

**DEPARTMENT OF EDUCATION**

**34 CFR Part 691**

**RIN 1840-AC92**

[Docket ID ED-2007-OPE-0135]

**Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program**

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations for the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) programs. The Secretary is amending these regulations to reduce administrative burden for program participants and to clarify program requirements.

**DATES:** *Effective Date:* These regulations are effective July 1, 2008.

*Implementation Date:* The Secretary has determined, in accordance with

section 482(c)(2)(A) of the Higher Education Act, of 1965, as amended (HEA) (20 U.S.C. 1089(c)(2)(A)), that institutions that administer the ACG and National SMART Grant Programs may, at their discretion, choose to implement these final regulations in their entirety, or by section, on or after November 1, 2007. For further information, see the section entitled "IMPLEMENTATION DATE OF THESE REGULATIONS" in the **SUPPLEMENTARY INFORMATION** section of this preamble.

**FOR FURTHER INFORMATION CONTACT:**

Topic	Contact person and information
General information and information related to <i>recognition of rigorous secondary school programs and eligible majors.</i>	Sophia McArdle. Telephone: (202) 219-7078 or via the Internet: <a href="mailto:sophia.mcardle@ed.gov">sophia.mcardle@ed.gov</a> .
Information related to <i>successful completion of a rigorous secondary school program.</i>	Jacquelyn Butler. Telephone: (202) 502-7890 or via the Internet: <a href="mailto:jacquelyn.butler@ed.gov">jacquelyn.butler@ed.gov</a> .
Information related to <i>grade point average</i> .....	Carney McCullough. Telephone: (202) 502-7639 or via the Internet: <a href="mailto:carney.mccullough@ed.gov">carney.mccullough@ed.gov</a> or Anthony Jones. Telephone: (202) 502-7652 or via the Internet: <a href="mailto:anthony.jones@ed.gov">anthony.jones@ed.gov</a> .
Information related to <i>academic year progression and prior enrollment</i>	Fred Sellers. Telephone: (202) 502-7502 or via the Internet: <a href="mailto:fred.sellers@ed.gov">fred.sellers@ed.gov</a> .

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) 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:** On August 7, 2007, the Secretary published a notice of proposed rulemaking (NPRM) for the ACG and National SMART Grant Programs in the **Federal Register** (72 FR 44050).

In the preamble to the NPRM, the Secretary discussed on pages 44052 through 44058 the major changes proposed in that document to strengthen and improve the administration of the ACG and National SMART Grant Programs authorized under the HEA (as amended by the Higher Education Reconciliation Act of 2005 (Pub. L. 109-171), enacted on February 8, 2006, 20 U.S.C. 1070a-1 (HERA)). These include the following:

- Amending § 691.2 to add a definition for the term *Classification of Instructional Programs (CIP)*, as that term is used in connection with the National SMART Grant Program.
- Amending § 691.6(a), (b), and (c) to require an institution in which a student is currently enrolled to determine the student's academic year progression based on the student's attendance in all ACG and National SMART Grant

eligible programs only at that institution.

- Amending § 691.6 by adding a new paragraph (d)(3) to provide that when determining the appropriate academic year for a transfer student, the institution to which the student transferred must count both (a) the number of credit or clock hours earned by the student at prior institutions that are accepted for the student, and (b) an estimated number of weeks of instructional time completed by the student.
- Amending § 691.6 by adding paragraphs (e), (f), (g), and (h) to provide for three alternative methods to determine the weeks of instructional time for a student's academic year progression, and to provide that an institution choosing to use one of these alternative methods must do so for all students enrolled in the eligible program.
- Amending § 691.6 by adding a new paragraph (d)(2) to clarify that when determining academic year progression for a student (a) an institution may not assign any weeks of instructional time to certain credit or clock hours accepted toward a student's eligible program if those credit or clock hours were earned from Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, other similarly earned credits or credits earned while not enrolled as a regular student in an ACG or National SMART Grant eligible program, or coursework that is not at the

postsecondary level, such as remedial coursework; and (b) an institution must assign weeks of instructional time to determine National SMART Grant eligibility for periods in which a student was enrolled in an ACG-eligible program before declaring, or certifying his or her intent to declare, an eligible major.

- Amending § 691.6 by adding paragraph (e) to provide that a student can request and receive an exact determination of his or her academic year standing and to provide that, if the institution performs an exact accounting, it may not employ any of the alternative methods for determining that student's academic year standing reflected in § 691.6(f), (g), or (h).
- Amending § 691.15 by adding paragraph (g) to clarify that, for purposes of eligibility for ACG and National SMART Grants, an institution that assesses grade point average (GPA) on a numeric scale other than a 4.0 scale must ensure that its minimum GPA requirement meets the same numeric standard as a cumulative GPA of 3.0 or higher on a 4.0 scale.
- Amending § 691.15 by adding paragraph (f)(1) to clarify that institutions are required to calculate a student's GPA for determining second-year ACG eligibility as follows:
  - For a student who transfers to an institution that accepts into the student's ACG eligible program at least the credit or clock hours for one academic year, but for less than two academic years, the institution must calculate the student's GPA using the

grades from all coursework accepted into the student's ACG eligible program.

- For a student who transfers to an institution that accepts less than the credit or clock hours for an academic year into the student's ACG eligible program, the institution must calculate the student's GPA by combining the grades from all coursework accepted into the student's ACG eligible program with the grades for coursework earned at the current institution through the payment period in which the student completes the credit or clock hours for his or her first academic year.

- Amending § 691.15 by adding paragraph (f)(2) to require that, for a transfer student who transfers from one institution to another institution at which the student is eligible for a National SMART Grant, the subsequent institution determines that student's eligibility for the first payment period using one of two methods, depending on whether it incorporates the grades from the student's previous coursework that it accepts on transfer into the student's GPA at the subsequent institution.

- Amending § 691.15(b) to extend eligibility for a first-academic-year ACG to any student who enrolls as a regular student in an ACG eligible program while in high school provided that the student is beyond the age of compulsory school attendance.

- Amending § 691.15 by adding paragraphs (d) and (e) to require an institution to document a student's eligible major and progress in the eligible program and major by maintaining documentation, such as the following: (a) Documentation of the declared major, including written declaration of intent to declare an eligible major provided by the student; and (b) written documentation showing that the student is progressing in coursework leading to a degree in the student's intended or declared eligible major; and (c) written documentation that the student is enrolling in the courses necessary to complete a degree in the intended or declared eligible major.

- Amending § 691.17 to provide a process for institutions of higher education to request additional majors to be added to the list of eligible majors for National SMART Grants.

- Amending § 691.15(b) to require that, in order to successfully complete a rigorous secondary school program of study, a student must obtain a high school diploma or, for a home-schooled student, receive a high school diploma or parental certification of completion of a secondary school education.

- Amending § 691.16(b) to allow State educational agencies (SEAs) and local educational agencies (LEAs) to request recognition of rigorous secondary school programs of study for school years beyond the immediate next school year.

- Amending § 691.16(d)(1) so that advanced or honors secondary school programs of study continue to be recognized as rigorous secondary school programs of study by the Secretary for school years subsequent to the 2005–2006 school year.

There are no significant differences between the NPRM and these final regulations resulting from public comment or legislative action.

#### Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to reduce administrative burden for program participants and to clarify program requirements for the ACG and National SMART Grant Programs, the Secretary is using the authority granted her under section 482(c) to designate all regulations subject to that section included in this document for early implementation at the discretion of each institution. Therefore, the regulations in this document may be implemented early in their entirety, or by section (e.g., all of § 691.6 or all of § 691.15), but not by paragraph, because related provisions (provisions within a section, at the very least) should be implemented contemporaneously. Moreover, because these final regulations replace transitional guidance that had been provided to institutions, institutions must make sure that any early implementation of the final regulations is consistent with the discussion in this document, notwithstanding the information provided in the transitional guidance the Department issued regarding the implementation of academic year progression for the 2006–2007 and 2007–2008 award years. Institutions must maintain documentation of the early implementation and must continue with the early implementation once it has been initiated.

#### Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM published on August 7, 2007 (72 FR 44050), 52 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make. We also do not address comments pertaining to issues that were not within the scope of the NPRM.

#### General Comments

Several commenters stated that the ACG and National SMART Grant Programs are overly burdensome to implement. As noted in the *Paperwork Reduction Act of 1995* section of this preamble, those comments relate to the basic structure of the program, as established in the HEA. While we cannot modify statutory program requirements through regulations, to the extent possible, we have tried to reduce the administrative burden associated with carrying out the statutory requirements governing the ACG and National SMART Grant Programs. We believe the final regulations are necessary to implement the statute.

Two commenters expressed concern that the current definition of “eligible program” in § 691.2(d) excludes certificate programs as eligible programs under the ACG and National SMART Grant Programs. We believe this definition is necessary to implement the programs in accordance with the plain language of the statute. Moreover, we believe that this definition encourages students to pursue associate or bachelor degrees. Regardless of whether an institution offers both degree and certificate programs, a student is only eligible for an ACG or National SMART Grant if the student is confirmed as enrolled full-time in the coursework of an ACG-eligible or National SMART Grant-eligible program, respectively.

We encourage institutions to counsel each student about the eligibility requirements for the ACG and National SMART Grant Programs, including the need to enroll in an “eligible program,” as defined in § 691.2(d), early on. This counseling may include explaining that if the student transfers from an ineligible program to an eligible

program, the student may receive an ACG or National SMART Grant as long as he or she meets all other eligibility requirements.

*Academic Year Progression (§ 691.6)*

General

*Comments:* Several commenters objected to using the Title IV, HEA definition of academic year, as measured in a minimum number of weeks of instructional time and, for undergraduate programs, credit or clock hours, for determining a student's academic year progression. The commenters supported determining academic year progression based solely on a student's grade level or credits earned. These commenters believed that using the Title IV, HEA definition of academic year for the ACG and National SMART Grant Programs was confusing, cumbersome, and administratively burdensome, and could lead to unintended errors.

*Discussion:* While we appreciate the commenters' concerns, under section 401A(c)(3) of the HEA, a student is eligible for an ACG in the student's "first academic year of a program of undergraduate education" and "second academic year of a program of undergraduate education," and for a National SMART Grant, in the "third or fourth academic year of a program of undergraduate education." The term academic year is defined in section 481(a)(2) of the HEA, which applies to all Title IV, HEA programs, including the ACG and National SMART Grant Programs. We cannot interpret the term "academic year" in any way that would be contrary to the statutory requirements in section 481(a)(2) of the HEA.

*Changes:* None.

*Comments:* Some commenters questioned the relationship between an exact accounting of weeks of instructional time for a student's academic year progression under the proposed regulations and the alternatives for determining the weeks of instructional time provided in proposed § 691.6(e), (f), (g), and (h) for programs that calculate payments under § 691.63(b) and (c) (e.g., nonterm programs). Another commenter supported the flexibility offered by proposed § 691.6(e), (f), (g), and (h), but indicated that the commenter's institution expected to retain its current policy of using the exact accounting method because it agrees that an exact accounting is most beneficial for students. One commenter believed that programs that do not calculate payments under § 691.63(b) and (c) also could use

the grade-level alternative under proposed § 691.6(h) for determining students' weeks of instructional time. One commenter questioned whether transfer credits were subject to an exact accounting.

*Discussion:* We consider an exact accounting of the credit or clock hours and weeks of instructional time to be the best method to determine any student's academic year progression because it is the most accurate. We further agree with the commenter who believed an exact accounting is more beneficial to students than estimating their academic year progression because it is the most accurate determination. We understand, however, that this better information places more administrative burden on an institution having to conduct an exact accounting for its students. The regulations, therefore, allow some flexibility for certain programs to use alternative methods to estimate a student's academic year progression. The alternative methods in § 691.6(f), (g), and (h), which allow institutions to estimate the number of weeks of instructional time when determining academic year progression, may be used for certain eligible programs and must be used for transfer students.

