DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, 673, 674, 675, 682, 685, 690, and 694

RIN 1845–AA23

Federal Student Aid Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Perkins Loan (Perkins Loan) Program; Federal Work-Study (FWS) Programs; Federal Family Education Loan (FFEL) Program; William D. Ford Federal Direct Loan (Direct Loan) Program; Federal Pell Grant Program; and Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) regulations. The Secretary is amending these regulations to reduce administrative burden for program participants, and to provide them with greater flexibility to serve students and borrowers.

DATES: *Effective Date:* Except for the amendment to section 694.10, these regulations are effective July 1, 2003. The amendment to section 694.10 becomes effective December 2, 2002.

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, lenders, guaranty agencies, and state grant agencies that administer Title IV, HEA programs may, at their discretion, choose to implement all of the provisions of these final rules on or after November 1, 2002. For further information, see ''Implementation Date of These Regulations'' under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For provisions related to the Title IV loan programs (Perkins Loan Program, FFEL Program, and Direct Loan Program): Ms. Gail McLarnon, U.S. Department of Education, 1990 K Street, NW, (8th Floor) Washington, DC 20006, Telephone: (202) 219–7048 or via the Internet: *Gail.McLarnon@ed.gov.*

For other provisions: Ms. Wendy Macias, U.S. Department of Education, 1990 K Street, NW, (8th Floor), Washington, DC, 20006, Telephone: (202) 502–7526 or via the Internet: *Wendy.Macias@ed.gov.*

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

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SUPPLEMENTARY INFORMATION: On August 6, 2002, and August 8, 2002, the Secretary published in the **Federal Register** two separate notices of proposed rulemaking (NPRMs) (67 FR 51036 and 67 FR 51718, respectively) for the Federal student assistance programs authorized by Title IV of the HEA. This document contains the final regulations for the rules that were proposed in both of these NPRMs.

The August 6, 2002 NPRM included proposed rules for the Student Assistance General Provisions, Perkins Loan Program, FFEL Program, and Direct Loan Program regulations.

In the preamble to the August 6, 2002 NPRM, the Secretary discussed on pages 51037 through 51046 the major changes proposed to improve the Federal student assistance programs. These included the following:

- Amending § 668.35 to state the conditions under which a borrower who is subject to a judgment obtained on a Title IV loan may regain eligibility for additional Title IV student financial assistance. [page 51037]
- Amending §§ 674.39, 682.405, and 685.211 to exclude from rehabilitation defaulted Perkins Loan, FFEL, and Direct Loan program loans on which a judgment has been obtained. [page 51037]
- Amending §§ 674.19, 682.402, and 682.414 to clarify the record retention requirements for promissory notes under the Perkins Loan and FFEL programs. [page 51038]
- Amending §§ 674.34, 682.210, and, by reference, 685.204, to modify the way loan holders in the Perkins Loan, FFEL, and Direct Loan programs calculate Federal postsecondary educational loan debt for purposes of determining a borrower's eligibility for an economic hardship deferment. [page 51039]
- Amending §§ 674.42, 682.604, and 685.304 to clarify that entities other than the institution may provide initial and exit loan counseling on the institution's behalf and to provide consistency in the information that must be disclosed to borrowers. [page 51039]
- Amending §§ 682.204 and 685.203 to clarify loan limits for separate stand-alone programs in the FFEL and Direct Loan programs. [page 51039]
- Amending § 682.210 and, by reference, § 685.204 to make it easier for borrowers in the FFEL and Direct Loan programs to certify eligibility for an unemployment deferment. [page 51040]
- Amending §§ 682.402, 685.212, and 685.220 to expand the instances where FFEL and Direct Loan program borrowers can have a portion of a consolidation loan discharged. [page 51040]
- Amending §§ 674.2 and 674.16 to provide for the use of a Master Promissory Note (MPN) in the Perkins Loan Program. [page 51041]
- Amending §§ 674.9 and 674.47 to modify the low-balance write-off options for institutions that participate in the Perkins Loan Program. [page 51042]
- Amending § 674.17 to clarify that when an institution participating in the Perkins Loan Program closes, or otherwise leaves the program, that institution must assign its outstanding loans to the Secretary and liquidate its Perkins Loan fund according to the Secretary's instructions. [page 51042]
- Amending §§ 674.33 and 674.42 to clarify the conditions under which an institution must coordinate minimum repayment options when a Perkins Loan borrower has received loans from more than one institution. [page 51042]
- Amending § 674.42 to provide flexibility to institutions that participate in the Perkins Loan Program in providing copies of promissory notes to borrowers. [page 51042]
- Amending § 674.43 to provide institutions increased flexibility in assessing late fees in the Perkins Loan Program. [page 51043]
- Amending § 674.45 to clarify when an institution that participates in the Perkins Loan Program must report a defaulted account to a national credit bureau. [page 51043]
- Amending § 674.46 to simplify the requirements for an institution that participates in the Perkins Loan Program to determine if it should initiate litigation against a defaulted borrower. [page 51043]
- Amending § 674.50 to provide consistency within the regulations for the assignment to the Secretary of Perkins loans. [page 51043]
- Amending § 682.200 to revise the definition of lender to clarify the treatment of loans held by trustee lenders. [page 51044]
- Amending § 682.209 to allow an FFEL lender to establish a borrower's first payment due date up to 60 days after the borrower enters repayment, to provide increased flexibility to FFEL

lenders when they receive updates to a borrower's enrollment status from an institution, and to provide a simplified method for a borrower in the FFEL Program to ask a lender to increase the length of the repayment period. [page 51044]

• Amending § 682.211 to simplify the process by which a lender and a borrower in the FFEL Program may agree to a discretionary forbearance. [page 51044]

• Amending § 682.402 to clarify that a State guaranty agency is not required to file a proof of claim in a bankruptcy filing and may instruct lenders not to file a proof of claim if filing a proof of claim would waive the State's sovereign immunity. [page 51045]

• Amending § 682.402 to provide that a guaranty agency may take up to 90 days to review a total and permanent disability discharge claim under the FFEL Program. [page 51045]

• Amending §§ 668.183 and 668.193 to revise, for purposes of calculating an institution's cohort default rate, the definition of a defaulted loan. [page 51045]

• Amending § 685.102 to modify the provisions governing the expiration of a Master Promissory Note in the Direct Loan Program. [page 51046]

The August 8, 2002 NPRM included proposed rules for the Institutional Eligibility Under the Higher Education Act of 1965, as Amended; Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; FWS Programs; FFEL Program; Direct Loan Program; Federal Pell Grant Program; and GEAR UP regulations.

In the preamble to the August 8, 2002 NPRM, the Secretary discussed on pages 51720 through 51733 the major changes proposed to improve the Federal student assistance programs. These included the following:

• Amending § 600.8 to reflect that the statutory provision that a branch campus must be in existence for two years before seeking to be designated as a main campus applies only to proprietary institutions of higher education and postsecondary vocational institutions. [page 51720]

• Amending §§ 600.21, 600.31, and 668.174 to provide clarification and additional flexibility to the change of ownership provisions by expanding the definition of family members and broadening the transactions that are not considered to be a change of ownership. [page 51720]

• Amending §§ 668.2, 668.3, and 668.8 to remove the so-called ''12-hour'' rule that defined a week of instructional time for credit hour nonterm and nonstandard term educational programs. [page 51720]

• Amending §§ 668.4, 682.603, 685.301, and 690.75 to revise the definition of payment period for credit hour nonterm educational programs and to clarify the definition of a payment period when a student withdraws and then returns to school. [page 51721]

• Amending § 668.14 to clarify the statutory program participation agreement provision concerning incentive payment restrictions. [page 51722]

• Amending § 668.22 to clarify when an institution is considered to be one that is required to take attendance for purposes of determining a student's last date of attendance. [page 51725]

• Amending § 668.22 to simplify the definition of a leave of absence and to allow for multiple leaves of absence not to exceed 180 days in any 12-month period. [page 51726]

• Amending §§ 668.35, 673.5, and 690.79 to provide consistent requirements for handling Title IV overpayments, including a provision under which, in most cases, a student who owes an overpayment of a Title IV grant or loan of less than $25 does not lose eligibility for additional Title IV aid. [page 51726]

• Amending §§ 668.32 and 668.151 to eliminate the provision that limits the duration of a passing score on an approved ability-to-benefit (ATB) test to 12 months before a student initially receives Title IV aid. [page 51728]

• Amending § 668.164 to clarify when an institution is required to make a late disbursement and to provide increased flexibility for an institution to make a late disbursement to a student. [page 51728]

• Amending § 668.165 to eliminate the requirement that an institution must confirm the receipt of a notice sent electronically to a student or parent. [page 51730]

• Amending §§ 668.171 and 668.173 to establish clear requirements for returning unearned Title IV program funds and the conditions under which an institution must submit a letter of credit if it does not return those funds in a timely manner. [page 51730]

• Amending §§ 675.2 and 675.21 to provide greater flexibility for the employment of FWS students by proprietary institutions. [page 51731]

• Amending § 694.10 to remove language in the GEAR UP regulations related to the packaging of GEAR UP scholarships by institutions. [page 51732]

We strongly encourage the reader to refer to the preambles of both the August 6, 2002, and August 8, 2002, NPRMs for a full discussion of the topics proposed in those NPRMs and finalized in this document.

These final regulations contain a few changes from the NPRMs. We fully explain these changes in the *Analysis of Comments and Changes* elsewhere in this preamble.

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.

Note: Section 482 does not apply to the GEAR UP program (34 CFR part 694).

In response to our request in the NPRMs for suggestions on which provisions the Secretary should designate for early implementation, most of the commenters supported making all of the provisions available for early implementation at the discretion of the regulated entity. Therefore, consistent with the intent of this regulatory effort to reduce burden and to provide greater flexibility, the Secretary is using the authority granted him under section 482(c) to designate all of the regulations subject to that section included in this document for early implementation at the discretion of each institution, lender, guaranty agency, or state agency, as appropriate.

