressed, because there would still be two reductions for those students instead of one. The first one occurred because there were fewer weeks of instructional time (even though the course had not been compressed) in the program compared to the weeks of instructional time in a full academic year, and the second one occurred because there were fewer credit or clock hours in the program compared to the credit or clock hours in a full academic year.

Using the lesser of the two fractions (where they are not the same) to determine the amount for which the student qualifies results in the student's award being reduced by the greater amount when there could be a reduction in the award to account for (1) the program having fewer hours, and (2) the program having fewer weeks of instructional time. By using the lesser of the two fractions, the proposed regulations would continue to address both of these measures. However, because a student enrolling in a shorter program will attend school for fewer weeks compared to the time the student would have attended for enrollment in a longer program (other factors such as enrollment status being equal), having sequential reductions for both of those measures reduces the student's award twice for what is really only one reason, i.e., the program is just a shorter program. Therefore, to ensure that a student's award is not subject to such a double reduction, only the greater of the two possible reductions comes into play when those reductions would not be the same. The Committee agreed with this alternative approach proposed by the Department.

Because the formula used for correspondence study programs without terms is similar to the formula used for programs using clock hours or credit hours without terms, the Department also proposed in § 690.66(a) to make a

similar modification to the calculation for correspondence study programs without terms. Part of that modification would remove the requirement that the institution prepare a written schedule for submission of lessons that reflects a workload of at least 12 hours of preparation per week to determine the length of the correspondence program, as that information is no longer needed in the new calculation. The Committee agreed to this proposal.

The Committee agreed that if the proposed changes related to calculating payments for a payment period were adopted for the Pell Grant Program, comparable changes should be adopted for the ACG and National SMART Grant programs. Therefore, proposed changes in § 691.63 that track the proposed changes in § 690.63 are also being published in this NPRM.

The following appendices will not appear in the Code of Federal Regulations:

BILLING CODE 4000–01–P

Appendix A to the preamble--Current Disbursement Requirements

Program Type	FFEL and Direct Loan Second disbursements	Pell Grant, ACG, National SMART Grant, FSEOG and Perkins Loan Subsequent disbursements	Exceptions to disbursing once each payment period**
Standard term credit hour program	Term*	Term	*For a single term loan period, FFEL and Direct Loan funds must be paid in two installments. Second installment paid at calendar midpoint between first and last scheduled days of class of the loan period.
Nonstandard term credit hour program (terms substantially equal in length)	Term*	Term	*For a single term loan period for the remainder of a program, FFEL and Direct Loan funds must be paid in two installments. Second installment paid at calendar midpoint between first and last scheduled days of class of the loan period.
Nonstandard term credit hour program (terms NOT substantially equal in length)	Later of • Calendar midpoint between first and last scheduled days of class of the loan period, or • Date that the student has completed half of the academic coursework in the loan period *	Term	* For a remainder of a program equal to or less than ½ an academic year, FFEL and Direct Loan funds must be paid in two installments. Second installment paid at calendar midpoint between first and last scheduled days of class of the loan period.
Clock-hour program	Later of • Calendar midpoint between first and last scheduled days of class of the loan period, or • Date that the student has completed half of the clock hours in the loan period *	Payment period: Completion of half of the clock hours in the academic year or program, as appropriate	* For a remainder of a program equal to or less than ½ an academic year, FFEL and Direct Loan funds must be paid in two installments. Second installment paid at calendar midpoint between first and last scheduled days of class of the loan period.
Nonterm credit-hour program	Later of • Calendar midpoint between first and last scheduled days of class of the loan period, or • Date that the student has completed half of the academic coursework in the loan period.*	Payment period: Completion of • Half of the number of weeks of instructional time in the academic year/program, and • Half of the number of credit hours in the academic year/program	* For a remainder of a program equal to or less than ½ an academic year, FFEL and Direct Loan funds must be paid in two installments. Second installment paid at calendar midpoint between first and last scheduled days of class of the loan period.

**FFEL and Direct Loan funds are not paid in two installments if the school is exempt under the cohort default rate exception.

Appendix B to the preamble--Proposed Disbursement Requirements

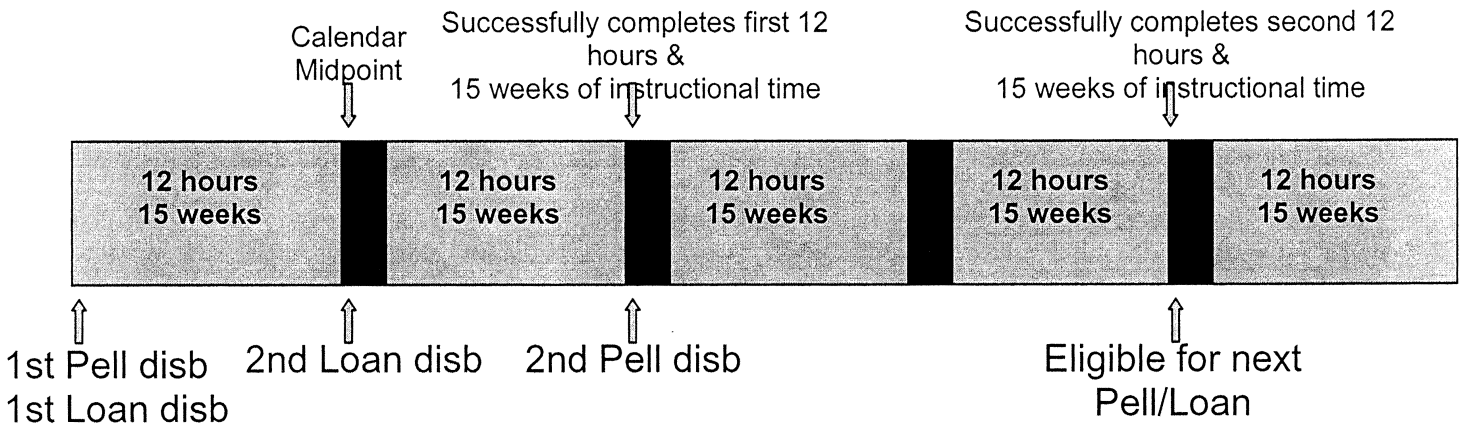
Program Type	FFEL and Direct Loan Second disbursements	Pell Grant, ACG, National SMART Grant, FSEOG and Perkins Loan Subsequent disbursements	Exceptions to disbursing once each payment period**
Standard term credit hour program	Term*	Term	*For a single term loan period, FFEL and Direct Loan funds must be paid in two installments. Second installment paid at calendar midpoint between first and last scheduled days of class of the loan period.
Nonstandard term credit hour program (terms substantially equal in length)	Term*	Term	*For a single term loan period, FFEL and Direct Loan funds must be paid in two installments. Second installment paid upon successful completion of half of the weeks of instructional time in the payment period.
Nonstandard term credit hour program (terms NOT substantially equal in length)	Payment period=Successful completion of • Half of the weeks of instructional time in the academic year/program less than an academic year; and • Half of the credit hours in the academic year/program less than an academic year For a remainder of a program equal to or less than ½ an academic year, the payment period is the remainder of the program.*	Term	* For a remainder of a program equal to or less than ½ an academic year, FFEL and Direct Loan funds must be paid in two installments. Second installment paid upon successful completion of • Half of the weeks of instructional time in the payment period; and • Half of the credit hours in the payment period
Clock-hour program and nonterm credit hour program	Payment period=Successful completion of • Half of the weeks of instructional time in the academic year/program less than an academic year; and • Half of the clock hours/credit hours in the academic year/program less than an academic year For a remainder of a program equal to or less than ½ an academic year, the payment period is the remainder of the program.*	Payment period=Successful completion of • Half of the weeks of instructional time in the academic year/program less than an academic year; and • Half of the clock hours/credit hours in the academic year /program less than an academic year. For a remainder of a program equal to or less than ½ an academic year, the payment period is the remainder of the program.	* For a remainder of a program equal to or less than ½ an academic year, FFEL and Direct Loan funds must be paid in two installments. Second installment paid upon successful completion of • Half of the weeks of instructional time in the payment period; and • Half of the clock hours/credit hours in the payment period

**FFEL and Direct Loan funds are not paid in two installments if the school is exempt under the cohort default rate exception.