We are providing in § 691.6(f), (g), and (h) alternative methods for determining weeks of instructional time for institutions calculating payments for programs under § 691.63(b) and (c) because these institutions generally have not had to account precisely for the weeks of instructional time completed by individual students in order to be compliant with the Title IV, HEA academic year for Title IV purposes. The alternatives are based on specified criteria that will provide consistent measures for students enrolled in those programs while providing a less burdensome way for institutions to estimate academic year progression.

In contrast, institutions that calculate payments for eligible programs under § 691.63(d) and (e) must account for the actual number of weeks a student attends classes in their academic year progression calculations under Title IV, HEA. Using an exact accounting of credit or clock hours and weeks of instructional time to determine academic year progression (apart from determining weeks of instructional time for transfer credits) is, therefore, the only appropriate option for these institutions under the HEA. For this reason, we do not provide the alternatives under proposed § 691.6(e), (f), (g), and (h) for determining weeks of

instructional time for these eligible programs.

For transfer students, because the proposed changes to § 691.6(a), (b), and (c) require an institution to determine a student's academic year progression based on the student's attendance in all ACG and National SMART Grant eligible programs *only* at the institution in which the student is currently enrolled, an institution is no longer required to do an exact accounting of a student's academic year progression at all institutions. Therefore, when determining the appropriate academic year for a transfer student under § 691.6(d)(3), the institution to which the student transferred must count the number of credit or clock hours earned by the student at prior institutions that are accepted toward the student's ACG or National SMART Grant-eligible program, and estimate the number of weeks of instructional time completed by the student.

*Changes:* None.

*Comments:* Many commenters believed that the proposed regulations should be revised to incorporate, for the 2008–2009 and subsequent award years, the transitional guidance the Department issued regarding the implementation of academic year progression for the 2006–2007 and 2007–2008 award years, including the guidance we provided in Dear Colleague letter GEN–06–18. This transitional guidance permitted programs eligible to calculate payments under § 691.63(b) and (c) to make certain assumptions when determining a student's academic year progression for ACG and National SMART Grant eligibility. The guidance also covered the treatment of transfer students, the extension of the fourth academic year for National SMART Grant eligibility, and the second academic year of associate degree programs for ACG eligibility. The common theme in the comments that mentioned the Department's transitional guidance was that the guidance provided institutions with more flexibilities in administering the ACG and National SMART Grant Programs than is available under the proposed regulations, and that these flexibilities provided significant burden relief and assisted them in addressing particular students' circumstances.

*Discussion:* Following the creation of the ACG and National SMART Grant Programs and based on the need to implement the programs quickly, the Department determined that it was appropriate to provide transitional guidance to relieve administrative burden on institutions during the two initial award years of implementation of

the ACG and National SMART Grant Programs. The relief provided in the transitional guidance mostly related to the treatment of transfer students for these programs and to determining weeks of instructional time completed at traditional academic calendar institutions. The flexibilities provided in the transitional guidance were intended to ease the transition for institutions as they established procedures for these new programs. The negotiated rulemaking proceeding for these regulations gave the participants time to address these issues in more detail, and these regulations put in place modified requirements for institutions to use to administer the ACG and National SMART Grant programs on an ongoing basis.

In addition, the extensions of fourth-academic-year National SMART Grant eligibility and second-academic-year of associate degree programs for ACG eligibility are no longer needed because all students now have an opportunity to qualify for awards during the appropriate academic year. Starting with the 2008–2009 award year, institutions will be required to comply fully with the HEA provisions for the ACG and National SMART Grant Program and these final regulations.

*Changes:* None.

*Comments:* Some commenters requested guidance on how to determine an individual student's academic year progression when the student's progression has been based on the Department's transitional guidance for the 2006–2007 and 2007–2008 award years and the student's academic year level is changed by the implementation of these final regulations in 2008–2009. One commenter suggested that, if we are unable to incorporate the transitional guidance into the final regulations, we should at least "grandfather" the transitional guidance for continuing students who may otherwise regress in applicable academic years.

*Discussion:* For 2008–2009 and subsequent award years, an institution must determine a student's academic year progression in accordance with the HEA provisions for the ACG and National SMART Grant Programs and these final regulations. We believe that this new framework may delay awards for some students until they progress to the point they were previously deemed to have reached, but most of these students will still be eligible to receive the same amount of grant funds from that point forward. A student who received a third-academic-year National SMART Grant Scheduled Award in the 2007–2008 award year under the transitional guidance may, for example,

now be considered to be in the second academic year in his or her National SMART Grant-eligible program in the 2008–2009 award year. That student would no longer be eligible for a National SMART Grant until the student enrolls in the fourth academic year of his or her National SMART Grant eligible program. In this example, the student has already received a third-year National SMART Grant award; thus the student may not be paid for any remaining eligibility for a second-year ACG award, even if otherwise eligible, because the student is presumed to have completed an ACG-eligible program through the second academic year at that same institution in order to qualify for the third-year award the student previously received. Because a student who has completed an ACG-eligible program through the second academic year is not eligible for a second-year ACG award, the student in the example is not eligible for a second-year ACG award.

Note, however, that the outcome of this example would be different if the student received the third-academic-year National SMART Grant award at another institution and then, upon transfer, was classified as being in his or her second academic year. If this transfer student were otherwise eligible, the student may receive any second-academic-year ACG Scheduled Award not already received at the prior institution because, under § 691.6(a), (b), and (c), academic year progression only takes into account attendance at the transfer student's current institution.

We do not believe it is necessary to "grandfather" the transitional guidance for continuing students because they generally will have the opportunity to progress to the academic year level they would otherwise be at under the transitional guidance.

*Changes:* None.

*Comment:* One commenter requested clarification of the relationship of academic year progression to the Scheduled Award. The commenter questioned whether an otherwise eligible student who receives a Scheduled Award within an award year and progresses to the next academic year within the same award year would be eligible to receive another ACG or National SMART Grant for the next academic year in that award year.

*Discussion:* An ACG or National SMART Grant Scheduled Award is the amount a full-time student would be paid for a full academic year without respect to any award year. Unlike the Federal Pell Grant Program in which a student starts a new Scheduled Award with each new award year, a student

receiving an ACG or National SMART Grant Scheduled Award starts a new Scheduled Award when the student starts a new academic year without reference to whether a new award year has commenced. For example, a program is offered in quarters with 10 weeks of instructional time and the academic year is defined as 36 credit hours and 30 weeks of instructional time. An eligible student in this program attends the quarters beginning in July, October, and January in the 2007–2008 award year and receives a first-academic-year ACG Scheduled Award over those three quarters. The student then continues into the quarter that begins in April and ends in June, which is prior to the next award year, and at the start of that quarter the student meets the eligibility requirements to receive a second-academic-year ACG Scheduled Award. In this example, the student would receive a payment from the second-year Scheduled Award for the quarter beginning in April. If the student continues to be eligible for a second-academic-year Scheduled Award in the quarters beginning in July and October of the 2008–2009 award year, the student would receive the second and third disbursements of the second-academic-year Scheduled Award during those quarters.

*Changes:* None.

*Academic Year Progression (§ 691.6(a), (b), and (c))*

*Comments:* Several commenters supported the changes reflected in proposed § 691.6(a), (b), and (c), which require an institution to determine a student's academic year progression based on the student's attendance in all ACG and National SMART Grant eligible programs *only* at the institution in which the student is currently enrolled. The commenters believed that the proposed changes would reduce burden and provide some needed flexibilities.

*Discussion:* We appreciate the commenters' support.

*Changes:* None.

*Comment:* Some commenters questioned the effect changing eligible programs would have on a student's academic year progression under the proposed regulations. One commenter believed that the proposed regulations would prohibit a student from being eligible for an award at an academic year level below the academic year level of any award the student had received at a prior institution. Another commenter believed that the regulations should provide that only credits that apply directly to a student's eligible

program should be considered in determining a student's academic year progression, without taking into account an institution's general academic policies regarding degree audits.

*Discussion:* In general, under these regulations, an institution must follow a student's academic year progression in all ACG- and National SMART Grant-eligible programs attended by the student at that institution. The receipt of ACGs or National SMART Grants at other institutions would not affect the student's academic year progression at the current institution, as is discussed further in the next section, *Transfer Students (§ 691.6(d)(3))*.

Under these regulations, a student's academic year progression must take into account (a) the credit or clock hours, including transferred hours, credited toward, for ACGs, ACG-eligible programs, and, for National SMART Grants, National SMART Grant-eligible programs at the student's current institution; and (b) the weeks of instructional time earned while enrolled in, for ACGs, ACG-eligible programs, and, for National SMART Grants, ACG- and National SMART Grant-eligible programs at the student's current institution, including any estimated weeks based on transferred hours. For example, a student completes his or her first academic year in weeks of instructional time and credit hours as a part-time student while enrolled in a Bachelor of Fine Arts degree program at an institution. At the end of the first academic year, the student transfers to the same institution's school of architecture to enroll full-time in the Bachelor of Architecture degree program. The student is still considered to have completed a first academic year at the institution for purposes of receiving an ACG. The student would be considered to be entering his or her second academic year in an ACG-eligible program at the institution by continuing in the Bachelor of Architecture without reference to the number of credits applicable to that degree from the Bachelor of Fine Arts degree program. A student moving between National SMART Grant-eligible programs would be treated similarly.

The ACG and National SMART Grant Programs have different eligibility requirements because National SMART Grants are only available for qualified students who are progressing in a designated major in a National SMART Grant-eligible program. A student's attendance in ACG-eligible programs will only count for the credit-or-clock-hour component of academic year progression for National SMART Grants if the credit or clock hours earned while

in an ACG-eligible program are applicable to the National SMART Grant eligible program. For the weeks-of-instructional-time component, under § 691.6(d)(2)(ii), a student is considered to have accrued weeks of instructional time in a National SMART Grant-eligible program while the student was enrolled in ACG-eligible programs.

In determining a student's academic year progression, an institution must always take into consideration only those credit or clock hours applicable to the student's attendance in, for ACGs, ACG-eligible programs, and for National SMART Grants, National SMART Grant-eligible programs. In making these determinations, an institution may follow its general academic policies regarding degree audits. For example, an institution may consider all credits to be generally applicable to a student's bachelor's degree program under its academic policies until such time as it performs a degree audit or otherwise performs an exact accounting of a student's academic year progression.

*Changes:* None.

*Comment:* One commenter asked at what point in time would an institution determine whether a student is enrolled in a National SMART Grant-eligible program for the purpose of determining that student's academic year progression for a National SMART Grant. The commenter noted that, for National SMART Grant purposes, an eligible program is defined as one that leads to a bachelor's degree in a National SMART Grant-eligible major. The commenter questioned whether a student is considered to be enrolled in a National SMART Grant-eligible program (1) only if he or she has declared or intends to declare a National SMART Grant eligible major, or (2) as long as an eligible major is offered within that program.

*Discussion:* A student's eligibility for a National SMART Grant is based upon his or her pursuit of an eligible major. A student demonstrates this pursuit by declaring an eligible major or demonstrating his or her intent to declare an eligible major. Accordingly, under § 691.6(d)(2)(ii), a student may be considered to be enrolled in a National SMART Grant-eligible program only if the student has declared a National SMART Grant-eligible major, or demonstrated his or her intent to declare an eligible major, in accordance with § 691.15(c)(2).

*Changes:* None.

*Transfer Student (§ 691.6(d)(3))*

*Comments:* Several commenters supported the requirement in proposed § 691.6(d)(3) that, when determining the

appropriate academic year for a transfer student, the institution to which the student transferred must count the number of credit or clock hours earned by the student at prior institutions that are accepted into the student's ACG- or National SMART Grant-eligible program, and estimate the number of weeks of instructional time completed by the student as determined by a formula provided in the proposed regulations.

*Discussion:* We appreciate the commenters' support.

*Changes:* None.