In accordance with the authority provided by section 482(c) of the HEA, the Secretary has determined that for some provisions, there are conditions that must be met in order for an institution, lender, guaranty agency, or state agency, as appropriate, to implement those provisions early. The conditions are—

Provision: Sections 674.34 and 682.210 that modify the formula used by Title IV loan holders when calculating a borrower's eligibility for an economic hardship deferment.

Condition: Until the Secretary has announced the approval of revised deferment forms, loan holders must provide alternative methods by which borrowers provide them with the loan detail information needed to perform the calculation using the modified formula.

Provision: Section 682.210 that modifies the information that a borrower must provide to a loan holder when requesting an unemployment deferment.

Condition: Until the Secretary has announced the approval of a revised deferment form, loan holders must provide alternative methods by which borrowers certify their eligibility for an unemployment deferment under the revised rules.

Provision: Sections 674.2 and 674.16 that provide for a Master Promissory Note (MPN) in the Federal Perkins Loan Program.

Condition: Implementation cannot occur until the Secretary has announced the approval of the Perkins MPN.

Provision: Section 668.22 that clarifies when an institution is considered to be one that is required to take attendance.

Condition: An institution must apply these provisions to all students who withdraw on or after the institution's implementation of these regulations.

Provision: Section 668.22 that provides increased flexibility in the granting of leaves of absence under the Return of Title IV Funds regulations.

Condition: An institution must apply these provisions to all students who are granted a leave of absence on or after the institution's implementation of these regulations.

Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 6, 2002, and on August 8, 2002, following the completion of the negotiated rulemaking process. The Secretary invited comments on the proposed regulations by October 7 for both NPRMs. We received 32 comments on the August 6, 2002 NPRM and 55 comments on the August 8, 2002 NPRM. In addition to their general support of our efforts to simplify the regulations and to reduce regulatory burden on students, borrowers, institutions, lenders, and guaranty agencies, the overwhelming majority of the commenters on both NPRMs also expressed support for the individual proposals included in the NPRMs.

We also received several comments on changes in the negotiated rulemaking process. Most of the commenters expressed appreciation to the Department of Education (Department) for the new scope and structure of the negotiated rulemaking process. Some commenters, however, felt that the Department should have included representatives of certain other organizations in the negotiations, but did not question the constituencies identified. Other commenters expressed the view that the Department should have excluded—and should exclude from future negotiations—individuals or groups that failed to negotiate in good faith and blocked consensus. We note that all organizations had an opportunity to submit institutional nominees and to form coalitions within the constituency groups identified and all nominations were carefully considered to achieve a balanced product. In creating the negotiating committees, the Department encouraged nominations of individuals from coalitions of individuals and organizations representing the constituencies. Moreover, the Department encouraged nominations of individuals who are actively involved in administering the Federal student financial assistance programs or whose interests are significantly affected by the regulations. We, and most of the commenters, believe that the Department was successful in assuring that individuals directly involved in administering the Federal student financial assistance programs appropriately represented the constituencies. In structuring future negotiations, however, the Department will take the comments received into consideration.

An analysis of the comments and of the changes in the regulations since publication of the NPRMs follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Change of Ownership (Sections 600.21, 600.31, and 668.174)

Comments: One commenter requested that the preamble discussion clarify that a transfer by an owner to a family member does not require the family member acquiring the institution to have previously worked there.

Discussion: The commenter is correct that the exception does not require a family member of the owner to have worked at the institution.

Changes: None.

Definition of Academic Year—''12-Hour Rule'' (Sections 668.2, 668.3, and 668.8)

Comments: Most of the comments we received supported the proposed change that would eliminate the so-called ''12-hour'' rule for determining a week of instructional time for credit hour nonterm and nonstandard term educational programs. Most commenters were very supportive of the proposal to use a single standard for all educational programs by extending the current ''one-day'' rule used for term-based and clock hour programs to credit hour nonterm and nonstandard term programs. One commenter specifically noted that the 12-hour rule acted as an impediment to increasing access to higher education. Others noted that the 12-hour rule was at odds with the educational advantages that flexible program calendars and formats, including web-based programs, provide to working adults. Two commenters noted that the Web-based Education Commission, chartered by the Higher Education Amendments of 1998, called for the elimination of the 12-hour rule. Another commenter noted that the House of Representatives' Committee on Education and the Workforce called the 12-hour rule ''outdated and obsolete.'' Finally, a commenter, in support of the proposed change, agreed that the 12-hour rule sometimes results in disparities in the amount of Title IV, HEA program funding that students receive for the same amount of academic credit.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: A number of commenters expressed concern with the proposal or requested that we not proceed with this change to the regulations. None of these commenters suggested alternatives or modifications to the proposal that was included in the NPRM.

Several commenters suggested that the issue should await the reauthorization of the HEA, so that Congress could consider it in conjunction with other issues related to distance and other nontraditional modes of instruction. One commenter noted that an independent study of the use of the credit hour in postsecondary education was being undertaken and that the results of that study could help inform Congress on this and related issues. One commenter specifically

stated that Congress should address issues of cost of attendance and disbursement schedules for students enrolled in nontraditional programs.

Discussion: We created the one-day rule and the 12-hour rule to implement the statutory condition that an academic year consist of at least 30 weeks of instructional time. We believe that the 12-hour rule had many unintended consequences and believe that one single standard is preferable for the reasons we stated in the preamble to the August 8, 2002 NPRM. Since the original establishment of the rule was a regulatory action, we believe that it does not require any legislative action. Therefore, we see no need to wait for Congress to deal with this issue in the next reauthorization of the HEA. This change will allow Title IV, HEA program eligibility to be determined on the same basis regardless of how a student's academic program is structured. Thus it provides for consistent and equitable treatment for individuals seeking a postsecondary education. We note that nothing prevents Congress from taking further action on this or any other issue. Finally, we do not see the change to the one-day rule from the 12-hour rule as having any effect on how Congress should address issues of cost of attendance and disbursements in nontraditional programs.

Changes: None.

Comments: One commenter suggested that changing from the 12-hour rule to the one-day rule would add a new category of eligible programs, and therefore a new group of eligible students who would compete with students in more traditional programs for scarce Title IV grant funding.

Discussion: We disagree with the commenter. Programs that previously were covered by the 12-hour rule were eligible to participate in the Title IV, HEA programs. Therefore, we do not believe that this change will result in an increased number of students receiving Title IV assistance. Under the one-day rule, students enrolled in those programs would be able to receive the same amount of assistance that students in term-based programs currently do.

Changes: None.

Comments: A few commenters disagreed with the proposal to eliminate the 12-hour rule, based upon their view that, while not perfect, the requirement that a nonterm or nonstandard term academic program include at least 12 hours of instruction per week provides some assurance that the program provides sufficient educational content to make the student's and taxpayer's investment worthwhile. One commenter questioned whether educational quality can be measured by time, particularly given new technological delivery systems. However, the commenter felt that it would be inappropriate to eliminate the 12-hour rule at this time because matters of educational quantity/quality need further study. One commenter, representing several consumer law advocacy organizations, opposed the elimination of the 12-hour rule, suggesting that it currently provides a quantitative method to measure the quality of an academic program. The commenter also stated that the proposed change would encourage some institutions to reduce program content without a commensurate reduction in tuition and other charges.

Discussion: We disagree with the commenter that the 12-hour rule provided any assurance that institutions would provide a minimum quantity of education to warrant support under the Title IV, HEA programs. Hours of regularly scheduled instruction are not the exclusive measure of the quantity of education provided in a postsecondary educational program. For example, in certain educational programs, research papers and projects may make up a considerable portion of that program, and the work associated with carrying out those papers and projects would not be considered as instructional hours under the 12-hour rule or the one-day rule. We believe that the one-day rule is adequate for programs offered in traditional terms and have no evidence to suggest that it is inadequate for programs offered in nonstandard terms and nonterms.

The 12-hour rule was established to measure educational quantity, not educational quality. It was established to implement the statutory requirement that an academic year for Title IV, HEA program purposes had to contain at least 30 weeks of instructional time, which in turn was enacted for the purpose of determining how much Title IV, HEA program funds a student could receive. As we noted in the preamble to the August 8, 2002 NPRM, we believe that there are adequate safeguards in place to ensure program integrity, such as the changes to the definition of a payment period made by this final rule, the clock-hour/credit-hour conversion regulations, and program monitoring by accrediting agencies. Finally, we are aware of no evidence that the proposed change would encourage some institutions to reduce program content.

Changes: None.

Comments: One commenter suggested that our statement in the preamble to the August 8, 2002 NPRM that the clock-hour/credit-hour conversion regulations provide adequate safeguards is questionable since those requirements do not apply to programs that are two years or longer in length and lead to a degree. The commenter stated the belief that the existence of what was perceived to be ''low-content degree programs'' offered by for-profit institutions demonstrates that the clock-hour/credit-hour conversion is not as valuable as we had stated.

Discussion: We disagree with the commenter because, based upon our experience with the clock/credit hour conversion controversy, the problems that needed to be addressed were found in short-term vocational programs, not in associate and higher degree programs. Moreover, we have no evidence that any institutions have reduced educational content in educational programs that lead to associate and higher degrees.

Changes: None.

Comments: A commenter representing accrediting agencies asked for clarification as to whether the change from the 12-hour rule to the one-day rule will impose any additional responsibilities on those agencies or on the process by which the Secretary recognizes accrediting agencies.

Discussion: No additional regulatory requirements are being placed on accrediting agencies as a result of this change.

Changes: None.