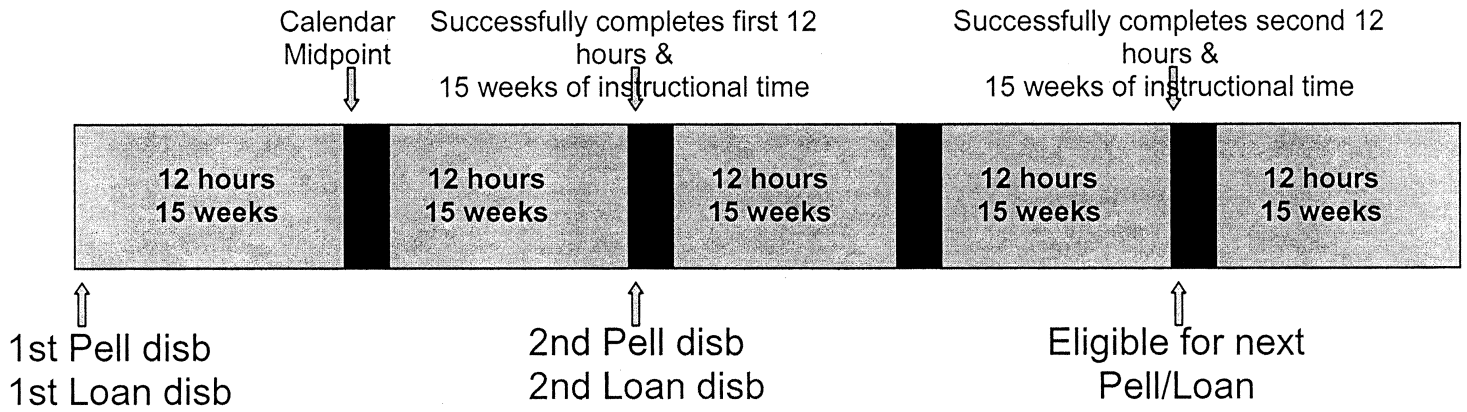
Appendix C to the preamble--Title IV disbursements--Less-than-full-time enrollment

60 credit hour nonterm program Academic Year = 24 credit hours & 30 weeks of instructional time

Half-time student--Current policy

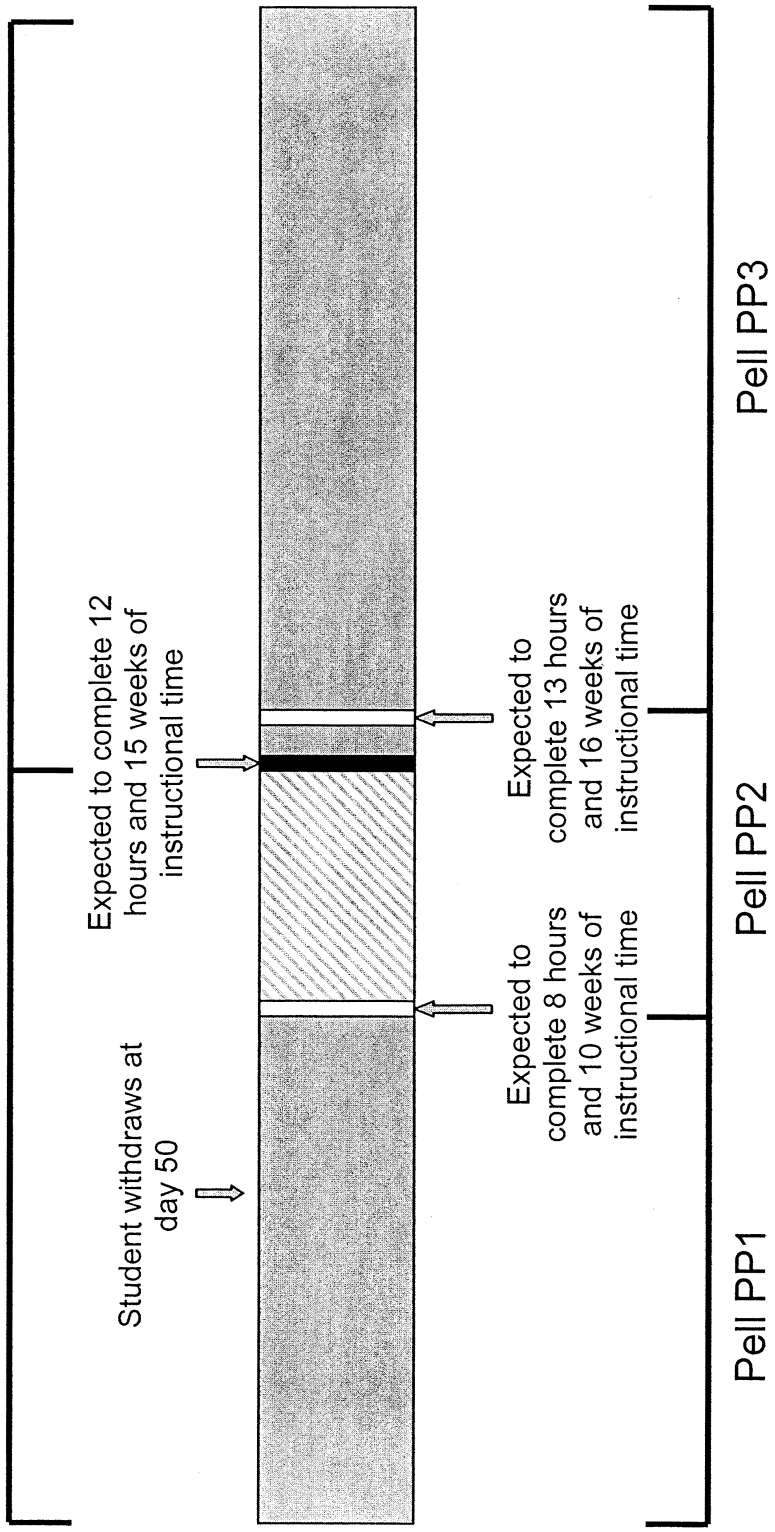


Half-time student--Proposed change



Appendix D to the preamble--Return of Title IV Funds--Payment periods for nonstandard term credit hour programs with terms not substantially equal in length

Academic Year = 24 credit hours & 30 weeks of instructional time
Length of terms: Term 1=10 weeks, Term 2=6 weeks, Term 3=14 weeks



BILLING CODE 4000–01–C

Executive Order 12866

1. Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise 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, we determined that this proposed regulatory action will not have an annual effect on the economy of more than $100 million. Therefore, this action is not ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. In accordance with the Executive order, the Secretary 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

These proposed regulations address a broad range of issues affecting students, borrowers, schools, lenders, guaranty agencies, secondary market participants, and third-party servicers participating in the Pell Grant, FSEOG, FWS, ACG, National SMART Grant, FFEL, Direct Loan, or Perkins Loan programs. Prior to the start of negotiated rulemaking, a list of proposed regulatory changes was developed from advice and recommendations by interested parties and organizations submitted through testimony at public hearings and written comments submitted directly to the Department of Education in Washington, DC. Staff within the Office of Postsecondary Education also identified issues for discussion and negotiation.