*Comments:* Some commenters objected to excluding the types of credit or clock hours described in proposed § 691.6(d)(2) when assigning weeks of instructional time for the purpose of calculating academic year progression. In particular, commenters believed it would be difficult for institutions to know whether the transferred credit or clock hours were earned in an ACG- or National SMART Grant-eligible program. One commenter was concerned that, in order to comply with the proposed regulations, an institution would need to collect documentation and perform evaluations beyond those normally required for transfer of credit or clock hours to determine whether the credit or clock hours would have associated estimated weeks of instructional time. Two commenters believed that, under the proposed regulations, an institution would be required to perform an exact accounting of weeks of instructional time for transfer credits and believed this requirement would be difficult to implement if the institution were using one of the alternative methods of determining weeks of instructional time under proposed § 691.6(e), (f), (g), and (h). These commenters also questioned whether a student could request an exact accounting of weeks of instructional time for the transferred credit or clock hours, what the appropriate treatment would be for credit or clock hours earned in summer courses at other institutions without a written agreement between institutions, and what the appropriate treatment would be for the late receipt of credit or clock hours on transfer by an institution at a time subsequent to a student's initial enrollment at that institution. One commenter questioned whether the prior receipt of ACGs or National SMART Grants affected a student's academic year progression at a student's current institution.

*Discussion:* We recognize the difficulty of determining whether credit or clock hours accepted on transfer should be excluded from an institution's

calculation of weeks of instructional time under § 691.6(d)(2). Nonetheless, institutions must determine a student's eligibility for the ACG and National SMART Grant Programs and, for transfer students, an institution is responsible for determining the credit or clock hours accepted on transfer that apply to a student's ACG- or National SMART Grant-eligible program and estimating the number of weeks of instructional time associated with those hours. With respect to the exclusions identified in § 691.6(d)(2) and the treatment of transfer students, an institution may rely on the documentation it normally collects from incoming transfer students to evaluate transfer credits. An institution is not required to collect additional documentation, and, unless the institution has information to the contrary, may consider all credit or clock hours accepted on transfer as having been earned while enrolled in an ACG- and National SMART Grant-eligible program. Correspondingly, if an institution has information indicating that the transferred credit or clock hours fall into one of the exclusions in § 691.6(d)(2), it must exclude those from its calculation of weeks of instructional time for the transferred student.

Under § 691.6(d)(3), an institution would never perform an exact accounting of weeks of instructional time for transfer credits but would estimate the number of weeks of instructional time completed by a transfer student. Under the regulations, for transfer students, the estimated number of weeks of instructional time must correspond to the credit or clock hours accepted in the same ratio as the weeks of instructional time in the eligible program's academic year is to the credit or clock hours in the academic year of the student's ACG- or National SMART Grant-eligible program.

For a student who transfers credit or clock hours into an ACG- or National SMART Grant-eligible program from attending a summer term at another institution or for whom the current institution receives credit or clock hours subsequent to the student's initial enrollment, the institution would estimate the number of weeks of instructional time completed by the student in the same manner as for all other transferred credit or clock hours.

As previously addressed under *Academic Year Progression* (§ 691.6(a), (b), and (c)), a student's prior receipt of ACG or National SMART Grant awards at other institutions does not affect a student's academic year progression at his or her current institution, but the student cannot receive a duplicate

award for the same academic year at the second institution. The current institution may only evaluate the credits accepted on transfer into the student's ACG- or National SMART Grant-eligible program in determining the student's academic year progression. While the receipt of ACGs and National SMART Grants at other institutions does not affect a student's academic year progression at his or her current institution, the current institution must always ensure that, in accordance with section 401A(d)(2)(B) of the HEA, an eligible student only receives one ACG for each of the first two academic years of an undergraduate program and one National SMART Grant for each of the third and fourth academic years of a bachelor's degree program.

*Changes:* None.

*Comment:* One commenter asked whether an institution that uses the grade-level alternative under § 691.6(h) would be required to determine the academic years completed by a transfer student in accordance with proposed § 691.6(d)(3) or whether the institution would do so by applying the credit hours the institution accepts on transfer toward the student's grade level in accordance with proposed § 691.6(h).

*Discussion:* We believe the commenter has identified a situation where it would be inappropriate to calculate a student's weeks of instructional time in accordance with proposed § 691.6(d)(3). Because the grade-level alternative method to determining weeks of instructional time under proposed § 691.6(h) is driven by the credit hours accrued by the student, including transfer credits, the requirements for determining academic year progression for transfer students in proposed § 691.6(d)(3) would not apply when an institution uses the alternative method in proposed § 691.6(h).

*Changes:* We have revised proposed § 691.6(d)(3) to provide that, for an eligible program for which an institution determines estimated weeks of instructional time based on grade level under § 691.6(h), the institution must include the credit hours accepted on transfer into a student's eligible program when determining the student's grade level in accordance with § 691.6(d)(2) and (h).

*Comment:* One commenter asked whether proposed § 691.6(d)(3) would apply only to eligible programs subject to a particular payment formula under § 691.63 or to all eligible programs.

*Discussion:* Proposed § 691.6(d)(3) applies to all eligible programs.

*Changes:* None.

*Comments:* One commenter questioned whether the determination

of the estimated weeks of instructional time for transferred credit or clock hours for a transfer student would apply only upon enrollment at the current institution and not for subsequent evaluations of a student's academic year progression. For example, the commenter questioned whether the transferred hours would be incorporated in determining the weeks of instructional time under the alternative methods provided in § 691.6(g) and (h), based on credits and grade level, respectively.

*Discussion:* The alternative methods of estimating weeks of instructional time provided in § 691.6(f), (g), and (h), along with an exact accounting of weeks of instructional time, apply only to attendance at the current institution. A transfer student's estimated weeks of instructional time, as calculated in accordance with § 691.6(d)(3), would be added to the weeks of instructional time the student accrues at the current institution, as determined based on an exact accounting or in accordance with § 691.6(f) or (g). It is unnecessary to estimate the weeks of instructional time under § 691.6(d)(3) when using the alternative method described in § 691.6(h). The methodology for estimating weeks of instructional time under § 691.6(g) is the same as that in § 691.6(d)(3), so it may appear that proposed § 691.6(g) applies to transfer credits.

If the estimated weeks of instructional time for credit or clock hours accepted on transfer are applicable to a first or second academic year in an ACG-eligible program, institutions are reminded that, under § 691.6(d)(2)(ii), those estimated weeks of instructional time would apply toward National SMART Grant academic year progression regardless of whether the credit or clock hours were earned while the student was enrolled in a National SMART Grant-eligible program.

*Changes:* None.

*Comment:* One commenter questioned whether the provisions of proposed § 691.6(d)(3) would apply to a student attending more than one eligible institution under a written agreement, both during the period covered by the agreement and upon returning to the home institution.

*Discussion:* To the extent the home institution is calculating the student's payments for payment periods under its academic calendar, including the credit or clock hours being earned at another eligible institution, the provisions of § 691.6(d)(3) would not apply because the student would not be transferring these credits or clock hours. However, if the home institution does not calculate

the student's payment for a payment period, the credit or clock hours would be treated as transfer credit or clock hours and would be subject to the provisions of § 691.6(d)(3).

*Changes:* None.

*Alternative Methods for Determining Weeks of Instructional Time (§ 691.6(e), (f), (g), and (h))*

*Comments:* Several commenters supported proposed § 691.6(e), (f), (g), and (h), which would provide three alternative methods for determining the weeks of instructional time for a student's academic year progression in eligible programs for which payments are determined under § 691.63(b) and (c). The alternative method in § 691.6(f) counts weeks of instructional time based on the number of terms the student has attended (terms-attended alternative). The alternative method in § 691.6(g) attributes weeks of instructional time to the credit hours earned by the student (credits-earned alternative). The alternative method in § 691.6(h) uses student's grade level as a basis for determining weeks of instructional time completed (grade-level alternative). An extensive discussion of these alternatives is found in the preamble of the NPRM (see 72 FR 44053-44054).

Several commenters objected to the applicability of proposed § 691.6(d)(2), under the credits-earned and grade-level alternative methods reflected in proposed § 691.6(g) and (h), respectively, because of the types of credits that are not counted under those methods. Proposed § 691.6(d)(2) would not permit an institution to allocate weeks of instructional time to certain credits that were not earned at postsecondary institutions or as part of an ACG- or National SMART Grant-eligible program.

*Discussion:* We appreciate the commenters' support and concerns. However, proposed § 691.6(d)(2) is designed to work with the alternative methods in § 691.6(f), (g), and (h), so that a student's academic year progression consistently excludes credits that do not have weeks of instructional time in an ACG- or National SMART Grant-eligible program associated with them.

*Changes:* None.

*Comment:* One commenter was concerned that proposed § 691.6(e)(2)(i) allows only institutions that determine payments for the student's eligible program under § 691.63(b) or (c) to use any of the three alternatives under proposed § 691.6(f), (g), and (h). The commenter noted that a similar restriction is stated in proposed

§ 691.6(f)(1) and (g)(1), but that these paragraphs use the language "may determine payments" under § 691.63(b) or (c) rather than "uses" those payment formulas. In addition, the commenter notes that the restriction is not repeated in any form in proposed § 691.6(h).

*Discussion:* These alternative methods of estimating weeks of instructional time only apply to programs for which payments are calculated under § 691.63(b) or (c) because institutions using these payment methods are not required to account directly for the weeks of instructional time when calculating payments for their programs. If a program were eligible for payment calculations under § 691.63(b) or (c) but, in fact, calculated payments under § 691.63(d), the institution would be required to accurately determine the weeks of instructional time attended by the student when making payment calculations, and it would be inappropriate to provide these three alternatives.

*Changes:* We have revised proposed § 691.6(f)(1) and (g)(1) by replacing the words "may determine" with the word "determines" in order to make these provisions consistent with proposed § 691.6(e)(2)(i). We have also revised § 691.6(h) to make it consistent with these other provisions.

*Comments:* One commenter requested clarification on whether an institution must use only one alternative for all students in a program unless an exception is made to use an exact accounting for a given student. The commenter also questioned whether an institution is required to document the basis for its determination to use an alternative method or an exact accounting.

*Discussion:* As provided under proposed § 691.6(e)(2)(ii), an institution must use the same alternative method for all students in an eligible program unless the institution performs an exact accounting, either on its own initiative or upon a student's request. While an institution must document whether it has used an alternative method or exact accounting to determine a student's weeks of instructional time, it is not required to document the basis for its decision.

*Changes:* None.

*Comment:* One commenter questioned whether, in using an alternative method of determining weeks of instructional time, an institution might identify specific groups of students in the eligible program for whom it would always perform an exact accounting. For example, an institution might use the grade-level alternative but perform an

exact accounting for all students with AP or IB credits.

*Discussion:* We believe that an institution should use the same alternative for determining weeks of instructional time for students in a program except when the institution initiates or performs, pursuant to a student's request, an exact accounting of weeks of instructional time. Accordingly, we believe it would be appropriate for an institution to identify a group or groups of students in the eligible program for whom it would always perform an exact accounting and then to use the same alternative method for determining the weeks of instructional time for all other students in the eligible program.

*Changes:* We have clarified in § 691.6(e)(2)(ii) that institutions must use the same alternative method for determining weeks of instructional time for all students enrolled in the eligible program for whom an exact accounting is not performed.

*Comments:* One commenter questioned how the application of the alternative methods described in § 691.6(f), (g), and (h) would be affected by a student attending some classes offered in an academic calendar outside the one offered by the student's eligible program or classes offered as part of intersessions between semesters that may be treated as part of a semester to qualify for payment calculations under § 691.63(b) or (c).

*Discussion:* We believe these situations would have little impact on how an institution would apply the alternative methods described in § 691.6(f), (g), and (h). A student taking some courses outside the academic calendar of his or her eligible program would still have payments calculated based on the eligible program's calendar and the courses would be considered to fall within the eligible program's calendar. Intersessions treated as part of a semester would be similarly considered to fall within a semester in the eligible program's calendar for purposes of these alternative methods.

*Changes:* None.

*Comments:* One commenter asked for clarification regarding the impact of using the grade-level alternative under proposed § 691.6(h) when an institution is required to remove from consideration credits that are not associated with weeks of instructional time under proposed § 691.6(d)(2). The commenter questioned the relationship of credits with which no weeks of instructional time are associated (e.g., AP credits) to the formula in proposed § 691.6(h)(3) for determining whether an institution may use the grade-level

alternative. The commenter further questioned whether an institution that qualifies to use the grade-level alternative based on an institution-wide analysis, rather than a program-level analysis under § 691.6(h)(3), must use the grade-level alternative for all of its eligible programs.