Comments: Two commenters requested specific clarification as to what exactly constituted a day of instruction. One of those commenters asked how much time during each day must actually be spent on instruction. The other commenter asked specifically how one day would be counted for a program offered on-line. That same commenter suggested that we make it clear that the one-day rule did not have to be met on a week-by-week basis, but could be met on average. That is, the requisite number of days must be met over the course of the program.

Discussion: We do not believe it is appropriate for the Department to limit institutional flexibility by establishing a rigid definition of how many hours of instructional time must be included in order for a day to be considered a day of instruction. We agree with the commenter who suggested that the measure should be whether the institution can demonstrate that the activities that make up a day of instruction are reasonable in both content and time. We also will rely upon the determination of the relevant accrediting agency in this regard.

We disagree with the commenter who suggested that the one-day rule did not

require one day each week but could be met by the program having an average of one day per week over the course of the program. The basis for the one-day rule is the requirement contained in section 481 of the HEA that states that an academic year must contain at least 30 weeks of instructional time. The one-day rule simply defines a week of instructional time as one that includes at least one day of instruction or examinations. The regulations make it clear that a week is a consecutive seven-day period. Therefore, a week in which there is not at least one day of instruction or examination cannot be counted as one of the 30 weeks of instructional time required by the statute. In order for a program to meet the 30 weeks of instructional time requirement, it must include at least 30 separate weeks in which at least one day of instruction or examination occurs.

Changes: None.

Payment Periods (Sections 668.4, 682.603, 685.301, and 690.75)

Comments: One commenter was uncertain whether the proposal to require a payment period to be made up of both the requisite number (usually half) of credit hours in an academic year or program, and the requisite number (usually half) of weeks in the academic year or program was to be applied to both credit-hour programs with terms and credit-hour programs without terms.

Discussion: The proposal applies only to credit-hour programs without terms.

Changes: None.

Comments: A number of commenters supported the Department's proposal that students who withdraw from an institution during a payment period and then return within 180 days to the same program remain in the same payment period. But one commenter wondered what would happen when the student returns, and thus the resumption of the payment period, was in a different award year. The commenter suggested that, if some of the funds for the payment period were to be paid from a different (new) award year, they should be a percentage of the aid that would have been scheduled for that payment period in the new award year, equal to the percentage of the original payment period amount that was not disbursed or returned from the initial period of attendance.

Discussion: A student who was originally enrolled in a payment period that began, and was scheduled to end, in one award year could return after the end of that award year (June 30). However, the intent of these regulations is that such a student is considered, upon his or her return, to be in the same payment period. Therefore, any Title IV program funds that will be disbursed to the student should be paid from the original award year regardless of whether the resumption of the payment period is in a new award year. Generally, the original payment for the payment period would have come from the earlier award year and any new disbursements would be from that same year. Of course, if the original payment period had been a crossover payment period (one that was originally scheduled to begin in one award year and end in the following award year) and the institution had paid (or planned to pay) the student from the second award year, then the resumption of the payment period and any required disbursements would remain in the second award year.

Finally, even if the student's absence and subsequent return causes more than six months of the recalculated payment period to fall into the second award year, we will still consider that the institution's original decision to place the payment period in the first award year remains valid based on the fact that, at the time of that original choice, less than six months of the payment period was scheduled to fall into the second award year.

Changes: None.

Comments: With regard to the student's withdrawal and subsequent return (within 180 days) to the same program, one commenter asked whether, if aid had not been disbursed during the original enrollment, credits earned for the entire payment period, both those enrolled in before the withdrawal and those enrolled in after the return, could be included in determining payment eligibility.

Discussion: The regulation addressing the situation in which a student withdraws from a program and then returns to that program within 180 days applies only to clock-hour programs and credit-hour programs without terms. For those programs, the regulations define a payment period in a way that generally requires the clock-hours or credit-hours in one payment period to be completed before the next payment period begins. Further, students in those payment periods are generally paid for one-half of the program or academic year, as appropriate, at a time. Thus, regardless of whether the student had already been paid for a certain number of clock- or credit-hours before the student's withdrawal, upon the student's subsequent return to the same program within 180 days, the institution would not be adding hours to the payment period, but would simply be keeping the student in the same payment period (consisting of the same number of clock- or credit-hours) he or she was in before withdrawing. Then, upon completion of the hours (and weeks for a credit-hour without terms program) in that payment period, the student would advance to the next payment period.

Changes: None.

Comments: A number of commenters asked how a Return of Title IV Funds calculation would be performed if a student withdrew from a program during a payment period and returned to that program within 180 days, and then withdrew a second time during that same payment period.

Discussion: When a student withdraws (the first time) without completing the payment period, a Return of Title IV Funds calculation is performed. If the student returns to the program within 180 days of his or her initial withdrawal, the student is put back into the same payment period he or she withdrew from, and any Title IV funds that the student or institution returned to the Title IV programs or to a lender for that payment period as a result of the earlier withdrawal are restored to the student. If the student then withdraws from the institution again during that same payment period, a new Return of Title IV Funds calculation, based on the second withdrawal date, would be performed using the full payment period and the full amount of Title IV aid for the payment period.

Changes: None.

Comments: One commenter raised general questions about the way payment periods are determined for programs that measure progress in credit hours but do not use terms. The commenter suggested that there should not be any rigid rules for such programs, but that the institution should have flexibility in determining the length and timing of a student's payment period based upon the program length and a student's enrollment pattern.

Discussion: The changes proposed in the August 8, 2002 NPRM and finalized in this document do not address the entire concept of payment periods, but instead only relate to two issues: (1) For nonterm credit hour programs, requiring a payment period to include, in addition to half the number of credits in the academic year, program, or remainder of the program, also half the number of weeks in that period, and (2) guidance on the treatment for a student who withdraws from a clock-hour or credit-hour nonterm program, and then returns to school.

Therefore, since a more comprehensive review of payment

periods was not included in either the negotiated rulemaking process that led to the August 8, 2002 NPRM or in the proposal presented in the NPRM, we do not believe that it would be appropriate to make additional changes to the payment period regulations at this time.

Changes: None.

Comments: One commenter asked whether an institution should remove costs for the period that the student was out of school in those cases where the student withdrew from an institution and returned within 180 days, and was worried that if that were done the student might not qualify for the original loan amount once he returned to the institution.

Discussion: The cost of attendance would be the costs associated with the original period before the student withdrew. Once the student has withdrawn and then returned to the same program within a 180-day period, the regulation states that the student remains in the same payment period. The cost of attendance for such a student returning to the same program within 180 days must reflect the original educational costs associated with the payment period from which the student withdrew.

Changes: None.

Comments: One commenter suggested that if a student withdraws but returns to the institution during the period in which the institution is required to return funds under the Return of Title IV Funds calculation, the institution would not have to return any funds or notify the lender of the enrollment change. In essence, the student would be retroactively granted a leave of absence.

Discussion: If a student returns to the institution before the Title IV funds are returned, the institution is not required to return the funds. However, § 668.22(j) requires an institution to return unearned funds for which it is responsible as soon as possible, but no later than 30 days after the date of the institution's determination that the student withdrew. Therefore, an institution is expected to begin the Return of Title IV Funds process immediately upon its determination that a student has withdrawn.

Changes: None.

Comments: One commenter stated that it was his understanding that students who withdraw and return after 180 days, or transfer to new programs within any timeframe, have their payment periods restarted, and that this meant that these students would not have to complete the credits that they were already paid for before they could receive additional student aid payments.

Discussion: The regulation addresses the determination of payment periods for students who have withdrawn and either returned to the same program after 180 days, or returned to another program within any timeframe. The regulation specifies that students who have withdrawn and either returned to the same program after 180 days, or returned to another program within any timeframe start a new payment period. However, a student's eligibility for additional Title IV funds may be subject to a variety of limitations associated with the aid the student received during the most recent period of attendance. For example, in the Federal Pell Grant Program, a student may never receive more than the student's scheduled annual award. In the FFEL Program, there are limitations imposed by annual loan limits, the existence of crossover loan periods, and overlapping award years.

Changes: None.

Comments: A couple of commenters asked for further clarification of the payment period provisions as they relate to the Return of Title IV Funds provisions and various Title IV program provisions.

Discussion: We will provide additional clarification on the applicability of these changes through appropriate Department publications after publication of these final regulations.

Changes: None.

Program Participation Agreement (Section 668.14)

Comments: The vast majority of commenters supported the proposal that came out of the negotiated rulemaking sessions to establish safe harbors that institutions could use to avoid the statutory prohibition against making incentive payments to recruiters and other covered personnel.

Discussion: None.

Changes: None.

Comments: Some commenters opposed any change to the current regulations dealing with incentive compensation. They believed that the proposed regulations were not authorized under section 487(a)(20) of the HEA, were ambiguous, and were burdensome to institutions.

Discussion: We disagree with the commenters. With regard to the first point, we believe that the regulations lawfully implement section 487(a)(20) of the HEA. As indicated in the preamble to the proposed regulations, the Congress recognized that if given a strictly literal interpretation, section 487(a)(20) of the HEA could be interpreted to cover almost every compensation arrangement involving a student's ultimate admission to a postsecondary institution. As a result, when enacting section 487(a)(20) of the HEA in 1992, the conference report resolving the different House and Senate versions of the Higher Education Amendments of 1992 indicated that the statutory words ''directly'' and ''indirectly'' in section 487(a)(20) of the HEA did not imply that institutions could not base salaries or salary increases on merit. Thus, Congress recognized that the scope of section 487(a)(20) of the HEA had limits, even though that section precluded incentive payments based directly or indirectly on success in securing enrollments.

Consistent with this clarification of legislative intent, we based the proposed safe harbors on a ''purposive reading'' of section 487(a)(20) of the HEA. This purposive reading is based upon our view that Congress enacted this provision with the purpose of preventing an institution from providing incentives to its staff to enroll unqualified students.