Regulatory Alternatives Considered

A broad range of alternatives to the proposed regulations was considered as part of the negotiated rulemaking process. These alternatives are reviewed in detail under the *Reasons* sections accompanying the discussion of each proposed provision. In assessing the budgetary impact of these alternatives, the Department considered the effect of possible changes on the size or timing of Federal student aid disbursements. In all cases, the alternatives considered-which generally dealt with the consolidation or clarification of existing definitions, procedures, or processes to simplify program administration-did not have a measurable effect on Federal costs.

Benefits

Many of the proposed regulations merely consolidate current regulations, codify the Department's guidance, or make relatively minor changes intended to establish consistent definitions or streamline program operations across the various Federal student aid programs; in the absence of data to the contrary, the Department believes the additional clarity and enhanced efficiency resulting from these changes represent benefits with little or no countervailing costs or additional burden. This belief is strongly supported by the fact that the Committee reached consensus on the proposed regulations. Nonetheless, the Department is interested in comments on possible administrative burdens related to the proposed regulations.

Benefits provided in these regulations include the clarification or consolidation of regulations or definitions involving enrollment statuses, independent study for direct assessment programs, cash management rules, disbursement and payment periods, return of Title IV aid, and the calculation of Pell Grant awards.

Costs

Because entities affected by these regulations already participate in the Title IV, HEA programs, these lenders, guaranty agencies, and schools must already have established systems and procedures in place to meet program eligibility requirements. All the proposed regulations involve discrete changes in specific parameters associated with existing guidance and regulations rather than entirely new requirements. Accordingly, entities wishing to continue to participate in the Federal student aid programs have already absorbed most of the administrative costs related to implementing these proposed regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation. The Department is particularly interested in comments on possible administrative burdens related to these system or process changes.

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 1 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

Category	Transfers
Annualized Monetized Transfers	$0

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 682.209 Repayment of a loan.)
- Could the description of the proposed regulations in the

''Supplementary Information'' section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs, individual students, and loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. Individuals are also not defined as ''small entities'' under the Regulatory Flexibility Act.

A significant percentage of the schools and lenders participating in the Federal student loan programs meet the definition of ''small entities.'' While these schools and lenders fall within the SBA size guidelines, the proposed regulations would not impose significant new costs on these entities.

The Secretary invites comments from small institutions and lenders participating in the Federal student loan programs as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Sections 668.4, 668.10, 668.21, 668.22, 668.164, 668.165, 674.16, 676.16, 682.200, 682.603, 682.604, 685.301, and 685.303, contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Collection of Information: Student Assistance General Provisions; Perkins Loan Program; FSEOG Program; FFEL Program; and the Direct Loan Program.

Sections 668.4, 668.22, 668.164, 682.200, 682.604, 685.301—Payment Periods and Disbursements of Title IV Grant and Loan Funds

By making a number of changes to the payment period definitions and disbursement requirements, these proposed regulations would, with few exceptions, align disbursements for all Title IV grant and loan programs.

Inconsistent requirements for disbursing Title IV grant and loan funds for certain types of programs can result in a student receiving second or subsequent disbursements of his or her grant funds or Perkins Loan funds at a different point in time than second disbursements of his or her FFEL or Direct Loan funds. Changes to the regulations that would achieve greater consistency in the timing of the disbursements of Title IV grant and loan funds are proposed to reduce this burden and confusion for institutions and students.

These proposed changes include—(1) Specifying that an institution must disburse all Title IV grant and loan funds on a payment period basis; (2) requiring, generally, that an institution disburse all Title IV grant and loan funds once each payment period; (3) adding a time component to the payment period definitions for clock hour programs to make the disbursements of Title IV grant and Perkins Loan funds conform with the disbursements of FFEL and Direct Loan funds, which must, by law, include a time component; (4) using weeks of instructional time as the time component for determining all Title IV grant and loan disbursements; (5) removing the institutional option to have more than two payment periods for nonterm credit hour programs and clock hour programs; and (6) extending to clock hour programs the provision that addresses how to identify the end of a payment period when an institution is unable to determine whether a student in a nonterm credit hour program has completed half of the credit hours in a program, academic year, or remainder of a program.

We estimate that the proposed changes will decrease burden for individuals and schools. We estimate that the proposed changes will decrease burden for individuals and institutions by 3,599 hours and 14,397 hours, respectively. Thus, we estimate that these proposed regulations will reduce burden by 17,996 hours in OMB Control Number 1845–0022.

Section 668.10—Defining Independent Study for Direct Assessment Programs

These proposed regulations would add a definition of *independent study* for direct assessment programs. The new definition would identify the conditions that must exist for a student in a direct assessment program who is taking all or a portion of that program through independent study to be eligible for Title IV, HEA program assistance. For example, students who are engaged in independent study would be expected to have regular and substantive interaction with their professor to assure progress within the course or program.

In the short-term, we expect no additional burden to be associated with direct assessment programs. We are currently aware of only one institution that utilizes such programs. Therefore, this section is not subject to the Paperwork Reduction Act of 1995.

Sections 668.21, 682.604, and 685.303—Treatment of Title IV Grant and Loan Funds if a Recipient Does Not Begin Attendance

The proposed regulations would consolidate requirements for returning any Perkins Loan, FSEOG, Pell Grant, ACG, National SMART Grant, and FFEL and Direct Loan funds under § 668.21, and eliminate these requirements from §§ 682.604(d)(3) and (4) and 685.303(b)(3). The proposed regulations would hold the institution responsible for returning FFEL and Direct Loan funds disbursed or paid directly to the student, if the institution knew the student would not attend before the funds were disbursed and establishes a timeframe within which the FFEL and Direct Loan funds must be returned. Finally, the proposed regulations clarify the meaning of ''delivered'' vs. ''disbursed'' FFEL and Direct Loan funds.

The proposed changes do not increase burden for institutions, lenders, or guaranty agencies.

Section 668.22—Post-Withdrawal Disbursements of Grant Funds Directly to a Student

The proposed regulations would eliminate the current requirement that an institution notify a student who has withdrawn from school and obtain the student's permission before making a post-withdrawal disbursement of Title IV grant funds directly to the student. In addition, the proposed regulations would require the institution to make a post-withdrawal disbursement of such grant funds to the student within 30 days of the date the institution

determines that the student withdrew. The proposed changes to the requirements for direct disbursement of post-withdrawal grant proceeds would reduce burden to the institutions by eliminating a notification and confirmation process. The reduction in burden will be reflected in OMB 1845–0022.

For loan funds instead of grant funds, a change is proposed for making a post-withdrawal disbursement of Title IV loan proceeds which, although retaining the borrower notice and confirmation process in the current regulations, requires the disbursement ''as soon as possible,'' but no later than 120 days after determination of the student's withdrawal. Adding the language ''as soon as possible'' to the current 120-day limit for disbursement of post-withdrawal Title IV loan proceeds will have no affect on paperwork burden.

We estimate that the proposed changes will decrease burden for individuals and institutions by 201 hours and 302 hours, respectively. Thus, we estimate that this proposed regulation will reduce burden by 503 hours as reflected in OMB Control Number 1845–0022.

Sections 668.164(c) and 668.165(b)(1)(i)—Electronic Disbursements of Title IV Funds

The proposed regulations would modify current authorization and notification requirements related to making direct payments to a student. The proposed regulations would allow an institution to pay a student directly through expanded electronic funds transfer methods such as debit cards, stored-value cards, ATM cards or other transaction devices. We estimate that the proposed changes will decrease the burden for institutions through the ability to use expanded electronic processes for making direct payments.