*Discussion:* Under proposed § 691.6(d)(2), an institution must exclude credits without weeks of instructional time in determining a student's grade level for purposes of proposed § 691.6(h)(2) when it determines the student's academic year progression. The formula in § 691.6(h)(3) applies only to full-time, full-year students during periods of enrollment in ACG- and National SMART Grant-eligible programs at the institution. To take into consideration credits without weeks in applying the formula in § 691.6(h)(3) would distort the academic year progression for those students.

If an institution uses an institution-wide analysis under the grade-level alternative, it must use the grade-level alternative for all of its ACG- and National SMART Grant-eligible programs. We believe that § 691.6(h)(3) should be changed to clarify this requirement.

*Changes:* We have added paragraph (h)(2)(iii) to § 691.6 to clarify that an institution that makes a determination under paragraph (h)(2)(i) of that section on an institutional basis must use the grade-level alternative method for all students at the institution for whom it does not perform an exact accounting of weeks of instructional time completed. We also have amended § 691.6(e)(2) to reference this requirement.

*Comments:* Several commenters supported continuing guidance similar to the transitional guidance for 2006–2007 and 2007–2008 that an institution may use one of the alternative methods or do an exact accounting to determine weeks of instructional time on a case-by-case basis without any restriction. Commenters also believed that the case-by-case determinations should include going from exact accounting back to using one of the alternative methods. The commenters believed that this type of flexibility would assist them in ensuring that students would more fully benefit under the ACG and National SMART Grant Programs.

*Discussion:* The alternative methods of determining academic year progression are provided for programs for which institutions do not generally track the exact number of weeks of instructional time attended by students. We believe that the alternative methods would not ensure the accurate

determination of a student's academic year progression if institutions were permitted to use the alternatives on a case-by-case basis as suggested by the commenters.

We do not believe it is appropriate for a student's academic year progression to be determined under one of the alternative methods once an institution implements an exact accounting for that student. We consider an exact accounting of the weeks of instructional time completed by a student to always be the best evaluation of that student's academic year standing when determining the student's eligibility for an ACG or National SMART Grant.

*Changes:* None.

*Limitations on Determining Weeks of Instructional Time (§ 691.6(d)(2))*

*Comments:* Many commenters objected to the restrictions in proposed § 691.6(d)(2) that an institution may not assign any weeks of instructional time to credit or clock hours accepted toward meeting a student's eligible program if the student earned (a) the credit or clock hours from Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or other similar competency measures, (b) the credit or clock hours while not enrolled as a regular student in an ACG or National SMART Grant eligible program, or (c) the credit or clock hours for coursework that is not at the postsecondary level, such as remedial coursework. The commenters believed that these restrictions should be eliminated because they result in significant burden on institutions implementing these programs, require manual reviews of student records, reduce institutional flexibility, penalize students, and are inconsistent with the requirements of the other Title IV, HEA programs. The commenters generally believed that no credit or clock hours credited toward a student's eligible program should be excluded from estimating a student's academic progression in weeks of instructional time.

*Discussion:* We appreciate the commenters' concerns and acknowledge the burden associated with calculating a student's weeks of instructional time under this framework. However, we believe it is important not to allocate weeks of instructional time to credits not earned at the postsecondary level in order to be consistent with the statute and to preserve maximum grant eligibility for these students. Students earn the credits described in § 691.6(d)(2)(i)(A) through (C) while not enrolled in an ACG- or National SMART Grant-eligible program, and, therefore,

we believe that it would not be appropriate for these credits to have weeks of instructional time in an ACG- or National SMART Grant-eligible program associated with them.

Moreover, we believe that § 691.6(d)(2)(i) is necessary to ensure that an institution accurately determines a student's academic year progression in his or her ACG or National SMART Grant eligible program.

*Changes:* None.

*Exact Accounting; Student Request To Determine Academic Year Level (§ 691.6(e))*

*Comments:* Several commenters believed that only an institution should initiate an exact accounting of a student's academic year progression. One commenter indicated that requiring institutions to perform an exact accounting upon a student request would be burdensome. Another did not believe students appreciated the distinctions in aid eligibility that may result from an exact accounting.

*Discussion:* We continue to consider an exact calculation of the weeks of instructional time completed by a student to always be the best evaluation of that student's academic year standing when determining the student's eligibility for an ACG or National SMART Grant, and we believe a student should always have this option available. However, we believe that institutions may counsel a student on the implications of initiating an exact accounting so that the student will understand all available options and that, in some circumstances, an exact calculation could reduce or delay the aid a student might receive under the estimate otherwise used by the institution.

*Changes:* None.

*Comment:* One commenter questioned the meaning of the phrase "including an accounting pursuant to paragraph (e)(2)(ii) of this section" in proposed § 691.6(e)(3).

*Discussion:* The reference to paragraph (e)(2)(ii) was an error; the proper reference is to paragraph (e)(2)(iii).

*Changes:* We have revised § 691.6(e)(3) to reference paragraph (e)(2)(iii).

*Comments:* Several commenters believed that proposed § 691.6(e)(2)(iii) provided that only a student could initiate an exact accounting of academic year progression and questioned whether an institution may initiate an exact accounting. One commenter asked what we meant, in proposed § 691.6(e)(3), when we used the word "initiates."

*Discussion:* While a student has a right to request that an institution perform an exact accounting of his or her weeks of instructional time, an institution can always choose to perform an exact accounting of a student's weeks of instructional time pursuant to § 691.6(e)(3). An institution is considered to have "initiated" an exact accounting under proposed § 691.6(e)(3) when the institution performs an exact accounting.

*Changes:* None.

*Comment:* One commenter questioned whether using an exact accounting for a student would apply to the student even after transfer to another institution.

*Discussion:* The requirement that a student is always subject to an exact accounting once one has been performed applies only to the student's current institution. If the student transfers to another institution, the new institution could, after accepting the prior courses under the transfer procedures, determine the student's academic year progression for courses taken at the new institution based on an exact accounting or any of the alternative methods for determining weeks of instructional time for the student in § 691.6, provided that the institution otherwise meets the requirements to use the alternative method selected.

*Changes:* None.

*Comment:* One commenter was concerned that neither an institution nor a student would have the benefit of understanding the implications of choosing an exact accounting over an alternative method (or vice versa) before committing to an exact accounting.

*Discussion:* The institution may counsel the student on whether to ask for the exact accounting, but must use that information if the calculation is made. An exact accounting provides the most accurate determination of a student's eligibility. The alternative methods have been adopted to ease the administrative burdens on institutions, rather than to provide students with the opportunity to receive grants they would not be entitled to under an exact accounting.

*Changes:* None.

*Comments:* One commenter had several questions relating to whether an exact accounting of a student's academic year progression would always preempt the use of the alternative methods for calculating weeks of instructional time under proposed § 691.6(f), (g), and (h). First, the commenter questioned whether the decision to conduct an exact accounting would apply only to the payment period in which the exact accounting was

conducted or to all subsequent payment periods, as well. The commenter also questioned whether it mattered for future determinations that an exact accounting was initiated by the institution or at the request of the student. Finally, the commenter questioned whether a student would be able to rescind his or her request.

*Discussion:* An exact accounting is the best measure of a student's academic year progression, and an institution must continue to use that information in all subsequent payment periods during the student's enrollment at that institution. No distinction exists for calculations requested by a student or initiated by the institution, and a student may not rescind his or her request for an exact accounting once it is made.

*Changes:* None.

*Comment:* One commenter indicated that, because the commenter's institution was unable to automate an exact accounting of a student's academic year progression, the institution would be unable to perform an exact accounting.

*Discussion:* When requested by a student, an institution is responsible for performing exact accountings of academic year progression regardless of whether its information systems would allow the process to be automated. Institutions are expected to perform these calculations manually in these circumstances.

*Changes:* None.

#### *Academic Year Progression and Grade Point Average (GPA)*

*Comments:* Several commenters questioned the effect changes in determinations of student's academic year progression would have on the student's relevant GPA. Two commenters noted that, with the termination of the transitional guidance for the 2006–2007 and 2008–2009 award years, institutions would no longer count weeks of instructional time for some students and this would result in continuing students regressing in academic year progression and would affect the students' relevant GPA. One of the commenters suggested "grandfathering" the GPA for these continuing students.

*Discussion:* The transitional guidance on academic year progression for the 2006–2007 and 2007–2008 award years generally dealt with estimating the weeks of instructional time in a student's academic year progression. It did not affect the number of credit or clock hours credited towards a student's ACG—or National SMART Grant-eligible program. As previously noted, the end

of the transitional guidance may result in a student regressing in academic year progression due to a reduced estimated number of weeks of instructional time calculated for that student going forward. The GPA would be calculated appropriate to a student's revised academic year standing. If a student were now considered a first-year student, there would be no GPA requirement for determining eligibility for a first-year ACG. If a student were now considered a second-year student, the GPA for the first academic year would be used to determine the student's eligibility for a second-year ACG. For a National SMART Grant, the cumulative GPA would be unchanged because there would be no change in the credit or clock hours credited toward a student's eligible program. We do not believe there is any need to "grandfather" the GPAs of continuing students.

*Changes:* None.

#### *Grade Point Average (GPA) (§ 691.15) General*

*Comment:* One commenter expressed disappointment with our failure to change the frequency with which institutions must calculate a National SMART Grant student's GPA. The commenter would prefer that the GPA be calculated annually rather than for each payment period. Another commenter believed that an annual calculation would significantly ease the institution's administrative burden without a loss of integrity to the program.

*Discussion:* Section 401A(c)(3)(B)(ii) of the HEA provides that, in order to receive a second-year ACG, a student must have obtained a cumulative GPA of at least 3.0 at the end of the student's first academic year of study. In contrast, for eligibility for a National SMART Grant, section 401A(c)(3)(C)(ii) requires a student to obtain a cumulative GPA of at least 3.0, but does not limit that measurement to a specific time. Because eligibility for a National SMART Grant must be determined each payment period and payments for the National SMART Grant Program are calculated for a payment period, we believe that it is most appropriate to review the student's GPA for the National SMART Grant Program each payment period.

*Changes:* None.

#### *Numeric Equivalent (§ 691.15(b)(1)(iii)(D), 691.15(c)(3), and 691.15(g))*

*Comment:* One commenter sought clarification on whether an institution must calculate a numeric equivalent

GPA when a student completes certain courses that are not measured by a standard numeric grading procedure in a program that otherwise assesses grades on a standard 4.0 numeric scale. Specifically, the commenter requested guidance on situations in which a student in such a program completes some or all courses within a single term and those courses are assessed using an alternative to the standard 4.0 numeric scale.

*Discussion:* Sections

691.15(b)(1)(iii)(D), (c)(3), and (g) focus on entire programs, rather than individual courses, in assessing academic performance using an alternative to a standard 4.0 numeric scale or a numeric equivalent to a 4.0 scale. We believe that it would be impractical to require institutions to convert every course that is assessed using an alternative measurement to a numeric equivalent when the preponderance of the program is assessed on a standard 4.0 numeric scale, or a scale that can be converted to the numeric equivalent of a 4.0 scale. In general, if the program uses a 4.0 scale to assess a student's GPA, or a numeric equivalent, it is not practical to require a few courses within that program that are assessed on an alternative scale to be converted to a numeric equivalent. However, an institution would not be prohibited from conducting a conversion on a course-by-course basis.

*Changes:* None.

*Transfer GPA—ACG (§ 691.15(f)(1))*

*Comment:* Although several commenters wrote in support of proposed § 691.15(f)(1) regarding GPA calculation for transfer students, most of the commenters expressed concern that the proposed regulations would increase administrative burden by adding another GPA calculation. Some commenters believed that the requirements for determining GPA for these students would result in institutions having to add a manual process, while other commenters expressed concern that proposed § 691.15(f)(1) would infringe on an institution's academic policies and create more than one method for an institution to assess a GPA. One commenter requested that institutions only be required to follow their own policies for determining a student's GPA.