In viewing the scope of section 487(a)(20) of the HEA through this purposive reading, we determined that various payment arrangements constituted legitimate business practices that did not support the enrollment of unqualified students and therefore did not fall within the scope of section 487(a)(20) of the HEA. Making these determinations is within the scope of the Secretary's authority of interpreting the statutory provisions he is charged with administering.

With regard to the commenters' other two points, we agree with the vast majority of commenters that, rather than being ambiguous, the safe harbors clarify the current law for most institutions by setting forth specific payment arrangements that an institution may carry out that have been determined not to violate the incentive compensation prohibition in section 487(a)(20) of the HEA. Moreover, no burden is placed upon an institution that uses a payment arrangement set forth in one of the safe harbors.

Changes: None.

Comments: The commenters who felt that the regulations were not authorized under section 487(a)(20) of the HEA also felt that any change to the current regulations would allow unscrupulous institutions to engage in the kinds of improper recruiting activities that gave rise to section 487(a)(20) of the HEA. They also felt that there was no demonstrated need for any change to the current regulations covering the

incentive compensation prohibition, and that any change should be made through legislation during the next HEA reauthorization.

Discussion: We believe that the primary purpose of the regulatory safe harbors is to provide guidance to institutions so they may adopt compensation arrangements that do not run afoul of the incentive compensation prohibition contained in section 487(a)(20) of the HEA. The safe harbors are based on comments we received from institutions during the FED UP initiative that requested that we provide clearer and more detailed guidance regarding this topic, suggestions by negotiators, and numerous questions we have received from institutions during the last eight years. We believe that institutions need this guidance now, and therefore it is neither necessary nor desirable to wait to make changes legislatively during the next HEA reauthorization.

Finally, we do not agree with the commenters that the safe harbors will allow unscrupulous institutions to engage in the kinds of improper recruiting activities that took place during the 1980s and early 1990s. As the commenters noted, during that period, institutions would recruit ability-to-benefit students who were not qualified to enroll in their institutions and keep the Title IV, HEA program funds those students received. That result is no longer possible today.

The incentive compensation prohibition is only one of the remedies that Congress has enacted to preclude such results. First, most of those unscrupulous institutions were terminated from participating in the Title IV, HEA programs because of their high cohort default rates. Second, there is a strengthened ability-to-benefit process that walls off institutions from the process and has higher standards of judging a student's ability-to-benefit. Third, if an institution enrolls unqualified students who then drop out, the institution may only keep Title IV, HEA program funds that the student has earned and must return unearned funds under the Return of Title IV Funds rules set forth in § 668.22. Fourth, under the default rate termination provisions, the institution would put its continuing eligibility to participate in the Title IV loan programs in jeopardy if their unqualified students fail to repay their loans. Finally, an institution could have its eligibility terminated if it misrepresents its programs to students.

Changes: None.

Comments: A commenter asked about the interrelationship between the various safe harbors.

Discussion: The 12 safe harbors are divided into two categories. The first category relates to whether a particular compensation payment is an incentive payment. The first safe harbor addresses this category by describing the conditions under which an institution may pay compensation without that compensation being considered an incentive payment.

The second category relates to the conditions under which an institution may make an incentive payment to an individual or entity that could be construed as based upon securing enrollments. The remaining 11 safe harbors address this category by describing the conditions under which such a payment may be made. These 11 safe harbors reflect our view that the individuals and activities described in a safe harbor are not covered by the statutory prohibition.

With regard to the latter 11 safe harbors, if an incentive payment arrangement falls within any one safe harbor, that payment arrangement is not covered by the statutory prohibition.

Changes: None.

Comments: Several commenters suggested that the Secretary include additional safe harbors in the final regulations and provided examples of safe harbors that they would like to see added.

Discussion: We proposed 12 safe harbors based upon the suggestions of the negotiators and questions we received regarding the incentive compensation prohibition. We intended that these safe harbors be clear and uncomplicated. As a result, we believe that institutions can use these safe harbors as a workable framework to determine if their payment arrangements violate the incentive compensation prohibition.

Changes: None.

Comments: A commenter suggested that we discuss the penalties that apply if an institution violates the incentive compensation prohibition.

Discussion: We believe that a discussion of the penalties for violating the incentive compensation prohibition are outside the scope of this exercise in developing final regulations for the provision.

Changes: None.

Comments: A commenter indicated that the safe harbors should specifically indicate that an institution could pay an incentive payment to a person or entity that was in the safe harbor.

Discussion: The last 11 safe harbors describe situations under which an institution can make an incentive payment to an individual or entity based upon success in securing enrollments. Therefore, it is not necessary to include that statement in each safe harbor. For this very reason, as noted below, we will eliminate the restriction in the last sentence in the ''clerical pre-enrollment'' safe harbor, § 668.14(b)(22)(ii)(F).

Changes: See discussion under Pre-Enrollment Activities.

Adjustments to Employee Compensation (Section 668.14(b)(22)(ii)(A))

Comments: Many commenters approved of our determination set forth in the first safe harbor that fixed compensation could include up to two adjustments in a twelve-month period as long as no adjustment is based solely on success in securing enrollments. Some commenters believed that two adjustments were too many; that two adjustments during a 12-month period was a loophole that institutions could use to bundle their bonuses and pay them as a salary adjustment.

Discussion: We believe that defining fixed compensation to include up to two pay adjustments during a 12-month period is not inconsistent with standard business practice, particularly as this safe harbor includes pay adjustments to an individual for any reason, including promotions.

Changes: None.

Comments: Almost all commenters approved our determination that one cost of living increase that is paid to all or substantially all employees would not count as one of the two allowable adjustments. One commenter asked the effect of an employer policy that withheld cost-of-living increases to poorly performing employees. Another pointed out that employers treat full-time employees differently from part-time employees, and suggested that cost of living increases that are paid to all or substantially all full-time employees not count as an adjustment in the safe harbor.

Discussion: We believe that if an employer has a written policy that indicates that cost of living increases are denied to poorly performing employees, that policy would not disqualify cost of living increases from being treated in the manner described in this safe harbor unless such a written policy has the effect of no longer applying the cost of living increase to ''all or substantially all'' employees, and other relevant factors reveal the increase to be tied to student recruitment and not within any of the prescribed safe harbors.

We agree with the commenters that employers often treat full-time employees differently from part-time employees, and therefore agree with the

commenters' suggestion that cost-of-living increases that are given to all or substantially all of an institution's full-time employees would not be considered a compensation adjustment.

Changes: Section 668.14(b)(22)(ii)(A) is changed to reflect that cost of living increases that are given to all or substantially all of an institution's full-time employees will not be considered a compensation adjustment.

Comments: Many commenters noted that salary adjustments could not be based solely on the number of students recruited, admitted, enrolled, or awarded financial aid, and asked whether the term ''solely'' was being used in its dictionary definition. If it was not, the commenters suggested a definition.

Discussion: In this safe harbor, the word ''solely'' is being used in its dictionary definition.

Changes: None.

Comments: Commenters raised a series of questions concerning various aspects of fixed compensation, including how overtime should be treated, how employee benefits should be treated, and the effect under this safe harbor if some of an institution's employees are unionized and others are not.

Discussion: With regard to overtime and benefits, if the basic compensation of an employee would not be an incentive payment, neither would overtime pay required under the Federal Labor Standards Act. Generally, the fact that some of an institution's employees are unionized and others are not should have no bearing on this safe harbor.

Changes: None.

Comments: One commenter asked about activities that recruiters could perform that would not be considered recruitment.

Discussion: There are a myriad of non-recruitment activities that a recruiter may engage in on a day-to-day basis, but we do not believe that it is practical nor necessary to provide an exhaustive list for purposes of this discussion.

Changes: None.

Enrollment in Programs That Are Not Eligible for Title IV, HEA Assistance (Section 668.14(b)(22)(ii)(B))

Comments: Some commenters objected to this safe harbor, because they believed that the Secretary had no authority to establish it because section 487(a)(20) of the HEA does not cover incentive payments to enroll students in educational programs that are not eligible programs under the Title IV, HEA programs. Another commenter objected to the safe harbor because it would encourage institutions to promote private loans.

Discussion: We disagree with the commenters. The safe harbor is authorized, as well as appropriate, because it informs institutions of the scope of the coverage of the incentive compensation prohibition of section 487(a)(20) of the HEA. Moreover, we believe that this safe harbor will have no bearing on whether institutions promote private loan programs to students attending ineligible programs.

Changes: None.

Contracts With Employers (Section 668.14(b)(22)(ii)(C))

Comments: Most commenters supported this safe harbor. The commenters recognized that the underlying rationale for the safe harbor was that an employer should have a significant stake in the education being offered its employees under a contract with an institution that uses a recruiter who receives an incentive payment. However, several commenters objected to the conditions that employers under this safe harbor had to satisfy. In particular, they objected to the conditions that an employer had to pay at least 50 percent of the tuition and fees charged its employees, and that recruiters have no contact with the employees. Some commenters recommended that these conditions be eliminated; that the employer/employee relationship itself provided a sufficient stake in the education being offered. Some commenters indicated that the percentage of tuition and fees that an employer had to pay should be a smaller percentage, while others indicated that the employer's stake in the education being offered could be demonstrated by other criteria. One commenter noted that literally no one could satisfy this safe harbor because a recruiter had to contact an employee in order to negotiate the contract. Another commenter recommended that Title IV, HEA program funds could not be used to pay the portion of the tuition and fees not paid by the employer.

Discussion: This safe harbor represents that, in general, business-to-business marketing of employer-provided education is not covered by the incentive compensation prohibition. However, not all business-to-business transactions are paid in the same manner, such as the straightforward payment by a company to an institution to educate its employees. This safe harbor deals with an iteration of that scheme; the payment of employees' tuition and fee charges by the employer under a contract arranged by an institution's recruiter who is paid an incentive.