We estimate that the proposed changes will decrease burden for institutions by 254,475 hours as reflected in OMB Control Number 1845–0038.

Section 668.165(a)—Loan Cancellation Notice and Affirmative Confirmation of a Loan

The proposed regulations would provide institutions the choice between active and passive confirmation of a loan. In addition, the proposed regulations would codify existing practice that an institution is not responsible for returning loans that it disbursed directly to a student. If an institution chooses active confirmation, the process is unchanged from current requirements. If an institution chooses passive confirmation of a loan, the proposed regulations change the timeframes for notice to the student, but do not substantially change the content of such notice. Therefore, we estimate that there will be no change in the burden.

Sections 682.603 and 685.301—Minimum Period for Certifying a Loan

The proposed regulations would clarify existing requirements for certifying FFEL and Direct Loans in certain situations. We believe there will be no overall change in the burden.

Sections 682.603 and 685.301—Annual Loan Limit Progression

The proposed regulations would incorporate into §§ 682.603 and 685.301 the Department's longstanding policy that provides that (1) for standard term, credit hour programs, a student regains eligibility for a new annual loan limit after the calendar period associated with the academic year has elapsed, and (2) for nonstandard term credit hour, nonterm credit hour, and all clock hour programs, a student regains eligibility for a new annual loan limit only after completing both the credit or clock hours and the weeks of instructional time in the academic year.

In addition, the proposed regulations would apply the policy for standard term, credit hour programs to nonstandard term credit hour programs with terms that are substantially equal in length and that are at least nine weeks in length regains. That is, a student enrolled in a nonstandard term, credit hour program with terms that are substantially equal in length and that are at least nine weeks in length would regain eligibility for a new annual loan limit when the calendar time associated with the academic year has elapsed. This proposed change would be consistent with final regulations published in the **Federal Register** on November 1, 2000 (65 FR 65616), which applied the same disbursement requirements to credit hour programs with standard terms and credit hour programs with nonstandard terms that are substantially equal in length. The proposed changes for §§ 682.603 and 685.301 have no effect on the burden for institutions, as they simply incorporate existing policy into the regulations. This existing burden has been approved by OMB under OMB 1845–0020.

Section 674.16 and 676.16—Single Disbursement for Perkins Loan and FSEOG Awards

The proposed regulations eliminate an exception in the regulations that allows an institution to make a single disbursement of a Perkins Loan or FSEOG award if the total amount of that loan or award for an academic year is less than $501. Eliminating the exception merely harmonizes the disbursement requirements for these programs and has no impact on burden.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections the Department will submit to the Office of Management and Budget for approval and public comment under the Paperwork Reduction Act.

Regulatory section	Information collection	Collection
§ 668.4, 668.22, 668.164, 682.200, 682.604, 685.301	This proposed regulation will, with few exceptions, align disbursements for all Title IV grant and loan programs.	OMB 1845–0022
§ 668.22	This proposed regulation will eliminate the current requirement that an institution notify a student who has withdrawn from school, and receive confirmation from the student, before making a post-withdrawal disbursement of Title IV grant funds directly to the student.	OMB 1845–0022
§§ 668.164 and 688.165	This proposed regulation provides authority for an institution to pay Title IV credit balances through electronic funds transfer, debit card, stored-value card, ATM card or other device.	OMB 1845–0038

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of

Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Commenters need only submit comments via one submission medium. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble. We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.375 Academic Competitiveness Grants; and 84.376 SMART Grants)

List of Subjects

34 CFR Part 668

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

34 CFR Parts 674 and 676

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

34 CFR Parts 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loans program—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 690 and 691

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

Dated: August 2, 2007.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 668, 674, 676, 682, 685, 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.

2. Section 668.2(b) is amended by adding, in alphabetical order, the definitions *First professional degree, Graduate or professional student*, *Half-time student*, *Three-quarter time student*, and *Undergraduate student*, and revising the definition of *Full-time student* to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

First professional degree: A degree that signifies both completion of the academic requirements for beginning practice in a given profession and a level of professional skill beyond that normally required for a bachelor's degree. Professional licensure is also generally required. Examples of a first professional degree include but are not limited to Pharmacy (Pharm.D.), Dentistry (D.D.S. or D.M.D.), Veterinary Medicine (D.V.M.), Chiropractic (D.C. or D.C.M.), Law (L.L.B. or J.D.), Medicine (M.D.), Optometry (O.D.), Osteopathic Medicine (D.O.), Podiatry (D.P.M., D.P., or Pod.D.), and Theology (M.Div., or M.H.L.).

(Authority: 20 U.S.C. 1082 and 1088)

Full-time student: An enrolled student who is carrying a full-time academic workload as determined by the institution under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

(2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

(3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters or quarters) the number of credits determined by—

(i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and

(ii) Multiplying the fraction determined under paragraph (b)(3)(i) of

this definition by the number of credit hours in the program's academic year.

(4) For a program that measures progress in clock hours, 24 clock hours per week.

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(7) For correspondence coursework, a full-time courseload must be—

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

(Authority: 20 U.S.C. 1082 and 1088)

Graduate or professional student: A student who—

(1) Is not receiving title IV aid as an undergraduate student for the same period of enrollment;

(2) Is enrolled in a program or course above the baccalaureate level at an institution of higher education, or is enrolled in a program leading to a first professional degree; and

(3) Has completed the equivalent of at least three academic years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself.

(Authority: 20 U.S.C. 1082 and 1088)

Half-time student: (1) Except as provided in paragraph (2) of this definition, an enrolled student who is carrying a half-time academic work load, as determined by the institution, that amounts to at least half of the work load of the applicable minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week, or is earning at least six credit hours per semester, trimester, or quarter. However, regardless of the work, no student enrolled solely in correspondence study is considered more than a half-time student.

(Authority: 20 U.S.C. 1082 and 1088)

* * * * *

Three-quarter time student: An enrolled student who is carrying a three-quarter-time academic work load, as determined by the institution, that amounts to at least three quarters of the work of the applicable minimum requirement outlined in the definition of a full-time student.

(Authority: 20 U.S.C. 1082 and 1088)

* * * * *

Undergraduate student: (1) A student who is enrolled in an undergraduate course of study that usually does not exceed four academic years, or is enrolled in a longer program designed to lead to a first degree at the baccalaureate level. For purposes of 34 CFR 690.6(c)(5) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(2) In addition to meeting the definition in paragraph (1) of this definition, a student is only considered an undergraduate for purposes of the Federal Supplemental Educational Opportunity Grant (FSEOG) Program, the Federal Pell Grant Program, the Academic Competitiveness Grant (ACG) Program, and National Science and Mathematics Access to Retain Talent (SMART) Grant Program if the student has not yet earned a baccalaureate or first professional degree. However, for purposes of 34 CFR 690.6(c)(5) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(3) For purposes of dual degree programs that allow individuals to complete a bachelor's degree and either a graduate or first professional degree within the same program, a student is considered an undergraduate student for at least the first three academic years of that program.

(Authority: 20 U.S.C. 1082 and 1088)

* * * * *

3. Section 668.4 is revised to read as follows:

§ 668.4 Payment period.

(a) *Payment periods for an eligible program that measures progress in credit hours and uses standard terms or nonstandard terms that are substantially equal in length.* For a student enrolled in an eligible program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), or for a student enrolled in an eligible program that measures progress in credit hours and uses nonstandard terms that are substantially equal in length, the payment period is the academic term.