Two commenters requested clarification on whether an institution must incorporate into a student's GPA the grades from the previous institution's coursework that was accepted by the subsequent institution

upon transfer. They further requested clarification regarding the following statement from the preamble that the commenters believed conflicted with other preamble statements and could possibly affect the interpretation of the regulatory language in § 691.15(f)(1)(i): "In conjunction with the proposed changes in § 691.6(a), (b), and (c), an institution would no longer consider a student's GPA from the student's first academic year in an eligible program at another institution." (72 FR 44055)

*Discussion:* We proposed the changes in § 691.15(f)(1) at the request of the community and because we recognize the need for consistent treatment of all ACG-eligible transfer students. Without the proposed regulations, a student who has not yet completed a full academic year could have been treated inconsistently by different institutions. This inconsistency was because, in instances when a student completes his or her first academic year after transferring, institutions have been able to use their own policy on whether the grades for the transfer credits are included in the GPA calculated to determine the student's eligibility for the second-year ACG award. Thus, depending on the current institution's policy, the grades from the prior institution might or might not have been counted to determine the student's eligibility for a second-year ACG award. In order to prevent this from happening, § 691.15(f)(1) has clarified that a one-time calculation must be used to determine eligibility for second-year ACG funds. Further, § 691.15(f)(1) has clarified that an institution must use the grades from the coursework earned at the prior institution that it accepted into the student's eligible program to determine the student's applicable GPA for these purposes. We acknowledge that these extra steps in the GPA calculation for transfer students may result in some additional burden. However, we believe that any added burden associated with this one-time calculation is outweighed by the need for equitable treatment of students. By establishing a uniform procedure that either fits with the institution's policy for incorporating accepted transfer courses or provides for a one-time calculation, we believe more students are ensured greater consistency in obtaining these funds.

Regarding the preamble language that the commenter perceived to be inconsistent, we do not believe that, and did not intend for, the sentence referenced by the commenter to conflict with other statements in the preamble or the proposed regulatory language. The statement emphasizes that under these

regulations, including the requirements regarding determination of academic year progression, institutions are no longer required to use the GPA for all courses a transfer student completed at another institution if the subsequent institution does not accept those courses on transfer. Under these regulations, an institution is only required to use the GPA associated with the courses it accepts upon transfer into the student's eligible program, rather than the GPA for all courses including those courses taken at the prior institution that did not transfer.

*Changes:* None.

*Transfer GPA—National SMART Grant (§ 691.15(f)(2))*

*Comment:* One commenter questioned the practical application of proposed § 691.15(f)(2)(ii), which directs an institution that accepts no credit or clock hours toward a student's eligible program to consider the student ineligible for a National SMART Grant until the student completes at least one payment period in an eligible program with a qualifying GPA. The commenter asked how a student could be considered in the third academic year or beyond if the institution did not accept any credit or clock hours for that student.

*Discussion:* We agree with the commenter that the language in proposed § 691.15(f)(2)(ii) does not appear to have any practical application.

*Changes:* We have deleted § 691.15(f)(2)(ii).

*Comment:* Similar to the comments received on the proposed changes to GPA calculations for an ACG-eligible transfer student, several commenters wrote in support of the proposed changes reflected in § 691.15(f)(2) regarding the GPA calculation for a transfer student eligible for a National SMART Grant. Many of these commenters also expressed concern that these proposed regulations would increase administrative burden by adding another GPA calculation. Again, similar to the proposed regulations for transfer students under the ACG Program, some commenters believed these proposed regulations for calculating the GPA under the National SMART Grant Program would require a new manual process to be performed by an institution, while other commenters were concerned the requirement would infringe upon an institution's academic policies and create more than one required method for calculating a GPA. Two commenters requested that the two different methods for calculating GPAs for transfer students under each

program be combined into one policy to cover students transferring into either program. One of the commenters specifically requested that the proposed method set forth under the ACG Program be eliminated and replaced with the proposed method under the National SMART Grant Program.

*Discussion:* As with the ACG Program, we proposed these regulatory changes at the request of the community and based on the need for consistent treatment of students who transfer. The community requested that the regulations describe the process for calculating a GPA for transfer students for both institutions that incorporate grades from transferred coursework and those that do not. The method of calculating a GPA under § 691.15(f)(2)(i) is a one-time calculation used only to determine a transfer student's eligibility for the first payment period of enrollment in a National SMART Grant-eligible program at the new institution. An institution must use the grades from the coursework earned at the prior institution that it accepted into the student's eligible program to determine the student's applicable GPA for determination of National SMART Grant eligibility. Further, with differing policies among institutions, students would be treated inequitably based on the institution to which they transfer if institutions were not required to calculate the GPA under the prescribed method. By establishing a uniform procedure that either fits with the institution's policy for incorporating accepted transfer courses or provides for a one-time calculation, we believe students are ensured greater consistency in obtaining these funds.

Regarding the request to use only one GPA calculation method for transfer students eligible for either the ACG or National SMART Grant Program, we believe the specific differences in GPA requirements for the two programs under section 401A(c)(3)(B) and (C) of the HEA warrant different treatment. In addition, the community requested equitable methods based on the frequency of the GPA calculations. We believe the regulations fulfill these requirements and requests.

*Changes:* None.

*Prior Enrollment in a Postsecondary Educational Program and Student Eligibility (§ 691.15)*

*Comment:* Several commenters supported proposed § 691.15(b)(1)(ii)(C), which extends ACG eligibility to a student who previously enrolled as a regular student in an ACG-eligible program while in high school provided that the student was beyond the age of

compulsory school attendance during that prior enrollment.

*Discussion:* We appreciate the commenters' support.

*Changes:* None.

*Eligible Majors (§§ 691.15 and 691.17)*

*Documenting Major (§ 691.15)*

*Comments:* Several commenters stated that because institutions already monitor academic progress under satisfactory academic progress (SAP) policies and existing academic advising, requiring written documentation to verify a student's progress in an eligible major would be duplicative and would place an unreasonable burden on institutions. The commenters suggested that the regulatory language be revised to require only verification of SAP, as defined by the institution. In a similar vein, two commenters stated that requiring written documentation to verify that a student is progressing in an eligible major at an appropriate pace creates significant administrative burden on student financial aid administrators, forcing them to act as academic advisors and academic program experts, and that a student's academic major, academic level progression, and GPA are sufficient to demonstrate the student's progress.

A few commenters requested clarification about the definition of the term "appropriate pace" as used in the preamble to the NPRM and an explanation of what documentation can be used to demonstrate that a student is completing coursework at an appropriate pace in his or her declared major. Commenters generally felt that what constitutes an appropriate pace should be determined by individual institutions. One commenter stated that, because each academic department at the commenter's institution currently uses its own method to monitor progress for all students within each major in its department, requiring written documentation of a student's progress in the intended or declared major would require a significant change in the institution's policies for monitoring progress. The commenter explained that all students, regardless of whether they are National SMART Grant recipients, are monitored in the same way, and that requiring specific documentation for National SMART Grant recipients represents an intrusion by the Federal Government into an institution's academic policies. The commenter further asserted that changing the institution's process so that it only monitors progress of National SMART Grant recipients could potentially result in violations of student privacy because

information about the financial status of individual students (e.g., that they are Pell Grant recipients) would be revealed to academic department personnel. One commenter thought that, when reviewing program compliance, auditors and program reviewers should take into account the complexities of dual majors and related studies so that a student in these circumstances, whom the institution believes to be making overall progress in his or her eligible major, is not penalized. Another commenter asked for clarification on whether documentation of progress in an eligible major must be maintained at the financial aid office or elsewhere on campus. Finally, one commenter proposed that student financial aid office policies should include instructions on how to monitor a student's progress in an eligible major.

Two commenters requested clarification on whether institutions can use existing academic advising mechanisms (processes, degree audits, databases, etc.) to meet the requirement that a student's progress in an eligible major be documented. A few commenters asked whether the term "written," as used in § 691.15(e), applies to automated systems and encompasses electronic business practices such that electronic documentation would constitute written documentation. For example, they questioned whether an electronic record retained by an institution that shows that a student has declared a major through an electronic means via the institution's Web site meets the "written" requirement under this section.

A couple of commenters stated that the term "annually" in § 691.15(e)(1) through (e)(3) is ambiguous. One of these commenters suggested that monitoring should be limited to any student who received at least one disbursement of a National SMART Grant during that student's third academic year and that the review should occur after the final third-year disbursement of a National SMART Grant, but prior to the first disbursement of a fourth academic year National SMART Grant. Yet another commenter suggested that progress in the major should be determined prior to the first disbursement, rather than at the time of award in early spring when an institution would have to assume that the eligible major requirement would be met.

*Discussion:* We do not agree with the commenters that requiring written documentation to verify progress in the major is duplicative of SAP policies and existing academic advising. Institutions

must comply with section 401A(c)(3)(C)(i) of the HEA, which requires that, to be eligible to receive a National SMART Grant, a student must pursue a National SMART Grant-eligible major. SAP policies alone are not sufficient to ensure compliance with these requirements. Further, we do not agree that requiring written documentation of progress in an eligible major places an unreasonable burden on institutions. The documentation required is minimal. As long as the institution can document that the student is full-time, has declared an eligible major or demonstrated an intent to do so, and is taking at least one course in the eligible major during the payment period, we will consider the student to meet the minimum requirements needed to demonstrate he or she is progressing in the eligible major at an appropriate pace for that payment period, even if the student has a double major.

As we clarified in Dear Colleague Letter (DCL) GEN-07-07, published on October 9, 2007, under § 691.15(c)(2)(ii), a student is eligible to receive a National SMART Grant if the student enrolls in the courses necessary both to complete the degree program and to fulfill the requirements of the eligible major. To meet this enrollment requirement, a student must enroll in at least one course that meets the specific requirements of the student's eligible major. We explained in the preamble to the July 3, 2006 Interim Final Regulations that, "[t]he Secretary believes this additional requirement fulfills the statutory requirement because it further documents the student's pursuit of an eligible major." (71 FR 37994) DCL GEN-07-07 can be accessed from: <http://www.ifap.ed.gov/dpclletters/GEN0707.html>.

The Department does not regulate a postsecondary educational institution's policies regarding administrative practices. Thus, we disagree with the comment that requiring specific documentation of progress in the eligible major for National SMART Grant recipients represents an intrusion by the Federal government into institutional processes because we do not specifically mandate the process by which an institution would document progress in the eligible major. We also note that we do not require student financial aid administrators to act as academic advisors and program experts by directly performing these functions. Institutions must coordinate these functions to ensure that the student financial aid administrators have access to the information needed to determine student eligibility for these grants, and

they are expected to follow their own policies and procedures regarding where and how they perform the functions necessary to ensure compliance with this requirement, as well as other requirements, including protecting private student information.

We have previously indicated that the term "written" encompasses electronic documentation. Thus, electronic documentation would fulfill the requirement that an eligible major be documented.

Finally, we agree with the commenters that the use of the phrase "at least annually" in the context of documenting progress in an eligible major under § 691.15(e)(1), (2), and (3), is ambiguous. Because the course enrollment requirements for the National SMART Grant Program are implemented by payment period, and an institution is required to determine a student's eligibility for a disbursement for each payment period under § 691.75, the phrase "at least annually" is inconsistent with the requirement to use payment periods.

*Changes:* We have revised the proposed regulations by removing the phrase "at least annually" from § 691.15(e)(1), (2), and (3).

#### *Determination of Eligible Majors (§§ 691.2(d) and 691.17)*

*Comments:* Commenters generally supported the proposed changes reflected in §§ 691.2(d) and 691.17 that provide a process by which institutions of higher education can request that additional majors be included on the Department's list of eligible majors for National SMART Grants. One commenter suggested that requests for designation of an additional eligible major should be made by the institution's designated academic official to ensure that additional eligible major requests do not come from a non-academic office. Several commenters urged the Department to add Food Science, (CIP 01.1001), Food Science and Technology, (CIP 01.1099), or both, as additional eligible majors for the National SMART Grant Program. One commenter asked that Nursing (CIP 51.1601) be added to list of eligible majors. Finally, a commenter suggested that the list of languages critical to the national security of the United States be revised to include Spanish.