In this safe harbor, the Secretary believes that the 50 percent requirement is a simple, straightforward standard to assure that an employer has a significant financial stake in the outcome of the education provided to its employees. This standard was supported by a majority of the negotiators. Therefore, we disagree with the commenters who suggested that this safe harbor be changed to allow an employer to pay less than 50 percent of its employees' tuition and fee charges.

With regard to the alternatives suggested by commenters, we believe that they are too complicated for a safe harbor. With regard to recruiter contact with employees, the contact that is prohibited does not include the contact necessary to obtain the contract.

Changes: None.

Profit-Sharing or Bonus Payments (Section 668.14(b)(22)(ii)(D))

Comments: Most commenters supported this safe harbor. However, one commenter objected to it because the commenter considered that the safe harbor could be manipulated. Several commenters pointed out that the safe harbor allowed a profit sharing plan to be limited to employees in an ''organizational level'' at an institution rather than the institution as a whole, and asked whether an organizational level in a multi-school institution could be one of the institutions. Other commenters suggested that the definition of ''profit'' be defined as ''total profit resulting when total costs are subtracted from total revenue at the institution.'' One commenter noted that while the regulatory safe harbor required that profit sharing or bonus payments be provided to all or substantially all of an institution's full-time employees, the preamble indicated that such payments had to be substantially the same amount, or based upon the same percentage of salary. The commenter recommended that the preamble requirement be eliminated as unnecessary. Moreover, if this condition is to be retained, the commenter proposed that percentage increases, like dollar increases, should also be substantially the same to all covered employees.

Discussion: We do not agree with the commenter who indicated that this safe harbor could be manipulated to provide incentive payments to recruiters under the guise of profit sharing because the payments must be made to all or substantially all of the full-time employees at one or more organizational level at the institution. In response to

comments relating to organizational level, we believe an ''organizational level'' at a multi-school institution would be one of the institutions.

We do not believe that it is necessary to define the term ''profit'' in this safe harbor as it is a commonly used business term that needs no explanation.

With regard to the last comment, we agree that a safe harbor should be in the regulation itself rather than in the preamble. Contrary to the commenter's suggestion, we believe that the safe harbor for bonuses and profit sharing should require that the payments to employees be substantially the same amount or the same percentage of salary. We do not, however, see the need to allow percentage increases to be substantially the same. We believe that this safe harbor already provides significant flexibility particularly since institutions can provide different percentages of compensation based on employees' organizational levels.

Changes: Section 668.14(b)(22)(ii)(D) is changed to reflect that the safe harbor only applies if the profit sharing or bonus payment is substantially the same amount or the same percentage of salary or wages.

Compensation Based Upon Completion of Program (Section 668.14(b)(22)(ii)(E))

Comments: Most commenters supported this safe harbor. However, several objected to it on the grounds that completion of an educational program is not a valid measure when the quality of an institution's programs is poor. One commenter, quoting from our preamble statement of April 24, 1994, when the current regulation was published, objected to the use of retention as a safe harbor, and also objected to the one-year retention period as too short.

Discussion: As previously indicated, we believe that the purpose of the incentive compensation prohibition is to prevent institutions from enrolling unqualified students. We note that other legislative and regulatory requirements are designed to weed out institutions with poor quality programs. We agree with most of the commenters that a student who successfully completes an educational program in which he or she was enrolled means, for this purpose, that the student was qualified to attend the institution.

With regard to retention, we believe that the successful completion of 24 semester or trimester credit hours, 36 quarter credit hours, or 900 clock hours of instruction also means that the student was qualified to enroll at the institution. Moreover, as a general matter, retention and completion of programs by students is a positive result that should be encouraged.

Changes: None.

Comments: Several commenters requested that the measure of whether a student completes one year of a program should be time rather than credits earned. One commenter asked whether all the required credits or hours had to be earned at the institution, or could they include transfer credits, life experience credit, or credits earned through tests. Another commenter asked whether the student had to earn one academic year of credit within the institution's satisfactory progress standard, and another asked whether the 30 weeks of instructional time element of the definition of an ''academic year'' was included in this safe harbor. A commenter indicated that the safe harbor should indicate that retention for one year is a minimum requirement and institutions are free to establish longer periods. Finally, one commenter asked whether a recruiter could get paid a bonus for each year the student successfully completes, so that the recruiter can theoretically receive four years of bonuses for a student enrolled in a four-year program.

Discussion: We believe that the appropriate method of measuring whether a student completes one academic year is by determining that the student has earned one academic year of credit rather than by not dropping out during a 12-month period. Therefore, we do not agree with the commenters' suggestions to substitute time for credits earned. To answer the questions raised by the other commenters: All the credits have to be earned at the institution as a result of taking courses at that institution; we have not applied the 30 weeks of instructional time element of the definition of an ''academic year'' to this safe harbor. Thus, this safe harbor applies when a student earns, for example, 24 semester credits no matter how short or long a time that takes.

We agree with the commenter that the one-year retention condition requirement is a minimum. Finally, if an institution so chooses, it may pay a recruiter a bonus for each academic year a student completes and not be in violation.

Changes: Section 668.14(b)(22)(ii)(E) is changed to reflect that the one academic year's worth of credit or hours must be earned at the institution.

Pre-Enrollment Activities (Section 668.14(b)(22)(ii)(F))

Comments: Most commenters supported this safe harbor. Some commenters objected to the requirement that the pre-enrollment activity had to be clerical in nature, with some noting that the clerical requirement was not in the proposed safe harbor itself, but was in the preamble discussion of the safe harbor. Some commenters concluded that the safe harbor described an individual rather than an activity, and based upon that interpretation, the commenters were concerned that recruiters could not be paid a bonus based upon their performance of pre-enrollment activities.

Some commenters requested that the list of pre-enrollment activities be expanded, and other commenters objected to the characterization that soliciting students for interviews is a recruitment activity rather than a pre-enrollment activity. Other commenters asked whether institutions could purchase leads to potential students for a flat fee from a third party under this safe harbor.

Discussion: We believe that one of the most important criterion for inclusion in this safe harbor is the clerical nature of the pre-enrollment activities that are being performed. Limiting pre-enrollment activities to rote clerical activities helps to draw the line between recruiting and pre-enrollment activity. Therefore, we will incorporate this requirement into the regulations.

We disagree with the characterization that this safe harbor describes an individual rather than an activity. However, by the very job description, a recruiter's job is to recruit. Therefore, as a practical matter, it would be very difficult for an institution to document that it was paying a bonus based upon enrollments to a recruiter solely for clerical pre-enrollment activities.

We are not going to expand the list of acceptable clerical pre-enrollment activities because no list will be all-inclusive, and we believe that institutions can determine whether activities qualify as clerical pre-enrollment activities based upon the current examples. Contrary to the commenter's conclusion, we believe that soliciting students for interviews is a core recruiting activity. Finally, although we believe that buying leads from third parties for a flat fee is not a clerical pre-enrollment activity under this safe harbor, we believe that the activity is not covered under the incentive compensation prohibition. Buying leads from third parties for a flat fee is not providing a commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments.

Changes: Section 668.14(b)(22)(ii)(F) is changed to add the requirement that pre-enrollment activities must be clerical in nature, and, for the reasons

stated earlier in connection with the general comments, we are deleting the requirement that compensation is not based upon the number of people actually enrolled.

Managerial and Supervisory Employees (Section 668.14(b)(22)(ii)(G))

Comments: One commenter objected to this safe harbor because the commenter believed that managers of recruiters and other covered persons should not be covered by the incentive compensation prohibition, and therefore should be included in this safe harbor. Other commenters objected to the preamble discussion of this safe harbor, where we indicated that an individual's occasional direct contact with students in the recruiting process would not turn that individual into a recruiter, because it would not necessarily be easy to determine whether an individual's involvement was occasional.

Discussion: As indicated in the preamble to the proposed regulations, we believe that direct supervisors of recruiters and other covered persons should be excluded from this safe harbor because their actions have a direct and immediate effect on the recruiters and other covered persons.

Changes: None.

Token Gifts (Section 668.14(b)(22)(ii)(H))

Comments: One commenter appreciated the increase in the cost of token gifts allowed under this safe harbor, indicating that it would eliminate concerns at many institutions.

Discussion: None.

Changes: None.

Profit Distributions (Section 668.14(b)(22)(ii)(I))

Comments: One commenter objected to this safe harbor because some institutions could treat revenue as profits.

Discussion: We disagree with the commenter because institutions participating in the Title IV, HEA programs must submit compliance audits and financial statement audits, and such audits would uncover this practice.

Changes: None.

Internet-Based Activities (Section 668.14(b)(22)(ii)(J))

Comments: Almost all commenters supported this safe harbor. One commenter agreed that the Internet is a communications medium much like the U.S. mail and direct mail solicitations. The commenter noted, however, that compensation arrangements between institutions and direct mail servicers are typically not based upon enrollments, and therefore suggested that the Internet safe harbor exclude compensation arrangements that are based upon enrollments.

Discussion: We disagree with the commenter. We believe that the use of the Internet is outside the scope of the incentive compensation prohibition, and, as indicated earlier, the point of the last 11 safe harbors is that they describe situations that would not violate the incentive compensation prohibition to make incentive payments to recruiters and other covered individuals based on enrollments. However, to highlight that the Internet is frequently used to refer prospective students to institutions, we are including that activity in the safe harbor.

Changes: Section 668.14(b)(22)(ii)(J) is changed to add referring prospective students to the institution as a described safe harbor.

Payments to Third Parties for Non-Recruitment Activities (Section 668.14(b)(22)(ii)(K))

Comments: One commenter requested that we clarify that recruiting activities do not include advertising or marketing.

Discussion: We agree with the commenter that if an institution pays a third party for marketing and advertising, those contracted services are not considered recruiting.

Changes: None.