(b) *Payment periods for an eligible program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length.* For a student enrolled in an eligible program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length—

(1) For Pell Grant, ACG, National SMART Grant, FSEOG, and Perkins Loan program funds, the payment period is the academic term;

(2) For FFEL and Direct Loan program funds—

(i) For a student enrolled in an eligible program that is one academic year or less in length—

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the program and half of the number of weeks of instructional time in the program; and

(B) The second payment period is the period of time in which the student successfully completes the program; and

(ii) For a student enrolled in an eligible program that is more than one academic year in length—

(A) For the first academic year and any subsequent full academic year—

(*1*) The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the academic year and half of the number of weeks of instructional time in the academic year; and

(*2*) The second payment period is the period of time in which the student successfully completes the academic year;

(B) For any remaining portion of an eligible program that is more than half an academic year but less than a full academic year in length—

(*1*) The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the remaining portion of the program and half of the number of weeks of instructional time remaining in the program; and

(*2*) The second payment period is the period of time in which the student successfully completes the remainder of the program; and

(C) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

(c) *Payment periods for an eligible program that measures progress in credit hours and does not have academic terms or for a program that measures progress in clock hours.*

(1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the program and half of the number of weeks of instructional time in the program; and

(ii) The second payment period is the period of time in which the student successfully completes the program or the remainder of the program.

(2) For a student enrolled in an eligible program that is more than one academic year in length—

(i) For the first academic year and any subsequent full academic year—

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year; and

(B) The second payment period is the period of time in which the student successfully completes the academic year;

(ii) For any remaining portion of an eligible program that is more than half an academic year but less than a full academic year in length—

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the remaining portion of the program and half of the number of weeks of instructional time remaining in the program; and

(B) The second payment period is the period of time in which the student successfully completes the remainder of the program; and

(iii) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

(3) For purposes of paragraphs (c)(1) and (c)(2) of this section, if an institution is unable to determine when a student has successfully completed half of the credit hours or clock hours in a program, academic year, or remainder of a program, the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of the date, as determined by the institution, on which the student has successfully completed—

(i) Half of the academic coursework in the program, academic year, or remainder of the program; or

(ii) Half of the number of weeks of instructional time in the program, academic year, or remainder of the program.

(d) *Application of the cohort default rate exemption.* Notwithstanding paragraphs (a), (b), and (c) of this section, if 34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies to an eligible program that measures progress in credit hours and uses nonstandard terms, an eligible program that measures progress in credit hours and does not have academic terms, or an eligible program that measures progress in clock hours, the payment period for purposes of FFEL and Direct Loan funds is the loan period for those portions of the program to which 34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies.

(e) *Excused absences.* For purposes of this section, in determining whether a student successfully completes the clock hours in a payment period, an institution may include clock hours for which the student has an excused absence (i.e., an absence that a student does not have to make up) if—

(1) The institution has a written policy that permits excused absences; and

(2) The number of excused absences under the written policy for purposes of paragraph (e) of this section does not exceed the lesser of—

(i) The policy on excused absences of the institution's accrediting agency or, if the institution has more than one accrediting agency, the agency designated under 34 CFR 600.11(b);

(ii) The policy on excused absences of any State agency that licenses the institution or otherwise legally authorizes the institution to operate in the State; or

(iii) Ten percent of the clock hours in the payment period.

(f) *Re-entry within 180 days.* If a student withdraws from a program described in paragraph (c) of this section during a payment period and then reenters the same program within 180 days, the student remains in that same payment period when he or she returns and, subject to conditions established by the Secretary or by the FFEL lender or guaranty agency, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of § 668.22.

(g) *Re-entry after 180 days or transfer.* (1) Except as provided in paragraph (g)(3) of this section, and subject to the conditions of paragraph (g)(2) of this section, an institution calculates new payment periods for the remainder of a student's program based on paragraph (c) of this section, for a student who withdraws from a program described in paragraph (c) of this section, and—

(i) Reenters that program after 180 days;

(ii) Transfers into another program at the same institution within any time period; or

(iii) Transfers into a program at another institution within any time period.

(2) For a student described in paragraph (g)(1) of this section—

(i) For the purpose of calculating payment periods only, the length of the program is the number of credit hours and the number of weeks of instructional time, or the number of clock hours and the number of weeks of instructional time, that the student has remaining in the program he or she enters or reenters; and

(ii) If the remaining hours and weeks constitute half of an academic year or less, the remaining hours constitute one payment period.

(3) Notwithstanding the provisions of paragraph (g)(1) of this section, an institution may consider a student who transfers into another program at the same institution to remain in the same payment period if—

(i) The student is continuously enrolled at the institution;

(ii) The coursework in the payment period the student is transferring out of is substantially similar to the coursework the student will be taking when he or she first transfers into the new program;

(iii) The payment periods are substantially equal in length in weeks of instructional time and credit hours or clock hours, as applicable; and

(iv) There are little or no changes in institutional charges associated with the payment period to the student.

(h) *Definitions.* For purposes of this section—

(1) Terms are *substantially equal in length* if no term in the program is more than two weeks of instructional time longer than any other term in that program; and

(2) A student *successfully completes* credit hours or clock hours if the institution considers the student to have passed the coursework associated with those hours.

(Authority: 20 U.S.C. 1070 *et seq.*)

4. Section 668.10 is amended by:

A. In paragraph (a)(3)(ii), removing the word ''or'' immediately after the figure ''668.4(a)'' and adding, in its place, the punctuation '','', and by adding the words '', or (c),'' immediately after the parenthetical ''(b)''.

B. Revising paragraph (a)(3)(iii).

C. Removing paragraphs (a)(3)(v) and (3)(vi).

The revision reads as follows:

§ 668.10 Direct Assessment Programs.

(a) * * *

(3) * * *

(iii) A week of instructional time in a direct assessment program is any seven-day period in which at least one day of educational activity occurs. Educational activity in a direct assessment program includes regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty mentor, development of an academic action plan addressed to the competencies identified by the institution, or, in combination with any of the foregoing, assessments. It does not include credit for life experience. For purposes of direct assessment programs, independent study occurs when a student follows a course of study with predefined objectives but works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member agree on what the student will do (e.g., required readings, research, and work products), how the student's work will be evaluated, and on what the relative timeframe for completion of the work will be. The student must interact with the faculty member on a regular and substantive basis to assure progress within the course or program.

* * * * *

5. Section 668.21 is revised to read as follows:

§ 668.21 Treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution.

(a) If a student does not begin attendance in a payment period or period of enrollment, the institution must—

(1) Return all title IV, HEA program funds that were credited to the student's account at the institution or disbursed directly to the student for that payment period or period of enrollment, for Federal Perkins Loan, FSEOG, Federal Pell Grant, ACG, and National SMART Grant program funds; and

(2) For FFEL and Direct Loan funds—

(i)(A) Return all FFEL and Direct Loan funds that were credited to the student's account at the institution for that payment period or period of enrollment; and

(B) Return the amount of payments made directly by or on behalf of the student to the institution for that payment period or period of enrollment, up to the total amount of the loan funds disbursed;

(ii) For remaining amounts of FFEL or Direct Loan funds disbursed directly to the student for that payment period or period of enrollment, the institution is not responsible for returning the funds, but must immediately notify the lender or the Secretary, as appropriate, when it becomes aware that the student will not or has not begun attendance so that the lender or Secretary will issue a final demand letter to the borrower in accordance with 34 CFR 682.412 or 34 CFR 685.211, as appropriate; and

(iii) Notwithstanding paragraph (a)(2)(ii) of this section, if an institution knew that a student would not begin attendance prior to disbursing FFEL or Direct Loan funds directly to the student for that payment period or period of enrollment (e.g., the student notified the institution that he or she would not attend, or the institution expelled the student), the institution must return those funds.

(b) The institution must return those funds for which it is responsible under paragraph (a) of this section to the respective title IV, HEA program as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(c) For purposes of this section, the Secretary considers that a student has not begun attendance in a payment period or period of enrollment if the institution is unable to document the student's attendance at any class during the payment period or period of enrollment.