*Discussion:* We appreciate the comments supporting the process to add majors to the Department's list of majors eligible for a National SMART Grant. However, we do not agree that the Department should designate which office at an institution should submit the request to add a major to the list of

eligible majors because the Department does not regulate the policies of a postsecondary educational institution regarding administrative practices.

The designated eligible major CIP codes for this program are not addressed in the Department's regulations. A revised list of eligible majors was published on September 24, 2007 in Dear Colleague Letter GEN-07-06 for academic year 2007-2008; this list includes Food Science as an eligible major. Nursing and Spanish were not included in the revised list because they are not considered eligible majors under section 401A(c)(3)(C)(i) of the HEA.

*Changes:* None.

#### *Rigorous Secondary School Program of Study (§§ 691.15 and 691.16)*

Successful Completion of a Rigorous Secondary School Program of Study (§ 691.15)

*Comments:* One commenter supported the change in proposed § 691.15 clarifying that successful completion of a rigorous secondary school program of study means that, in addition to completing the specific requirements of a rigorous secondary school program of study, a student must receive a high school diploma or, for home-schooled students, receive a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian.

Several commenters expressed concern that the requirements for determining and documenting a student's successful completion of a rigorous secondary school program of study were unnecessary. One commenter noted that if a high school transcript contained all of the information necessary to determine completion of a rigorous secondary school program of study, there is no need to collect further documentation. Several commenters believed it was sufficient to rely on the FAFSA, which allows students to indicate that they have completed a rigorous secondary school program and received a high school diploma or certification of completion of a secondary school education. Another commenter believed that unless there is conflicting information to resolve, the transcript and the FAFSA self-certification should be sufficient to establish a student's eligibility.

Another commenter requested clarification on whether a General Educational Development (GED) certificate was the equivalent of a certification of completion of a secondary school education. The

commenter requested guidance on whether a student who completed seven semesters of high school, including the requirements for completing a rigorous secondary school program of study, then dropped out of high school, but later completed a GED, is eligible for an ACG.

Finally, two commenters supported the overall changes to the eligibility requirements affecting home-schooled students. One commenter in particular believed the changes in the regulations on how institutions must document successful completion of a rigorous secondary school program of study for home-schooled students provided reasonable guidance.

*Discussion:* Section 401A(c)(3)(A)(i) and (c)(3)(B)(i) of the HEA requires a student to successfully complete a rigorous secondary school program of study in order to be eligible for an ACG. We believe that the regulations provide a necessary clarification of the meaning of successful completion of a rigorous secondary school program of study.

We disagree with the commenters who stated that they could rely on the student's indication on the FAFSA to document that a student successfully completed a rigorous secondary school program. The student's indication on the FAFSA is used to identify students who may be eligible for an ACG; it does not document that the student actually completed a rigorous secondary school program of study and received a high school diploma or, for home-schooled students, received a high school diploma or certification of completion of a secondary school education provided by the student's parent or guardian. In addition, some data suggest that a significant number of students are incorrectly indicating that they have completed a rigorous secondary school program of study.

We agree with the commenters that a student's transcript may serve as the only documentation necessary to determine whether a student successfully completed a rigorous secondary school program of study if that transcript shows that the student completed one of the rigorous programs identified under § 691.16 and that the student obtained a high school diploma or the certification of completion of a secondary school education. In this case no further documentation, *i.e.*, a high school diploma, would be required. If the student's transcript does not provide all of the necessary information to document that a student both completed a rigorous secondary school program of study and obtained a high school diploma or the certification of completion of a secondary school education, however, we believe

additional documentation, such as a high school diploma, is necessary to ensure that a student has met the eligibility requirements.

We believe it is appropriate to require that an institution look only at those students who self-certify their ACG eligibility through a FAFSA in determining which students at the institution are eligible for an ACG. However, if an institution is aware, based on information in its files, such as a high school transcript, that a student who did not self-certify on a FAFSA may be eligible for an ACG, the institution is encouraged, but not required, to determine if that student is eligible to receive an ACG.

In accordance with § 691.16(c)(3), GED programs do not fulfill the requirements for completion of a rigorous secondary school program of study. A student who completed seven semesters of high school, including all of the academic requirements for a rigorous secondary school program of study, then dropped out of high school but later completed a GED, would be ineligible for an ACG because the student did not successfully complete that rigorous secondary school program of study.

*Changes:* We have revised § 691.15 by adding a new paragraph (b)(5) to provide that an institution must attempt to document the successful completion of a rigorous secondary school program of study in the case of any student who self-certifies on the FAFSA that the student completed a rigorous secondary school program of study. Section 691.15(b)(5) further provides that if a student does not self-certify the completion of a rigorous secondary school program of study, notwithstanding 34 CFR 668.16(f), an institution is not required to determine the student's eligibility for an ACG.

#### *Recognition of a Rigorous Secondary School Program of Study (§ 691.16)*

*Comments:* Commenters generally supported the proposal to allow SEAs and LEAs to request recognition of rigorous secondary school programs of study for school years beyond the immediate school year. A couple of commenters expressed concern that no changes were proposed to increase the rigor of the existing rigorous secondary school programs of study options. Three commenters proposed changes or additions to the secondary school programs of study already recognized as rigorous. To strengthen program rigor, one commenter suggested increasing the mathematics requirement in § 691.16(d)(2) to include three years of mathematics, including geometry and

algebra II, and an additional math course at the level of algebra II or above for students who completed algebra I in middle or junior high school. In addition, this commenter believed that simply taking either two International Baccalaureate (IB) Diploma Program courses or two Advanced Placement (AP) courses does not constitute a rigorous curriculum. The commenter recommended that we eliminate § 691.16(d)(4) and (5) that include these two options as recognized rigorous secondary school programs of study. Alternatively, the commenter recommended that, although it would increase institutional burden, we should deem the options in § 691.16(d)(4) and (5) as rigorous only for students from secondary schools that can demonstrate that at least 75 percent of their students do not need remedial coursework in college. Finally, this commenter was concerned about the possibility that LEAs may establish rigorous programs that are of a lower academic standard than the SEA has set for ACG eligibility and suggested revising § 691.16 to reflect that, while an LEA can request recognition of a rigorous secondary school program of study, the program of study must be comparable to or exceed the rigor of a curriculum approved by the State and recognized by the Chief State School Officer and the U.S. Secretary of Education.

Another commenter expressed concern that the preapproved rigorous secondary school program of study options do not take into account the qualitative rigor of courses or the alignment of secondary school programs with college readiness and do not include dual enrollment or early college programs in the list of preapproved rigorous secondary school programs of study. The commenter recommended that to be recognized as rigorous, secondary school programs should be required to show both the alignment of the proposed rigorous secondary school programs with college-readiness as well as a plan to further strengthen that alignment over time. The commenter also recommended inclusion of dual-enrollment and early college programs in the list of preapproved rigorous secondary school programs of study. Finally, one commenter suggested that any secondary school program for a student who completes at least two higher-level QualityCore courses and receives a college readiness score for at least two of those courses be included in the list of preapproved rigorous secondary programs of study. This commenter suggested that, alternatively, any secondary school program of study

for a student who completes and passes at least two higher-level core college preparatory courses with outcomes directly tied to college readiness validated by a national examination program be included in the list of preapproved rigorous secondary school programs of study.

*Discussion:* We appreciate the commenters' support regarding the proposal to allow SEAs and LEAs to request recognition of rigorous secondary school programs of study for school years beyond the immediate school year.

With respect to comments suggesting changes or additions to the recognized secondary school programs of study, the issue was discussed during the negotiated rulemaking process in connection with strengthening the Secretary's coursework option in § 691.16(d)(2). Some non-Federal negotiators raised concerns about the uncertainty of student access to classes if coursework requirements in mathematics, science, social studies, and foreign language were increased. Because the Secretary's coursework option is intended to be available to all students, we have concluded that changes should not be made to the Secretary's coursework option in § 691.16(d)(2) at this time.

In relation to the IB and AP program options reflected in § 691.16(d)(4) and (d)(5), the regulations accept as rigorous any secondary school program of study for a student who completes at least two IB courses and receives a score of "4" or higher on the examinations for at least two of those courses. The Secretary also recognizes as rigorous any secondary school program of study for a student who completes at least two AP courses and receives a score of "3" or higher on the College Board's AP Program Exams for at least two of those courses. Thus, it is not enough to merely take the IB or AP coursework to constitute a rigorous secondary school program of study. Nor is it sufficient to simply complete the IB or AP coursework and exams without completing a secondary school program of study. A student is required to complete a secondary school program of study, which includes, as part of the program, the IB or AP coursework and exam scores. We believe completion of a secondary school program that includes IB or AP coursework and exam scores is a sufficient indicator that the student has completed a rigorous secondary school program. Thus, we do not agree with the commenter that we should eliminate the option to complete a secondary school program that includes IB or AP coursework and exam

scores from the recognized list of rigorous secondary school programs of study.

We also do not agree that the commenter's alternative option of treating IB and AP coursework as rigorous only if the secondary school can demonstrate that at least 75 percent of their students do not need remedial work in college should be implemented. Tracking the remedial coursework taken by graduates from each high school at different postsecondary schools would be very difficult to do. We believe the benefits from such a process are significantly outweighed by the burden that would be imposed upon these entities, and thus, we do not support this alternative option.

The HEA does not restrict the ability of an LEA to establish a rigorous secondary school program of study, and we see no benefit to adopting the suggestion to regulate the ability of LEAs to establish rigorous secondary school programs of study.

We also do not agree with the suggestion that dual-enrollment and early college programs should be included in the list of preapproved rigorous secondary school programs of study. Both the HEA and these regulations enable States to propose dual-enrollment and early college programs for recognition as rigorous secondary school programs of study. States are also able to propose program options that take into account the qualitative rigor of courses or the alignment of secondary school programs with college readiness. Further, States are able to propose program options that include QualityCore coursework or programs involving college preparatory coursework with outcomes tied to college readiness validated by a national examination program. We believe that States should retain the responsibility for proposing these types of programs for recognition as rigorous secondary school programs of study.

*Changes:* None.

#### **Executive Order 12866**

##### *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 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, it has been determined that this 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 the benefits justify the costs.

##### *Need for Federal Regulatory Action*

These final regulations address a range of issues affecting students and schools participating in the ACG and National SMART Grant 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 that were submitted through testimony at public hearings and written comments that were provided directly to the U.S. Department of Education in Washington, DC. Staff within the Office of Postsecondary Education also identified issues for discussion and negotiation.

##### *Regulatory Alternatives Considered*

As part of the negotiated rulemaking process, the Department considered a broad range of alternatives to the proposed regulations. We discussed these alternatives in detail in the NPRM under the *Reasons* sections that accompany the discussion of each proposed regulatory provision. In assessing the budgetary impact of these alternatives, the Department considered the effect of possible changes on student eligibility for ACG and National SMART grant awards and on the size or timing of student awards. In all cases, the alternatives considered, which generally dealt with the clarification of existing definitions, procedures, or processes to simplify program administration, did not have a measurable effect on Federal costs. No comments or additional

information have been received since the publication of the NPRM to cause the Department to reconsider this determination.

As noted above, while the Department cannot modify statutory program requirements through regulations, in considering alternatives we have tried, to the extent possible, to adopt those alternatives that reduce administrative burden whenever possible within the limitations imposed by statutory requirements. For example, in recognition of the impact of administering the academic year progression requirements for the ACG and National SMART Grant programs on institutions, the final regulations require an institution to determine a student's academic year progression during the student's attendance in all ACG and National SMART Grant eligible programs only at the institution in which the student is currently enrolled. We believe this approach will simplify the academic year progression analysis for the institution, especially when administering aid for transfer students.

Similarly, the final regulations include alternative methods for determining weeks of instructional time. The provision of these three alternative approaches will add flexibility and help alleviate administrative burden on institutions, especially those with traditional academic calendars, in calculating the weeks of instructional time component of a student's academic year progression.