Payments to Third Parties for Recruitment Activities (Section 668.14(b)(22)(ii)(L))

Comments: Several commenters specifically indicated their support for this safe harbor. Several others objected to it because they believed that it violated the spirit of the incentive compensation prohibition as well as the literal language of that provision.

Discussion: With regard to the reasons given by the commenters who objected to the safe harbor, as we stated in the preamble to the August 8, 2002 NPRM, we believe that Congress did not intend to limit an institution's ability to contract with outside entities for recruitment, admissions, enrollment, or financial aid services if the outside entity adheres to the same limitations that apply to institutions. Payments made by an institution to a third party would not violate the incentive payment restrictions as long as the individuals performing any activities related to recruitment, admissions, enrollment, or financial aid were compensated in a way that would otherwise be permissible under the standards in this section for covered employees of the institution.

Changes: None.

Institutions Required To Take Attendance (Section 668.22)

Comments: One commenter did not believe that an institution that is required to take attendance by an outside entity for a limited time for census purposes should automatically qualify as an institution that is required to take attendance for purposes of the Return of Title IV Funds calculation. The commenter indicated that census records may not be appropriate for determining a student's withdrawal date. As such, the commenter suggested that the length of a limited period of census taking does not matter. Rather, if the institution's policy does not result in a student being withdrawn as a result of the census data, the institution should not be considered one that is required to take attendance for the census period.

The commenter asked for clarification regarding the procedures that must be followed after the end of the period of required attendance taking.

Discussion: Census taking was merely an example of a reason why an institution might be required to take attendance by an outside entity for a limited period of time. As stated in the preamble to the August 8, 2002 NPRM, if the outside entity determines that the institution is required to take attendance for any period, for any purpose, including census purposes, then the institution is considered to be one that is required to take attendance for that period of time. We would like to emphasize that the change to the regulations related to determining whether an institution is one that is required to take attendance, specifically revises § 668.22(b)(3)(i) to state that it is such an institution only if the outside entity has determined that the institution is required to take attendance. Thus, if an outside entity that imposes census taking requirements does not consider its requirements to require an institution to take attendance continuously for the limited period of time, the institution would be considered an institution that is not required to take attendance for that period for Title IV purposes. The exception that the preamble addressed was that even if the outside entity considers a one-day census activity to be required attendance taking, we would not consider the institution to be one that is required to take attendance.

Unless an institution demonstrates that a withdrawn student who is not in attendance at the end of a limited period of required attendance taking attended after the limited period, the student's

withdrawal date would be determined according to the requirements for an institution that is required to take attendance. That is, the student's withdrawal date would be the last date of academic attendance as determined by the institution from its attendance records. If the institution demonstrates that the student attended past the end of the limited period, the student's withdrawal date is determined in accordance with the requirements for an institution that is not required to take attendance. So, for a student who has attended past the limited period and unofficially withdrew, the student's withdrawal date is the midpoint of the payment period or period of enrollment. Consistent with the policy for documenting a student's last date of attendance at an academically-related activity, an institution is not required to take attendance to demonstrate a student's attendance past the end of the limited period of attendance taking.

Changes: None.

Leaves of Absence (Section 668.22)

Comments: One commenter requested that we repeat the discussion in the August 8, 2002 NPRM on allowing multiple leaves of absence as long as the sum of the leaves does not exceed 180 days within any 12-month period and the requirement that an institution must require the student to submit a written reason for his or her request for an approved leave of absence.

Discussion: The commenter is correct that the proposed change does mean that an institution can approve more than one leave of absence for a student as long as the total of all leaves for that student does not exceed 180 days in a 12-month period. The commenter is also correct that the new regulations require the student to submit a written reason for the request for the leave of absence. We refer the reader to the more extensive discussion on these matters that was included in the August 8, 2002 NPRM beginning on page 51726.

Changes: None.

Comments: One commenter agreed with our position that a student should be able to return to an institution from an approved leave of absence and repeat coursework as long as there are no additional institutional charges.

Discussion: We clarified in the NPRM that a student may resume his or her academic program at a point earlier than the point where the academic program was suspended temporarily through an approved leave of absence. Under this guidance, both the student and the institution enjoy greater flexibility to deal with student academic needs. However, since the regulations provide that an institution may not impose additional charges when the approved leave of absence ends and the student resumes his or her program of study, a student who returns for the purpose of repeating prior coursework may not be assessed additional charges by the institution.

Changes: None.

Comments: One commenter noted that, especially for nonterm programs, there are a variety of reasons (most frequently scheduling problems) that prevent students from simply restarting their coursework at the same place they stopped. Particularly if the nonterm program offers its course in a series of modules, a returning student might choose to re-enter into a different course in a different module within the same program. The commenter suggested that students in nonterm programs be exempt from the requirement that, after returning from an approved leave of absence, they must return to the same point in the coursework that they were at the time the leave of absence began.

Discussion: Currently, § 668.22(d)(1)(viii) requires that when a student returns from a leave of absence, the student must be permitted to complete the coursework he or she began prior to the leave of absence. This is because the concept of an approved leave of absence is that the payment period in which the student was originally enrolled in has been temporarily suspended due to the leave of absence. Upon the student's return, the student simply resumes or continues the same payment period and coursework and is not eligible for additional Title IV program assistance until the payment period has been completed.

For term-based programs, where the payment period is the term, a student returning from a leave of absence must complete the term in order to complete the payment period and be eligible to receive a second or subsequent disbursement. In addition, as noted earlier, upon return from a leave of absence the student cannot be assessed any additional charges. Therefore, we think it very unlikely that a student enrolled in a term-based program could ever participate in the leave of absence process included as part of the Return of Title IV Funds requirements.

However, for nonterm-based programs, the regulations in § 668.4, as finalized by this document, provide that the payment period is the period of time it takes a student to complete both half the number of credits and half the number of weeks of the academic year, program or remainder of the program, as appropriate. For clock-hour programs, the payment period is the period of time it takes a student to complete half the number of clock hours in the program. Therefore, whether the student returns to the point in the same course as when the leave of absence began, or the student starts in a new course within the program (without additional institutional charges), once half the required credits are earned and half the number of weeks are completed or, for a clock-hour program, half the number of clock hours are completed, the student has completed the payment period for which the student was previously paid Title IV funds. If otherwise eligible, the student may receive a second or subsequent disbursement of Title IV program funds. Thus, we agree with the commenter that flexibility in this area could be provided to students and institutions when the program is offered on a nonterm basis.

Changes: Section 668.22(d)(1)(vii) is revised to provide that for a clock-hour program or a nonterm credit-hour program, the student need not complete the exact same coursework he or she began prior to the leave.

Comments: One commenter suggested that we modify the proposed rule to allow an institution to offer the student a full tuition credit towards the course the student chooses to re-enter as a mechanism to comply with the requirement that the institution not assess the student any additional charges upon return from an approved leave of absence.

Discussion: As we understand the commenter's suggestion, we do not see a need to modify the regulations. We believe that the commenter's proposal would meet the requirement that a student returning from an approved leave of absence not be assessed any additional institutional charges for completing the payment period.

Changes: None.

Expiration of Ability To Benefit Tests (Sections 668.32 and 668.151)

Comments: While there was general support for the removal of the 12-month limitation on the acceptability of an ability to benefit (ATB) passing score, one commenter expressed concern about the exception that ''home-schooled'' students are not required to have passed the GED or an ATB test before becoming eligible for Title IV, HEA program assistance.

Discussion: We appreciate the support for the elimination of the 12-month limitation of ATB passing scores. Section 484(d)(3) of the HEA provides that, as an alternative to a high school diploma, a student who has completed a secondary school education in a home

school setting that is treated as a home school or private school under State law meets the applicable standard to be eligible for Title IV, HEA program assistance without the need for such a student to have passed the GED or an ATB test.

Changes: None.

Overpayments (Sections 668.35, 673.5, and 690.79)

Comments: One commenter indicated that the *de minimis* standard of less than $25 for student original overpayment amounts is too low and should be increased to at least $100. Further, the commenter stated that excluding from the application of the *de minimis* standard situations in which the amount owed by the student was the result of an original overpayment amount that was paid down to less than $25, or was the result of the application of the $300 campus-based overaward threshold, makes the regulation too complicated for efficient program administration.

Discussion: The less than $25 *de minimis* standard used in the regulations is based upon an amount that is cost effective for the Department to collect. We are able to successfully pursue collections of $25 or higher with Internal Revenue Service (IRS) offsets, as well as with other methods. As to the second comment, the regulations exclude two instances in which the *de minimis* amount provisions do not apply. In the case where the original overpayment amount was $25 or more, but has been reduced to less than $25, the student is still responsible for fully paying that remaining balance. Without this exclusion, students would be encouraged not to pay the last $24.99 of their overpayment. In the other case, a student is responsible for paying the balance of the overpayment, even if it is less than $25, when the overpayment is a result of applying the $300 campus-based overaward threshold to an FSEOG or Federal Perkins Loan overaward. Without this second exclusion, we would be creating a new campus-based overaward threshold of $324.99. There is no basis in the statute for changing the campus-based overaward threshold beyond $300.

Changes: None.

Comments: One commenter recommended that, in addition to applying the less than $25 *de minimis* amount to original overpayments owed by a student, the regulations provide the same treatment to an institution when it is liable for an overpayment. That is, the commenter suggested that an institution not be required to return an original overpayment that is less than $25. The commenter believed that the requirement for an institution to return small amounts is administratively burdensome to the institution and is not cost effective.

Discussion: The purpose of having the less than $25 *de minimis* amount for student original overpayments is to allow needy students to continue to be eligible for Title IV aid when their overpayment obligation is a small amount. The overpayment amounts that an institution owes do not impact a student's eligibility. However, the regulatory change that we are making for student original overpayment amounts that are less than $25 provides for a consistent application across the Title IV programs, reduces the burden on needy students, and reduces the burden for institutions in the recording and collection of a small student debt.