(d) In accordance with procedures established by the Secretary or FFEL Program lender, an institution returns title IV, HEA funds timely if—

(1) The institution deposits or transfers the funds into the bank account it maintains under § 668.163 no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

(2) The institution initiates an electronic funds transfer (EFT) no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

(3) The institution initiates an electronic transaction, no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance, that informs an FFEL lender to adjust the borrower's loan account for the amount returned; or

(4) The institution issues a check no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance. An institution does not satisfy this requirement if—

(i) The institution's records show that the check was issued more than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance; or

(ii) The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 45 days after the date that the institution becomes aware that the student will not or has not begun attendance.

(Authority: 20 U.S.C. 1094)

6. Section 668.22 is amended by:

A. Revising paragraph (a)(5).

B. Adding paragraph (e)(5)(iii).

The revision and addition read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

(a) * * *

(5)(i) A post-withdrawal disbursement must be made from available grant funds before available loan funds.

(ii)(A) If outstanding charges exist on the student's account, the institution may credit the student's account up to the amount of outstanding charges with all or a portion of any—

(*1*) Grant funds that make up the post-withdrawal disbursement in accordance with § 668.164(d)(1) and (d)(2); and

(*2*) Loan funds that make up the post-withdrawal disbursement in accordance with § 668.164(d)(1), (d)(2), and (d)(3) only after obtaining confirmation from the student or parent, in the case of a parent PLUS loan, that they still wish to have the loan funds disbursed in accordance with paragraph (a)(5)(iii) of this section.

(B)(*1*) The institution must disburse directly to a student any amount of a post-withdrawal disbursement of grant funds that is not credited to the student's account. The institution must make the disbursement as soon as possible, but no later than 30 days after the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(*2*) The institution must offer to disburse directly to a student, or parent in the case of a parent PLUS loan, any amount of a post-withdrawal disbursement of loan funds that is not credited to the student's account, in accordance with paragraph (a)(5)(iii) of this section.

(*3*) The institution must make a direct disbursement of any loan funds that make up the post-withdrawal disbursement only after obtaining the student's, or parent's in the case of a parent PLUS loan, confirmation that the student or parent still wishes to have

the loan funds disbursed in accordance with paragraph (a)(5)(iii) of this section.

(iii)(A) The institution must provide within 30 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section, a written notification to the student, or parent in the case of parent PLUS loan, that—

(*1*) Requests confirmation of any post-withdrawal disbursement of loan funds that the institution wishes to credit to the student's account in accordance with paragraph (a)(5)(ii)(A)(*2*) of this section, identifying the type and amount of those loan funds and explaining that a student, or parent in the case of a parent PLUS loan, may accept or decline some or all of those funds;

(*2*) Requests confirmation of any post-withdrawal disbursement of loan funds that the student, or parent in the case of a parent PLUS loan, can receive as a direct disbursement, identifying the type and amount of these title IV funds and explaining that the student, or parent in the case of a parent PLUS loan, may accept or decline some or all of those funds;

(*3*) Explains that a student, or parent in the case of a parent PLUS loan, who does not confirm that a post-withdrawal disbursement of loan funds may be credited to the student's account may not receive any of those loan funds as a direct disbursement unless the institution concurs;

(*4*) Explains the obligation of the student, or parent in the case of a parent PLUS loan, to repay any loan funds he or she chooses to have disbursed; and

(*5*) Advises the student, or parent in the case of a parent PLUS loan, that no post-withdrawal disbursement of loan funds will be made, unless the institution chooses to make a post-withdrawal disbursement based on a late response in accordance with paragraph (a)(5)(iii)(C) of this section, if the student or parent in the case of a parent PLUS loan, does not respond within 14 days of the date that the institution sent the notification, or a later deadline set by the institution.

(B) The deadline for a student, or parent in the case of a parent PLUS loan, to accept a post-withdrawal disbursement under paragraph (a)(5)(iii)(A) of this section must be the same for both a confirmation of a direct disbursement of the post-withdrawal disbursement of loan funds and a confirmation of a post-withdrawal disbursement of loan funds to be credited to the student's account.

(C) If the student, or parent in the case of a parent PLUS loan, submits a timely response that confirms that they wish to receive all or a portion of a direct disbursement of the post-withdrawal disbursement of loan funds, or confirms that a post-withdrawal disbursement of loan funds may be credited to the student's account, the institution must disburse the funds in the manner specified by the student, or parent in the case of a parent PLUS loan, as soon as possible, but no later than 120 days after the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(D) If a student, or parent in the case of a parent PLUS loan, submits a late response to the institution's notice requesting confirmation, the institution may make the post-withdrawal disbursement of loan funds as instructed by the student, or parent in the case of a parent PLUS loan (provided the institution disburses all the funds accepted by the student, or parent in the case of a parent PLUS loan), or decline to do so.

(E) If a student, or parent in the case of a parent PLUS loan, submits a late response to the institution and the institution does not choose to make the post-withdrawal disbursement of loan funds, the institution must inform the student, or parent in the case of a parent PLUS loan, in writing of the outcome of the post-withdrawal disbursement request.

(F) If the student, or parent in the case of a parent PLUS loan, does not respond to the institution's notice, no portion of the post-withdrawal disbursement of loan funds that the institution wishes to credit to the student's account, nor any portion of loan funds that would be disbursed directly to the student, or parent in the case of a parent PLUS loan, may be disbursed.

(iv) An institution must document in the student's file the result of any notification made in accordance with paragraph (a)(5)(iii) of this section of the student's right to cancel all or a portion of loan funds or of the student's right to accept or decline loan funds, and the final determination made concerning the disbursement.

* * * * *

(e) * * *

(5) * * *

(iii) For a program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length, if the institution uses the payment period to determine the treatment of title IV grant or loan funds for a category of students found in paragraph (e)(5)(ii)(B) of this section, the institution must—

(A)(*1*) For students in the category who are disbursed or could have been disbursed aid using both the payment period definition in § 668.4(b)(1) and the payment period definition in § 668.4(b)(2), use the payment period during which the student withdrew that ends later; and

(*2*) If in the payment period that ends later there are funds that have been or could have been disbursed from overlapping payment periods, the institution must include in the return calculation any funds that can be attributed to the payment period that ends later; and

(B) For students in the category who are disbursed or could have been disbursed aid using only the payment period definition in § 668.4(b)(1) or the payment period definition in § 668.4(b)(2), use the payment period definition for which title IV, HEA program funds were disbursed for a student's calculation under this section.

* * * * *

7. Section 668.161 is amended by revising paragraph (b) to read as follows:

§ 668.161 Scope and purpose.

* * * * *

(b) *Federal interest in title IV, HEA program funds.* Except for funds received by an institution for administrative expenses and for funds used for the Job Location and Development Program under the FWS Programs, funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries, the Secretary, or lender or a guaranty agency under the FFEL programs. The institution, as a trustee of Federal funds, may not use or hypothecate (*i.e.*, use as collateral) title IV, HEA program funds for any other purpose.

8. Section 668.164 is amended by:

A. Revising paragraphs (b), (c), and (d).

B. Revising paragraph (g)(4)(i).

C. Adding a new paragraph (h).

The revisions and addition read as follows:

§ 668.164 Disbursing funds.

* * * * *

(b) *Disbursements by payment period.* (1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. An institution must disburse title IV, HEA program funds once each payment period unless—

(i) For FFEL and Direct Loan funds, 34 CFR 682.604(c)(6)(ii) or 34 CFR 685.301(b)(3) applies; or

(ii) For FSEOG, Federal Pell Grant, ACG, and National SMART Grant funds, an institution chooses to make more

than one disbursement in each payment period in accordance with 34 CFR 676.16(a)(3), 34 CFR 690.76, or 34 CFR 691.76, as applicable.