During negotiated rulemaking, non-Federal negotiators indicated that additional clarity for requirements to determine transfer student GPA for an ACG would reduce administrative burden on institutions. Accordingly, the final regulations clarify that, for a second-year ACG, GPA must be calculated at the end of the student's first academic year (in contrast to the requirement under the National SMART Grant Program that a 3.0 cumulative GPA be maintained for every payment period) and that an institution only needs to track coursework it accepts into the student's ACG-eligible program.

#### *Benefits*

Many of the final regulations reflected in this notice merely clarify the current regulations, codify subregulatory guidance, or make relatively minor changes intended to streamline program operations. The Department believes the additional clarity and enhanced efficiency resulting from these changes create benefits with little or no countervailing costs. While many commenters raised concerns about

administrative burden related to the proposed regulations, the Department believes that these concerns are generally a reflection of the structure of the program as determined by statute rather than of discretionary requirements included in the regulatory provisions. Specific burden concerns are discussed in more detail elsewhere in this preamble, primarily in the *Analysis of Comments and Changes* and *Paperwork Reduction Act of 1995* sections.

Benefits provided in these final regulations include the elimination of the requirement that schools determine a student's academic year progression based on the student's attendance in ACG or National SMART Grant eligible programs at all institutions. Now the student's academic year progression may be based solely on the ACG or National SMART Grant eligible programs attended by the student at the student's current institution. A second benefit of these final regulations is that institutions of higher education have the ability to choose from three alternative approaches for determining weeks of instructional time in a student's academic year progression. A third benefit of these regulations is that they clarify how institutions (a) calculate a student's GPA for the purpose of determining eligibility for an ACG or National SMART Grant, (b) document a student's intent to major in an eligible subject, and (c) define successful completion of a rigorous program of study. In addition, the final regulations allow States to designate a rigorous program of study for more than one year, and create a process for schools to suggest additions to the list of majors in which students are eligible to receive a National SMART Grant. Lastly, the final regulations allow a student who is beyond the age of compulsory attendance and who enrolls as a regular student in an ACG-eligible program while in high school to be eligible for an ACG if the student meets the other eligibility requirements after graduating from high school. None of these provisions were determined to have a substantial economic impact; no information or comments have been received since the publication of the NPRM that would cause the Department to reconsider this determination.

#### *Costs*

The only provision included in the regulations that directly affects student eligibility, and potentially could result in increased Federal costs, involves the treatment of some students enrolled in dual-credit or early college programs during high school. These students,

ineligible to receive an ACG under current regulations, will be eligible under the final regulations provided that they had not been admitted to an eligible program while in secondary school. There is no data available on participation in these dual-credit programs, but anecdotal evidence indicates they do not involve a large number of students. While the expanded eligibility afforded by this provision will provide a significant benefit to a small number of students, for cost estimation purposes, the Department projects that other ACG eligibility requirements related to academic rigor, full-time attendance, and Pell Grant eligibility will reduce the already small pool of potentially affected students such that no measurable costs will be incurred.

Because institutions of higher education affected by these regulations already participate in the ACG and National SMART Grant Programs, these schools must have already established systems and procedures to meet program eligibility requirements. The final regulations reflect discrete changes in specific parameters associated with the Department's existing guidance on these programs, rather than entirely new requirements. Accordingly, entities wishing to continue to participate in the programs have already absorbed most of the administrative costs related to implementing these regulations. Marginal costs over this baseline are primarily related to one-time changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation.

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 final regulations. As shown in the table, the Department estimates that these regulations will have no impact on Federal student aid payments.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]	
Category	Transfers
Annualized Monetized Transfers .....	\$0

*Regulatory Flexibility Act Certification*

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations affect institutions of higher education, States, State agencies, and individual students. 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. Individuals are also not defined as “small entities” under the Regulatory Flexibility Act.

A significant percentage of the schools participating in the ACG and National SMART Grant programs meet the definition of “small entities.” While these schools fall within the SBA size guidelines, these final regulations do not impose significant new costs on these entities.

In the NPRM the Secretary invited comments from small institutions as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requested evidence to support that belief. Many commenters raised concerns about administrative burden, particularly for small institutions, related to the proposed regulations. As noted elsewhere in this notice, the Department believes that these concerns reflect concerns with the structure of the program, as determined by statute, rather than of discretionary requirements included in the regulatory provisions. Specific burden concerns are discussed in more detail elsewhere in this preamble, primarily in the *Analysis of Comments and Changes and Paperwork Reduction Act of 1995* sections.

*Paperwork Reduction Act of 1995*

These regulations contain information collection requirements that were reviewed in connection with the NPRM. The Department received numerous comments on the burden associated with implementing the ACG and National SMART Grant Programs. Several financial aid office professionals

submitted comments expressing the view that these programs are the most challenging and burdensome aid programs to deliver. The burden of these programs was associated with making a determination that the student had completed a rigorous secondary school program of study; academic year progression; and calculation of grade point averages. Commenters also indicated that the administrative software available to institutions of higher education does not support the implementation of these programs. Another commenter indicated that the program should be a campus-based program with institutions given flexibility in making awards.

These comments relate to the basic structure of the ACG and National SMART Grant Programs, as established in HEA, and cannot be modified through regulatory action. To the extent possible, we have tried to minimize the burden associated with these statutory requirements. None of the comments received indicated that the estimates of burden associated with implementing these programs under the proposed regulations were incorrect.

In regard to other information collection requirements described in the NPRM, the Paperwork Reduction Act of 1995 does not require a response to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

*Intergovernmental Review*

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

In accordance with the order, we intend this document to provide early notification of the Department’s specific plans and actions for this program.

*Assessment of Educational Impact*

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not

require transmission of information that any other agency or authority of the United States gathers or makes available.

*Electronic Access to This Document*

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: [www.ed.gov/news/fedregister](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.

You may also view this document in PDF format at the following site: [www.ifap.ed.gov](http://www.ifap.ed.gov).

**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: [www.gpoaccess.gov/nara/index.html](http://www.gpoaccess.gov/nara/index.html).

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

**List of Subjects in 34 CFR Part 691**

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

Dated: October 22, 2007.

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

■ For the reasons discussed in the preamble, the Secretary amends part 691 of title 34 of the Code of Federal Regulations as follows:

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

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

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

■ 2. Section 691.2(d) is amended by adding, in alphabetical order, the definition of “Classification of Instructional Programs (CIP)” to read as follows:

**§ 691.2 Definitions.**

\* \* \* \* \*  
(d) \* \* \*

*Classification of Instructional Programs (CIP):* A taxonomy of

instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics used to identify eligible majors for the National SMART Grant Program. Further information on CIP can be found at <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2002165>.

\* \* \* \* \*

■ 3. Section 691.6 is amended by:

■ A. In paragraphs (a) and (b), removing the words "undergraduate education" and adding, in their place, the words "enrollment at an institution".

■ B. In paragraph (c), adding the words "during the student's undergraduate education in all eligible programs" before the punctuation ".".

■ C. Revising paragraph (d).

■ D. Adding new paragraphs (e), (f), (g), and (h).

The revision and additions read as follows:

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

\* \* \* \* \*

(d)(1)(i) Institutions must count credit or clock hours earned by a student toward a student's completion of the credit or clock hours of an academic year if the institution accepts those hours toward the student's eligible program, including credit or clock hours that are earned—

(A) From Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures; or

(B) At an institution while not enrolled as a regular student in an eligible program.

(ii) Institutions may not count credit or clock hours awarded for coursework that is at less than the postsecondary level, such as remedial coursework. These credit or clock hours may not be considered in determining the credit or clock hours that a student has completed in an academic year.

(2)(i) An institution may not assign any weeks of instructional time to credit or clock hours accepted toward meeting the student's eligible program if the student earned the credit or clock hours—

(A) From Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures;

(B) At a postsecondary institution while not enrolled as a regular student in an eligible program except as provided in paragraph (d)(2)(ii) of this section; or

(C) For coursework that is not at the postsecondary level, such as remedial coursework.

(ii) An institution must assign weeks of instructional time to determining National SMART Grant eligibility for periods in which a student was enrolled in an ACG eligible program prior to declaring, or certifying his or her intent to declare, an eligible major.

(3)(i) Except as provided in paragraph (d)(2)(ii) of this section, for a transfer student, an institution determining the academic years completed by the student must count—

(A) The number of credit or clock hours earned by the student at prior institutions that comply with paragraph (d)(1) of this section, and that the institution accepts on transfer into the student's eligible program; and

(B) The weeks of instructional time, except as prohibited in paragraph (d)(2) of this section, determined by multiplying the number of credit or clock hours that the institution accepts on transfer by the number of weeks of instructional time in the academic year and dividing the product of the multiplication by the credit or clock hours in the academic year.

(ii) For a student who transfers into an eligible program for which an institution determines estimated weeks of instructional time under paragraph (h) of this section, the institution must apply the credits accepted on transfer into the student's eligible program when determining the student's grade level in accordance with paragraphs (d)(2) and (h) of this section.

(e)(1) Except as provided in paragraph (e)(2) of this section, an institution must determine a student's progression in the weeks of instructional time of an academic year through an exact accounting of those weeks of instructional time.

(2) Except as provided in paragraph (h)(2)(iii) of this section, an institution may use, on an eligible program-by-program basis, an alternative method to determine the weeks of instructional time taken by its students during an academic year under paragraphs (f), (g), and (h) of this section if the institution—

(i) Determines payments for the student's eligible program under § 691.63(b) or (c);

(ii) Uses, for all students enrolled in the eligible program for whom an exact accounting is not performed, the same alternative method described in paragraph (f), (g), or (h) of this section to determine the students' progression in the weeks of instructional time of an academic year; and

(iii) Upon request from a student, performs an exact accounting of the student's academic year progression for that student based on the actual weeks of instructional time the student attended in all eligible programs at the institution and on any qualifying credit or clock hours accepted on transfer into the student's eligible program.

(3) An institution may not use an alternative method under paragraphs (f), (g), or (h) of this section if it performs an exact accounting for a student, including an accounting pursuant to paragraph (e)(2)(iii) of this section. Once an institution initiates an exact accounting for a student under this section, the institution must use the determination for that student based on the exact accounting and not the determination based on an alternative method.

(f)(1) For an eligible program for which the institution determines payments under § 691.63(b) or (c), an institution may determine a student's completion of the weeks of instructional time in an academic year under the procedures set forth in paragraphs (f)(2) and (f)(3) of this section.

(2) For an eligible student enrolled in an eligible program that has a single summer term that provides at least 12 semester, trimester, or quarter hours of coursework and for which payments are calculated under § 691.63(b), the student's term is considered to be—

(i) For an eligible program offered in semesters or trimesters, one-half of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(i), or one-third of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(ii); or

(ii) For an eligible program offered in quarters that has a single summer term, one-third of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(i), or one-fourth of an academic year in weeks of instructional time if payments may be determined under § 691.63(b)(3)(ii).

(3) For an eligible student enrolled in an eligible program with a single summer term that provides at least 12 semester, trimester, or quarter hours of coursework for which the institution may determine payments under § 691.63(c), the student's term is considered to be—

(i) For an eligible program offered in semesters or trimesters, one-half of the weeks of instructional time in the fall through spring terms if payments may be determined under § 691.63(c)(4)(i), or one-third of an academic year in weeks of instructional time if payments may be determined under § 691.63(c)(4)(ii); or

(ii) For an eligible program offered in quarters, one-third of the weeks of instructional time in the fall through spring terms if payments may be determined under § 691.63(c)(4)(i), or one-fourth of an academic year in weeks of instructional time if payments may be determined under § 691.63(c)(4)(ii).

(g)(1) Except as provided in paragraph (d)(2) of this section, an institution with an eligible program for which the institution determines payments under § 691.63(b) or (c) may determine a student's completion of the weeks of instructional time in an academic year under the procedures set forth in paragraph (g)(2) or (g)(3) of this section.

(2) For an eligible student enrolled in an eligible program for which payments may be determined under § 691.63(b), an institution must determine the number of weeks a student is considered to have completed in an academic year by multiplying the number of credit hours a student has earned in an eligible program by the number of weeks of instructional time in the academic year and dividing the product of the multiplication by the credit or clock hours in the academic year.