Changes: None.

Comments: One commenter suggested that the language in the regulations requiring the institution to provide written notice of an FSEOG or Federal Pell Grant overpayment to the student be clarified. The commenter suggested that the regulations state that an institution is not required to send the written notice if the institution pays the overpayment on the student's behalf from its own funds, because there is no reason for the student to register a formal objection to an overpayment determination with the institution.

Discussion: The written notice requirement for overpayments does not apply unless the student owes an overpayment that is outstanding. If the institution already paid the overpayment on the student's behalf from its own funds, the institution would not have to send the written notice to the student because there is no overpayment to collect.

Changes: None.

Rehabilitation of Defaulted Loans (Sections 668.35, 674.39, 682.405, and 685.211)

Comments: One commenter objected to the addition of language in § 668.35(b) that allows a Perkins Loan borrower against whom a judgment has been obtained to regain eligibility for further Title IV student aid by making satisfactory repayment arrangements. The commenter noted that seeking a judgment against a defaulted Perkins Loan borrower is a last resort that involves considerable time and money and that a judgment is pursued only after a Perkins institution has exhausted all other means of collecting the defaulted loan. The commenter stated that extending further Title IV student financial assistance to such a borrower is against the taxpayers' best interests and that the only option that should be offered to a defaulted borrower against whom a judgment has been obtained is to pay the judgment amount in full.

Discussion: The proposal to allow a borrower who is subject to a judgment to regain eligibility for Title IV program assistance reflects the concerns expressed by the negotiators that, under the original proposal presented to the negotiators, borrowers subject to a judgment would not only be excluded from the benefits of rehabilitation, but would also be unable to regain eligibility for Title IV aid. The negotiators felt that denying access to additional student financial assistance to a borrower who makes an agreement with the loan holder to repay the loan was excessively harsh and had the potential to effectively prohibit the borrower from furthering his or her education, securing employment, and being better able to repay student loan obligations.

The new regulations in § 668.35(b) provide institutions and guarantors with significant flexibility to recover judgment debts by allowing the loan holder to determine the conditions that the judgment debtor must satisfy to regain eligibility for additional Title IV aid. For example, if, in a particular case, payment in full is the only repayment arrangement that is satisfactory to the holder, then a borrower who is subject to a judgment must pay the loan in full. Alternatively, should the holder agree to repayment arrangements with the judgment debtor, the holder is free to determine the number and amount of payments necessary to restore eligibility for further Title IV aid, as long as those arrangements include the borrower making at least six consecutive monthly payments.

Changes: None.

Comments: Some commenters noted that proposed language in § 682.405(b)(1), which defines ''voluntary'' payments for the purpose of loan rehabilitation, excluded payments made ''after a judgment has been entered on a loan.'' (The commenters incorrectly believed that this proposed change was the basis for excluding judgment borrowers from rehabilitation.) The commenters further noted that the proposed regulations in § 668.35(b) provided that a borrower who is subject to a judgment may reestablish Title IV eligibility if the borrower pays the debt in full or makes at least six payments under arrangements satisfactory to the judgment holder, but that the proposed regulation did not require that such payments be ''voluntary.'' Lastly, the

commenters noted that the FFEL Program definition of ''satisfactory repayment arrangements'' in § 682.200(b) defines the term ''voluntary payments'' differently than it is defined in § 682.405(b)(1) of the FFEL Program regulations. While the commenters supported the proposed language in § 668.35(b) to provide a mechanism for judgment borrowers to regain Title IV eligibility, the commenters believed the interplay between this provision and the provisions within the FFEL Program regulations requiring differing ''voluntary'' payments is confusing and that clarification was needed.

Several commenters representing institutions that participate in the Perkins Loan Program also noted that proposed § 668.35(b) is inconsistent with § 674.9(j) of the Perkins Loan Program regulations, in that the Perkins regulations require a defaulted Perkins Loan borrower subject to a judgment to make ''voluntary'' payments to reestablish eligibility for a Federal Perkins Loan. (Sections 674.9(j)(1) and (2) define ''voluntary'' payments as ''payments made directly by the borrower, including payments made over and above payments made pursuant to a judgment * * * and do not include payments obtained pursuant to a judgment.'') In contrast, the commenters noted that proposed § 668.35(b) did not require that payments to reestablish Title IV eligibility be voluntary.

The commenters suggested that we revise the FFEL regulations defining ''satisfactory repayment arrangement'' to clarify that a borrower against whom a judgment has been obtained can reestablish Title IV eligibility under § 668.35(b). With regard to the Perkins Loan program, the commenters suggested that we either revise proposed § 668.35(b) to reference the Perkins Loan program definition of ''satisfactory repayment arrangement'' or remove the reference to ''voluntary'' payments in § 674.9 for the purpose of regaining eligibility for a Perkins Loan.

Discussion: We disagree with the commenters' assumption that the basis for excluding borrowers subject to a judgment from loan rehabilitation is that payments on a judgment are not considered ''voluntary.'' The preamble of the August 6, 2002 NPRM, beginning at 67 FR 51036, has a full discussion of the reasons we proposed to exclude borrowers subject to a judgment from the opportunity for loan rehabilitation. We agree with the commenters, however, that the interplay of provisions defining ''voluntary'' in the Perkins Loan and the FFEL program regulations and their relationship with proposed § 668.35(b) is confusing.

We believe that the best resolution is to modify proposed § 668.35(b) to add the word ''voluntary,'' with a definition, to the description of the monthly payments that a borrower who is subject to a judgment must make before regaining eligibility for additional Title IV aid. We believe that the definition of ''voluntary payments,'' in the definition of ''satisfactory repayment arrangement'' in § 682.200(b) of the FFEL Program regulations is the most appropriate definition to use. Accordingly, we will define ''voluntary'' in § 668.35(b) as ''payments made directly by the borrower, not including payments obtained by Federal offset, garnishment, or income or asset execution.'' We would emphasize that a payment on a judgment is considered a ''voluntary'' payment under this definition if the borrower who is subject to the judgment makes a payment directly to the judgment holder and that there is no requirement that the payment be over and above the payment required on the judgment.

We also believe that the definition of ''voluntary'' in § 674.9(j)(1) and (2) and in the Direct Loan Program definition of ''satisfactory repayment arrangement'' in § 685.102(b) should be changed to reflect the definition of ''voluntary'' in § 682.200(b).

Changes: We have added the requirement that payments made pursuant to § 668.35(b) must be voluntary payments, along with a definition of ''voluntary.'' We have also amended the definition of ''voluntary'' in §§ 674.9(j) and 685.102(b) to reflect the definition of ''voluntary'' in current § 682.200(b).

Comments: Several commenters requested that we revise the rules governing a guaranty agency's basic program agreement with the Secretary in § 682.401(b)(4), as they relate to reinstatement of borrower eligibility, to add a reference to proposed language in § 668.35(b) that allows a borrower who is subject to a judgment to reestablish eligibility for Title IV, HEA program assistance. The commenters believed that since loan rehabilitation would no longer be an option for a borrower with a loan on which a judgment has been obtained, a clarifying change was needed to exempt these borrowers from the FFEL Program rules governing reinstatement of borrower eligibility.

Discussion: We agree that the addition of a reference in § 682.401(b)(4), stating that reinstatement of Title IV eligibility for a borrower with a defaulted loan on which a judgment has been obtained is governed by § 668.35(b), would add clarity.

Changes: We have made the suggested change to § 682.401(b)(4).

Comments: Several commenters supported the proposed regulations that excluded from rehabilitation defaulted Title IV loans on which a judgment has been obtained.

Discussion: None.

Changes: None.

Comments: One commenter stated that rehabilitation of loans subject to a judgment has served as a beneficial and successful tool to encourage borrowers to repay their loans and objected to the proposed changes that excluded from rehabilitation defaulted loans on which a judgment has been obtained. The commenter stated that many borrowers default at an early age without realizing the serious and long-lasting consequences of their failure to repay their loan and that eliminating the option of rehabilitation denies borrowers subject to a judgment the ability to improve their credit history.

Discussion: The negotiators reached consensus that the effort and expense associated with rehabilitating loans subject to a judgment outweighed the value of rehabilitation of judgment debts as a collection tool. However, as we pointed out in the August 6, 2002, NPRM, while the new regulations exclude a loan on which a judgment has been obtained from rehabilitation, a loan holder may, at its option, enter into an agreement with such a borrower to offer some of the benefits of rehabilitation while maximizing recovery of the debt. Moreover, we also proposed new language in § 668.35(b) to ensure that a borrower subject to a judgment may reestablish eligibility for further Title IV, HEA program assistance.

Changes: None.

Comments: Several commenters requested that we revise § 682.405(b)(1) to specify that the definition of the term voluntary in that section applies only to loan rehabilitation. The commenters felt that we introduced ambiguity with regard to the meaning of voluntary payments by placing language in the August 6, 2002 NPRM preamble describing proposed changes to § 682.405(b)(1) in the same paragraph as language describing reinstatement of Title IV eligibility. The commenters also suggested revising this paragraph to exclude payments obtained by state offset from the definition of voluntary payments for the purpose of loan rehabilitation.

Discussion: Although we regret any confusion that resulted from the placement of preamble language

describing proposed changes to § 682.405(b)(1) in the same paragraph as language describing reinstatement of Title IV eligibility, we do not see the need for a clarification that the term voluntary, as defined in § 682.405(b)(1), applies only to that section. The proposed language, by its placement within § 682.405, makes it clear that the definition of voluntary applies only to that section. We also disagree with the suggestion to revise this paragraph to add that payments made by state offset are excluded from the definition of voluntary payments for the purposes of loan rehabilitation because making such a change is more than a technical change to the regulations and was not subject to negotiated rulemaking.