(2) The provisions of paragraph (b)(1) of this section do not apply to the disbursement of FWS Program funds.

(3) Except as provided in paragraph (g) of this section, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

(c) *Direct payments.* (1) An institution pays a student or parent directly by—

(i) Releasing to the student or parent a check provided by a lender to the institution under the FFEL Program;

(ii) Issuing a check payable to and requiring the endorsement of the student or parent. An institution issues a check on the date that it—

(A) Mails the check to the student or parent; or

(B) Notifies the student that the check is available for immediate pickup at a specified location at the institution. The institution may hold the check for up to 21 days after the date it notifies the student. If the student does not pick up the check within this 21-day period, the institution must immediately mail the check to the student or parent, initiate an EFT to the student's or parent's bank account, or return the funds to the appropriate title IV, HEA program;

(iii) Initiating an electronic funds transfer (EFT) to a bank account designated by the student's or parent; or

(iv) Dispensing cash for which the institution obtains a signed receipt from the student or parent.

(2) For purposes of this section, ''bank account'' means an FDIC insured account such as a checking or savings account, or a similar account that underlies a stored-value card or other transaction device.

(3) An institution may request, but not require or rely on, the student or parent to open a bank account. If the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must—

(i) Obtain in writing affirmative consent from the student or parent to open that account;

(ii) Before the account is opened, inform the student or parent of the terms and conditions associated with accepting and using the account;

(iii) Not make any claims against the funds in the account without the written permission of the student or parent, except for correcting an error in transferring the funds in accordance with banking protocols;

(iv) Ensure that the student or parent does not incur any cost in opening the account or initially receiving any type of debit card, stored-value card, other type of automated teller machine (ATM) card, or similar transaction device that is used to access the funds in that account;

(v) Ensure that the student has convenient access to a branch office of the bank or ATMs of the bank in which the account was opened (or ATMs of an affiliated bank), so that the student does not incur any cost in making cash withdrawals from that office or ATMs;

(vi) Ensure that the debit, stored-value or ATM card, or other device can be widely used, *e.g.*, the institution may not limit the use of the card or device to particular vendors; and

(vii) Not market or portray the account, card, or device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument.

(d) *Crediting a student's account at the institution.* An institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy—

(1) Current year charges for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board;

(iii) Room, if the student contracts with the institution for room; and

(iv) If the institution obtains the student's or parent's authorization under § 668.165(b), other educationally related charges incurred by the student at the institution; and

(2) Prior award year charges for a total of not more than $200 for—

(i) Tuition and fees, room, or board; and

(ii) If the institution obtains the student's or parent's authorization under § 668.165(b), other educationally related charges incurred by the student at the institution.

* * * * *

(g) * * *

(4) * * *

(i) An institution may not make a late disbursement later than 180 days after the date of the institution's determination that the student withdrew, as provided in § 668.22, or for a student who did not withdraw, 180 days after the date the student otherwise becomes ineligible.

* * * * *

(h)(1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary, lender, or guaranty agency, as applicable, any title IV, HEA program funds that it attempts to disburse directly to a student or parent but the student or parent does not receive or negotiate those funds.

(2) If a disbursement is made by check and the check is not cashed, an institution must return those funds no later than 240 days of the initial attempt to disburse them.

(i) If a check is returned to the institution, or an EFT is rejected, the institution may, as long as it does so within 45 days of the funds being returned to the institution, make additional attempts to disburse the funds. If the institution has not made another attempt to disburse those funds, they must be returned to the Secretary, lender, or guaranty agency, as applicable, before the 45 day period ends.

(ii) All attempts to disburse the funds must end and the institution must return those funds to the Secretary, lender, or guaranty agency, as applicable, by the end of the 240-day period.

9. Section 668.165 is amended by:

A. Revising paragraph (a).

B. Revising paragraph (b)(1).

The revisions read as follows:

§ 668.165 Notices and authorizations.

(a) *Notices.* (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan or FFEL Program funds, the notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) Except in the case of a post-withdrawal disbursement made in accordance with § 668.22(a)(5), if an institution credits a student's account at the institution with Direct Loan, FFEL, or Federal Perkins Loan Program funds, the institution must notify the student or parent of—

(i) The anticipated date and amount of the disbursement;

(ii) The student's right or parent's right to cancel all or a portion of that loan or loan disbursement and have the loan proceeds returned to the holder of that loan. However, if the institution releases a check provided by a lender under the FFEL Program, the institution is not required to provide this information; and

(iii) The procedures and time by which the student or parent must notify the institution that he or she wishes to cancel the loan or loan disbursement.

(3) The institution must provide the notice described in paragraph (a)(2) of this section in writing—

(i) No earlier than 30 days before, and no later than 30 days after, crediting the student's account at the institution, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(ii) No earlier than 30 days before, and no later than seven days after, crediting the student account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(4)(i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan or loan disbursement.

(ii) The institution must return the loan proceeds, cancel the loan, or do both, in accordance with program regulations provided that the institution receives a loan cancellation request—

(A) The later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(B) Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii)(A) or (B) of this section, the institution may return the loan proceeds, cancel the loan, or do both, in accordance with program regulations.

(5) An institution must inform the student or parent in writing regarding the outcome of any cancellation request.

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for an award year before the institution credits the student's account with those loan funds; and

(ii) An institution is not required to return any loan proceeds that it disbursed directly to a student or parent.

(b) * * *

(1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(d)(2) that are included in that authorization; and

(ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment method, hold on behalf of the student or parent any title IV, HEA program, funds that would otherwise be paid directly to the student or parent under § 668.164(e). Under this provision, the institution may issue a stored-value card or other similar device that allows the student or parent to access those funds at his or her discretion to pay for educationally related expenses.

* * * * *

10. Section 668.166 is revised to read as follows:

§ 668.166 Excess cash.

(a) *General.* (1) The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan Program funds, that an institution does not disburse to students or parents by the end of the third business day following the date the institution—

(i) Received those funds from the Secretary; or

(ii) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds received from the Secretary, such as those resulting from award adjustments, recoveries, or cancellations.

(2) The provisions of this section do not apply to the title IV, HEA program funds that an institution receives from the Secretary under the just-in-time payment method.

(b) *Excess cash tolerances.* An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount remaining in its account after the seven-day tolerance period.

(c) *Consequences for maintaining excess cash.* Upon a finding than an institution maintains excess cash for any amount or timeframe over that allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Secretary incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or cash monitoring payment method described in § 668.163(d) and (e), respectively.

(Authority: 20 U.S.C. 1094)

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429 unless otherwise noted.

§ 674.2 [Amended]

12. Section 674.2 is amended by:

A. In paragraph (a), adding to its list, in alphabetical order, the terms *Graduate or professional student, Half-time student,* and *Undergraduate student.*

B. In paragraph (b), removing the definitions for *Graduate or professional student, Half-time graduate or professional student, Half-time Undergraduate student,* and *Undergraduate student.*

§ 674.16 [Amended]

13. Section 674.16 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as paragraphs (g) and (h), respectively.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

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

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

§ 676.2 [Amended]

15. Section 676.2 is amended by:

A. In paragraph (a), adding to its list, in alphabetical order, the term *Undergraduate student.*

B. In paragraph (b), removing the definition for *Undergraduate student.*

§ 676.16 [Amended]

16. Section 676.16 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

18. Section 682.200 is amended by:

A. In paragraph (a)(1), adding to its list, in alphabetical order, the terms *Graduate and professional student, Half-time student,* and *Undergraduate student.*

B. In paragraph (b), removing the definitions for *Graduate or professional student, Half-time student,* and *Undergraduate student* and revising the definition of *Period of Enrollment.*

The revision reads as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Period of enrollment. The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with a *bona fide* academic term established by the school for which institutional charges are generally assessed (*e.g.*, semester, trimester, or quarter in weeks of instructional time, length of the student's program in weeks of instructional time or academic year). The period of enrollment is also referred to as the loan period.