(3) For an eligible student enrolled in an eligible program for which payments may be determined under § 691.63(c), an institution must determine the number of weeks a student is considered to have completed in an academic year by multiplying the number of credit hours a student has earned in an eligible program by the number of weeks of instructional time in the fall through spring terms and dividing the product of the multiplication by the credit or clock hours in the academic year.

(h)(1) Except as provided in paragraph (d)(2) of this section, an institution with an eligible program for which the institution determines payments under § 691.63(b) or (c) may determine a student's completion of the weeks of instructional time in an academic year under the procedures set forth in paragraph (h)(2) and (h)(3) of this section.

(2) A student at a grade level can be assumed to have completed an academic year for each of the prior grade levels if for each grade level of a student's eligible program—

(i) A student has completed at least the minimum credit hours for the prior academic years for that program in accordance with this section; and

(ii) Most full-time students in the student's eligible program complete the weeks of instructional time of an academic year during the period of completing each grade level as

determined in accordance with paragraph (h)(3) of this section.

(3)(i) For purposes of an award year, in making a determination under paragraph (h)(2)(ii) of this section, an institution must first determine that at least two-thirds of the full-time, full-year students complete at least the weeks of instructional time of an academic year while completing each grade level during the three most recently completed award years prior to the award year immediately preceding the award year for which the determination is made.

(ii) For each of the ACG or National SMART Grant Programs, an institution may make a determination under paragraph (h)(3)(i) of this section on an eligible program basis or an institutional basis.

(iii) An institution that makes a determination under paragraph (h)(3)(i) of this section on an institutional basis must use the alternative method in paragraph (h) of this section for all students at the institution for whom it does not perform an exact accounting of the weeks of instructional time completed.

\* \* \* \* \*

■ 4. Section 691.15 is amended by:

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

■ B. Adding new paragraphs (e), (f), and (g).

■ C. Adding a parenthetical phrase at the end of the section.

The revisions and additions read as follows:

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

\* \* \* \* \*

(b) *ACG Program.* (1) A student is eligible to receive an ACG if the student—

(i) Meets the eligibility requirements in paragraph (a) of this section;

(ii) For the first academic year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed after January 1, 2006, as determined by the institution, a rigorous secondary school program of study recognized by the Secretary under § 691.16; and

(C) Has not previously been enrolled as a regular student in an eligible program while—

(1) Enrolled in high school; and

(2) Being at or below the age of compulsory school attendance; and

(iii) For the second academic year of his or her eligible program—

(A) Has received a high school diploma or, for a home-schooled student, a high school diploma or the certification of completion of a secondary school education by the cognizant authority;

(B) Has successfully completed, after January 1, 2005, as determined by the institution, a rigorous secondary school program of study recognized by the Secretary under § 691.16;

(C) Has successfully completed the first academic year of his or her eligible program; and

(D) For the first academic year of his or her eligible program, obtained a grade point average (GPA) of 3.0 or higher on a 4.0 scale, or the numeric equivalent, consistent with other institutional measures for academic and title IV, HEA program purposes.

(2)(i) An institution must document a student's successful completion of a rigorous secondary school program of study under paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii)(A) and (b)(1)(iii)(B) of this section using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) If an institution has reason to believe that the documentation provided by the student under paragraph (b)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student's successful completion of a rigorous secondary school program of study by using documentation provided directly to the institution by the cognizant authority.

(3) For purposes of paragraph (b) of this section—

(i) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency;

(C) A public or private high school; or

(D) A testing organization such as the College Board or State agency; or

(ii) A home-schooled student's parent or guardian is the cognizant authority for purposes of providing the documentation required under paragraph (b) of this section. This documentation must show that the home-schooled student successfully completed a rigorous secondary school program under § 691.16(d)(2). This documentation may include a transcript or the equivalent or a detailed course description listing the secondary school courses completed by the student.

(4) For a student who transfers from an eligible program at one institution to an eligible program at another institution, the institution to which the student transfers may rely upon the

prior institution's determination that the student successfully completed a rigorous secondary school program of study in accordance with paragraphs (b)(1)(ii)(A), (b)(1)(ii)(B), (b)(1)(iii)(A), and (b)(1)(iii)(B) of this section based on documentation that the prior institution may provide, or based on documentation of the receipt of an ACG disbursement at the prior institution.

(5)(i) If a student self-certifies on an application under § 691.12, or otherwise self-identifies to the institution, that he or she completed a rigorous secondary school program of study recognized by the Secretary under § 691.16, an institution must attempt to collect the documentation described under paragraph (b)(2) of this section.

(ii) Notwithstanding 34 CFR 668.16(f), an institution is not required to determine the ACG eligibility of a student if the student does not self-certify on his or her application, or otherwise self-identify to the institution, the completion of a rigorous secondary school program of study.

(c) *National SMART Grant Program.* A student is eligible to receive a National SMART Grant for the third or fourth academic year of his or her eligible program if the student—

(1) Meets the eligibility requirements in paragraph (a) of this section;

(2)(i)(A) In accordance with the institution's academic requirements, formally declares an eligible major; or

(B) Is at an institution where the academic requirements do not allow a student to declare an eligible major in time to qualify for a National SMART Grant on that basis and the student demonstrates his or her intent to declare an eligible major in accordance with paragraph (d) of this section; and

(ii) Enrolls in the courses necessary both to complete the degree program and to fulfill the requirements of the eligible major as determined and documented by the institution in accordance with paragraph (e) of this section;

(3) Has a cumulative GPA through the most recently completed payment period of 3.0 or higher on a 4.0 scale, or the numeric equivalent measure, consistent with other institutional measures for academic and title IV, HEA program purposes, in the student's eligible program;

(4) For the third academic year, has successfully completed the second academic year of his or her eligible program; and

(5) For the fourth academic year, has successfully completed the third academic year of his or her eligible program.

(d) *Intent to declare a major.* (1) For a student whose institution's academic policies do not allow the student to declare an eligible major in time to qualify for a National SMART Grant disbursement, the institution must obtain and keep on file a recent self-certification of intent to declare an eligible major that is signed by the student.

(2) The student described in paragraph (d)(1) of this section must formally declare an eligible major when he or she is able to do so under the institution's academic requirements.

(e) *Documentation of progression in the major.* The institution must document a student's progress in taking the courses necessary to complete the intended or declared major that establishes eligibility for a National SMART Grant. Documentation of coursework progression in the eligible program and major under paragraph (c)(2)(ii) of this section may include, but is not limited to:

(1) Written counselor or advisor tracking of coursework progress toward a degree in the intended or declared eligible major.

(2) Written confirmation from an academic department within the institution that the student is progressing in coursework leading to a degree in the intended or declared eligible major. This confirmation must be signed by a departmental representative for the intended eligible major.

(3) Other written documentation of coursework that satisfies the ongoing nature of monitoring student coursework progression in the intended or declared eligible major.

(f) *Transfer students.* (1)(i) Under the ACG Program, if a student transfers to an institution that accepts for enrollment at least the credit or clock hours for one academic year but less than the credit or clock hours for two academic years from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility for an ACG is calculated using the grades from all coursework accepted by the current institution into the student's eligible program.

(ii) Under the ACG Program, if a student transfers to an institution that accepts for enrollment less than the credit or clock hours for one academic year from all prior postsecondary institutions attended by the student, the GPA to determine second-year eligibility for an ACG is calculated using the grades from—

(A) All coursework accepted from all prior postsecondary institutions by the

current institution into the student's eligible program; and

(B) The coursework earned at the current institution through the payment period in which the student completes the credit or clock hours of the student's first academic year in an eligible program based on the total of the credit or clock hours accepted on transfer and the credit or clock hours earned at the current institution.

(2) Under the National SMART Grant Program, if a student transfers from one institution to the current institution, the current institution must determine that student's eligibility for a National SMART Grant for the first payment period using either the method described in paragraph (f)(2)(i) of this section or the method described in paragraph (f)(2)(ii) of this section, whichever method coincides with the current institution's academic policy. For an eligible student who transfers to an institution that—

(i) Does not incorporate grades from coursework that it accepts on transfer into the student's GPA at the current institution, the current institution, for the courses accepted in the eligible program upon transfer—

(A) Must calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts toward the student's eligible program; and

(B) Must, for all subsequent payment periods, apply its academic policy and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(ii) Incorporates grades from the coursework that it accepts on transfer into the student's GPA at the current institution, an institution must use the grades assigned to the coursework accepted by the current institution into the eligible program as the student's cumulative GPA to determine eligibility for the first payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(g) *Numeric equivalent.* (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing ACG or National SMART Grant eligibility. That institution's equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance

to support a determination that a student has performed at a level commensurate with at least a 3.0 GPA on a 4.0 scale in that program.

(2) A grading policy that includes only "satisfactory/unsatisfactory", "pass/fail", or other similar nonnumeric assessments qualifies as a numeric equivalent only if—

(i) The institution demonstrates that the "pass" or "satisfactory" standard has the numeric equivalent of at least a 3.0 GPA on a 4.0 scale awarded in that program, or that a student's performance for tests and assignments yielded a numeric equivalent of a 3.0 GPA on a 4.0 scale; and

(ii) The institution's equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control numbers 1845-0001 and 1845-0039)

■ 5. Section 691.16 is amended by:

■ A. Revising paragraph (b).

■ B. In the introductory text of paragraph (c), removing the word "identifying" and adding, in its place, the word "establishing".

■ C. In paragraph (c)(2), removing the word "successfully" before the punctuation ";" and adding the word "successfully" immediately before the word "pursue".

■ D. In the introductory text of paragraph (d), removing the word

"identified" and adding, in its place, the word "established".

■ E. In paragraph (d)(1), removing the words "or 2005-2006 school year" and adding, in their place, the words "school year or later school years".

■ F. In the introductory text of paragraph (d)(2) adding the word "successfully" immediately after the word "student".

■ G. Adding a parenthetical phrase at the end of the section.

The revision and addition read as follows:

**§ 691.16 Recognition of a rigorous secondary school program of study.**

\* \* \* \* \*

(b) For each award year, the Secretary establishes a deadline for SEAs and LEAs to submit information about the secondary school program or programs that the SEA or LEA establishes as a rigorous secondary school program of study, and, in the case of an LEA, documentation that the LEA is legally authorized by the State to establish a separate secondary school program of study. An SEA and LEA, if applicable, may submit information—

(1) For students graduating during the current school year; and

(2) For students graduating during one or more specified upcoming school years.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 1845-0078)

■ 6. Section 691.17 is amended by redesignating paragraph (c) as paragraph (e), and adding new paragraphs (c) and (d) to read as follows:

**§ 691.17 Determination of eligible majors.**

\* \* \* \* \*

(c) *Designation of eligible majors.* For each award year, the Secretary publishes a list of eligible majors identified by CIP code.

(d) *Designation of an additional eligible major.* For each award year, the Secretary establishes a deadline for an institution to request designation of an additional eligible major.

(1) Requests for designation of an additional eligible major must include—

(i) The CIP code and program title of the additional major;

(ii) The reason or reasons the institution believes the additional major should be considered an eligible program under this part; and

(iii) Documentation showing that the institution has actually awarded or plans to award a bachelor's degree in the requested major.

(2) For each award year, the Secretary will confirm the final list of eligible majors.

\* \* \* \* \*

**§ 691.75 [Amended]**

■ 7. Section 691.75 is amended by:

■ A. In paragraph (b)(2), removing the regulatory citation "691.15(b)(1)(iii)(C)" and adding, in its place, the regulatory citation "691.15(b)(1)(iii)(D)".

■ B. In paragraph (c), removing the regulatory citation "691.15(b)(1)(iii)(C)" and adding, in its place, the regulatory citation "691.15(b)(1)(iii)(D)".

■ C. In paragraph (d)(1)(i), removing the regulatory citation "691.15(b)(1)(iii)(C)" and adding, in its place, the regulatory citation "691.15(b)(1)(iii)(D)".

[FR Doc. E7-21068 Filed 10-26-07; 8:45 am]

BILLING CODE 4000-01-P