* * * * *

§ 682.207 [Amended]

19. Section 682.207(e) is amended by removing the parenthetical ''(10)'' and adding, in its place, the parenthetical ''(8)''.

§ 682.208 [Amended]

20. Section 682.208(f)(1)(iii)(A) is amended by removing the figure ''§ 682.604(d)(4)'' and adding, in its place, the figure ''34 CFR 668.21(a)(2)(ii)''.

21. Section 682.603 is amended by:

A. Revising paragraph (f)(1).

B. Redesignating paragraphs (g), (h), and (i) as paragraphs (h), (i), and (j), respectively.

C. Adding a new paragraph (g).

D. In the introductory text of newly redesignated paragraph (h)(1) and the text of newly redesignated paragraph (h)(2), removing the parenthetical ''(10)'' and adding, in its place, the parenthetical ''(8)''.

The revision and addition read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(f)(1)(i) The minimum period of enrollment for which a school may certify a loan application is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single term (e.g., a semester or quarter); or

(B) Except as provided in paragraphs (f)(1)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(*1*) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(*2*) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school with credit or clock hours from another school, and the prior school certified or originated a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may certify a loan for the remaining portion of the program or academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a degree program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new degree program at the same school, the school may certify a loan for the remainder of the academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

* * * * *

(g)(1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of paragraphs (g)(1) and (g)(2) of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

* * * * *

22. Section 682.604 is amended by:

A. Revising paragraph (c)(6).

B. Removing paragraphs (c)(7) and (c)(8).

C. Redesignating paragraphs (c)(9), (c)(10), and (c)(11) as paragraphs (c)(7), (c)(8), and (c)(9), respectively.

D. In newly redesignated paragraph (c)(9), removing the parenthetical ''(g)'' and adding, in its place, the parenthetical ''(h)''.

E. Revising paragraph (d)(3).

F. Removing paragraph (d)(4).

The revisions read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(c) * * *

(6) Unless the provision of § 682.207(d) applies—

(i) If a loan period is more than one payment period, the school must deliver loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two deliveries of loan proceeds during that payment period. The school may not make the second delivery until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

* * * * *

(d) * * *

(3) If a student does not begin attendance in the period of enrollment—

(i) Disbursed loan proceeds must be handled in accordance with 34 CFR 668.21; and

(ii) Undelivered loan funds held by the school must be handled in accordance with 34 CFR 668.167.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

Authority: 20 U.S.C. 1087a *et. seq.*, unless otherwise noted.

24. Section 685.102 is amended by:

A. In paragraph (a)(1), adding to its list, in alphabetical order, the terms *Full-time student, Graduate or professional student, Half-time student,* and *Undergraduate student.*

B. In paragraph (a)(3), removing from its list, the terms *Full-time student, Graduate or professional student,* and *Undergraduate student.*

C. In paragraph (b), removing the definition of *Half-time student* and revising the definition of *Period of enrollment.*

The revision reads as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Period of enrollment: The period for which a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan is intended. The period of enrollment must coincide with one or more academic terms established by the school (such as semester, trimester, quarter in weeks of instructional time; academic year; and length of the program of study in weeks of instructional time), for which institutional charges are generally assessed. The period of enrollment is also referred to in this part as the loan period.

* * * * *

25. Section 685.301 is amended by:

A. Redesignating paragraph (a)(9)(ii) as paragraph (a)(9)(iv).

B. Revising paragraph (a)(9)(i).

C. Adding new paragraphs (a)(9)(ii) and (iii).

D. Revising paragraphs (b)(2) and (b)(3).

E. Removing paragraphs (b)(5) and (b)(6).

F. Redesignating paragraphs (b)(7) and (b)(8) as paragraphs (b)(5) and (b)(6), respectively.

G. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

H. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

(a) * * *

(9)(i) The minimum period of enrollment for which a school may originate a Direct Loan application is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single academic term (e.g., a semester or quarter); or

(B) Except as provided in paragraph (a)(9)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(*1*) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(*2*) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school with credit or clock hours from another school, and the prior school originated or certified a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may originate a loan for the remaining portion of the program or academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a degree program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new degree program at the same school, the school may originate a loan for the remainder of the academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

* * * * *

(b) * * *

(2) An institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraphs (b)(4) or (b)(8) of this section applies—

(i) If a loan period is more than one payment period, the school must disburse loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two payments during that payment period. The school may not make the second payment until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

* * * * *

(c) *Annual loan limit progression based on completion of an academic year.* (1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

(4) For purposes of paragraphs (c)(1) and (c)(2) of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks of instructional time longer than any other term in that loan period.

* * * * *

26. Section 685.303 is amended by revising paragraph (b)(3) to read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(b) * * *

(3) If a student does not begin attendance in the period of enrollment, disbursed loan proceeds must be

handled in accordance with 34 CFR 668.21.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

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

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

§ 690.2 [Amended]

28. Section 690.2 is amended by:

A. In paragraph (b), adding to its list, in alphabetical order, the terms *Half-time student*, *Three-quarter-time student*, and *Undergraduate student*.

B. In paragraph (c), removing the definitions for *Half-time student*, *Less-than-half-time student*, *Three-quarter-time student*, and *Undergraduate student*.

29. Section 690.63 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

(a)(1) Programs using standard terms with at least 30 weeks of instructional time. A student's Federal Pell Grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(*1*) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(*2*) The program is offered exclusively in semesters, trimesters, or quarters; and

(*3*) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

* * * * *

(e) *Programs using credit hours without terms or clock hours.* The Federal Pell Grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining the student's Scheduled Federal Pell Grant using the Payment Schedule; and

(2) Multiplying the amount determined under paragraph (e)(1) of this section by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

; or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

* * * * *

30. Section 690.66 is amended by revising paragraph (a) to read as follows:

§ 690.66 Correspondence study.

(a) An institution calculates the Federal Pell Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Determining the student's annual award using the half-time Disbursement Schedule; and

(2) Multiplying the annual award determined from the Disbursement Schedule for a half-time student by the lesser of—

(i)

$$\frac{\text{The number of credit hours in the payment period}}{\text{The number of credit hours in the program's academic year}}$$

; or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

* * * * *

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

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

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

§ 691.2 [Amended]

32. Section 691.2 is amended by:

A. In paragraph (b), adding to its list, in alphabetical order, the term *Undergraduate student.*

B. In paragraph (d), removing the definition for *Undergraduate student***.**

§ 691.8 [Amended]

33. Section 691.8 is amended by removing paragraph (c).

34. Section 691.63 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 691.63 Calculation of a grant for a payment period.

(a)(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's grant for a payment period is calculated under paragraphs (b) or (d) of this section if —

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(*1*) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(*2*) The program is offered exclusively in semesters, trimesters, or quarters; and

(*3*) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

* * * * *

(e) *Programs using credit hours without terms or clock hours.* The grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining that the student is attending at least full-time;

(2) Determining the student's ACG or National SMART Grant Scheduled Award; and

(3) Multiplying the ACG or National SMART Grant amount determined under paragraph (e)(2) of this section by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

; or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

* * * * *

[FR Doc. E7–15314 Filed 8–7–07; 8:45 am]

BILLING CODE 4000–01–P