Changes: None.

Comments: One commenter felt strongly that the regulations should specifically state that judgment holders may enter into an agreement with the judgment debtor that would allow the holder to provide many of the same benefits offered under loan rehabilitation programs. The commenter asked if the proposed addition of language in § 668.35(b), which allows a judgment borrower the opportunity to reestablish Title IV eligibility by making repayment arrangements that are satisfactory to the holder of the debt, gives the holder of a judgment the authority to enter into agreements with judgment borrowers that would provide borrowers with some of the benefits of rehabilitation.

Discussion: In many cases, the terms of a court judgment make the entire obligation due and payable in full immediately, and any payment arrangements that arise between the parties to satisfy the judgment is solely by agreement between the debtor and the judgment holder. We do not see the need to specify in regulation the authority already held by a judgment holder to enter into such agreements with a judgment debtor.

The new regulations in § 668.35(b) simply extend to a borrower who is subject to a judgment the opportunity to reestablish eligibility for Title IV student financial assistance. As stated earlier, the negotiators were concerned that borrowers who were subject to a judgment would no longer be entitled to rehabilitate their loans and would be left without any recourse if the borrower wished to return to school and needed additional financial aid. We note that a borrower who is subject to a judgment will reestablish Title IV eligibility as part of an agreement between the debtor and judgment holder, if the holder chooses to enter into such an agreement. However, the authority to enter into such an agreement stems from the nature of the judgment debt, not from this regulatory provision.

Changes: None.

Comments: Several commenters asked us to clarify what types of benefits a holder can provide to a borrower with a Title IV loan that is subject to a judgment pursuant to an agreement outside of the holder's loan rehabilitation program. The commenters were concerned that loan holders would not have the authority to offer removal of the borrower's negative credit history under such an agreement under the Fair Credit Reporting Act and loan program credit bureau reporting regulations. Several commenters wanted us to address the status of a loan on which a judgment has been obtained, both from the standpoint of the borrower and the judgment holder, once the borrower has reached an agreement with the judgment holder. One commenter asked us to clarify how long a borrower has to repay the loan and what interest rate would apply in cases when the borrower signs a new note under an arrangement between the borrower and the judgment holder.

Discussion: The holder of a Title IV loan that is subject to a judgment has the option, but is not required, to enter into an agreement with the borrower in which the holder agrees to offer some benefits. We expect any agreement between a borrower subject to a judgment and the judgment holder to require the debtor to make at least six consecutive, voluntary monthly payments, the minimum standard contained in § 668.35(b) for a judgment borrower to reestablish Title IV eligibility. A judgment holder is also free to require other, more stringent repayment arrangements it considers appropriate. The benefits the judgment holder may offer the borrower as part of an agreement to resolve a judgment include the return of Title IV eligibility and removal of a borrower's negative credit history. Alternatively, the holder may offer to vacate the judgment and allow the borrower to sign a new promissory note after the borrower complies with the conditions of the agreement. However, it is up to the holder of the judgment to consider any legal and practical restrictions on its ability to offer the borrower certain benefits, such as credit report changes.

In accordance with general legal principles and our longstanding policy, a judgment debt on a Title IV loan is considered a Title IV loan obligation. An agreement between a loan holder and a borrower to resolve a judgment does not change the character of the debt. Accordingly, if the holder vacates the judgment as part of such an agreement, the borrower's rights and responsibilities would be those of a defaulted Title IV borrower and would include the opportunity to enter into a formal regulatory rehabilitation agreement with the loan holder. The holder would be subject to the requirements and benefits associated with holding a defaulted Title IV loan. The interest rate and repayment options would be those available under the original promissory note.

Changes: None.

Comments: One commenter stated that the regulations addressing rehabilitation of loans, although now revised to exclude loans reduced to judgment, still may imply that the Secretary considers defaulted borrowers to be able to seek rehabilitation even after the Secretary has referred a loan to the Department of Justice for collection litigation. The commenter considered this implication unfounded as a matter of law, contrary to the interests of the loan programs and the Federal government, and urged the Secretary to clarify the proposed regulations to specify that neither the statute nor the regulations allow borrowers to rehabilitate loans that have been referred to the Department of Justice for litigation.

Discussion: We believe that the HEA and the Federal Claims Collection Standards adequately address this concern and that a regulatory change is unnecessary. A rehabilitation agreement is a form of repayment arrangement; after a Federal agency has referred a debt owed the agency to the Department of Justice for litigation, the Federal Claims Collection Standards provide that the Department of Justice has ''exclusive jurisdiction'' over the debt, and the agency is no longer authorized to determine repayment terms for that debt (31 CFR 904.1(b)). Moreover, sections 432(a)(2) and 468(3) of the HEA state explicitly that the Secretary's broad power to enforce Title IV HEA loans remains subject to the full authority of the Attorney General to conduct litigation to collect those loans. The HEA both directs the institution, the guarantor, or the Secretary to offer the borrower in default an opportunity for rehabilitation of the loan, and directs that the Secretary's authority to arrange repayment terms ends where responsibility for enforcement of the debt passes to the Department of Justice. The Secretary therefore interprets the HEA itself to limit the defaulted borrower's ability to seek rehabilitation of a Title IV loan only to the period during which the loan is held by the Secretary. The option to rehabilitate a

defaulted loan therefore lapses once the debt is referred to the Department of Justice.

Changes: None.

Comments: Two commenters recommended that borrowers subject to a judgment, who have begun the rehabilitation process but not completed the payment stream before final regulations are effective, be permitted to complete the rehabilitation process.

Discussion: If a holder has agreed to allow a judgment borrower to attempt rehabilitation of his or her loan prior to the effective date of these final regulations, we expect the loan holder to honor such an agreement. However, if the judgment borrower misses any of the required payments, the holder is not required to allow the borrower another attempt at rehabilitation.

Changes: None.

Comments: One commenter asked if the holder of an institutional loan subject to a judgment has the option to enter into an agreement with the borrower and offer to remove the borrower's negative credit history under the proposed regulations.

Discussion: The terms and conditions of non-Federal loans are not subject to the regulations that apply to the Title IV loan programs.

Changes: None.

Late Disbursements (Section 668.164)

Comments: Several commenters objected to the proposal that an institution would be required to obtain the Secretary's approval in order to make late disbursements more than 120 days after the student was no longer eligible. Most of these commenters believed that we should continue the current practice of allowing guaranty agencies to approve late disbursements of FFEL Program funds. Two commenters stated that deciding to make a late disbursement was similar to professional judgment and argued that institutions should be permitted to make these disbursements without obtaining our approval.

Discussion: While we appreciate the willingness of guaranty agencies to approve requests for late disbursements that are not made within the 120-day timeframe, we continue to believe that we should review and approve such disbursement requests. These rules (and previous late disbursement rules) provide an exception to the general rule that a student must be enrolled and eligible to receive Title IV student aid. If a disbursement is not made while a student is enrolled and eligible, an institution now has, regardless of the reason and without any approval, 120 days to make that disbursement. Beyond that, from both a policy and operations perspective, we need to be aware of the frequency and circumstances under which this exception is used. In addition, we believe it is more efficient, and more equitable to students and institutions, to direct all late disbursement requests requiring approval (those after the 120-day timeframe) to one party for review, particularly for requests that deal with funds from more than one Title IV program. To facilitate the process, before the effective date for these regulations, the Department plans to establish a process by which institutions will submit their request. In its request, an institution will provide the name of the student (or parent in the case of a PLUS loan), the type and amount of Title IV aid to be disbursed, and a description of the circumstances that resulted in the disbursement not being made, including why the disbursement was not made and was not the fault of the student or parent. After we review the request, we will promptly inform the institution of our decision or if necessary, request additional information. If the request is approved, the institution can, consistent with the requirements of the funding source (*i.e.,* FFEL lender or guaranty agency) make the late disbursement. We expect the institution to maintain documentation of its request and the Department's response to that request.

Changes: None.

Comments: One commenter did not agree with the proposal that an institution would be required to offer a late disbursement to a student who had completed a payment period or period of enrollment. The commenter contended that in many such cases the student would not owe the institution any money or would not be likely to have other remaining costs, thereby eliminating the need for the late disbursement. For this reason, the commenter was concerned that requiring an institution to make a late disbursement of a loan would needlessly increase a student's debt. Instead, the commenter suggested that an institution should have sole discretion in determining whether a late disbursement was necessary.

Discussion: As we explained in the August 8, 2002 NPRM, because the student earned the funds for the period completed, it is up to the student, not the institution, to decide whether he or she needs the funds. Consequently, an institution must offer the late disbursement to the student and must make that disbursement if the student accepts the offer. If an institution believes a late disbursement is not needed or is concerned that a late disbursement of a loan may increase the risk of default, we encourage the institution to advise the student about how the disbursement may affect his or her eligibility for additional Title IV aid and caution the student about loan debt. An institution may do this in the offer it makes to the student.

Changes: None.

Comments: Many commenters supported the proposal eliminating the requirement that, for a student to qualify for late disbursement, an institution must have a valid SAR/ISIR for that student on or before the date the student became ineligible.

Discussion: We appreciate the support for a proposal that makes it easier for a student to qualify for a late disbursement and easier for an institution to document that the student qualified. However, as we noted in the NPRM, an institution must still have a valid SAR/ISIR to make a late disbursement of a Federal Pell Grant. In this regard, two changes are necessary.

Changes: Two conforming changes are necessary. First, we have made a conforming change to 668.22(a)(4)(ii)(B) to increase from 90 to 120 days the amount of time within which an institution must disburse a post-withdrawal disbursement. Second, we have made a conforming change to § 690.61(b) to exempt a student, who now otherwise qualifies for a late disbursement, from the requirement that the student submit a valid SAR/ISIR to the institution while the student is enrolled (the student now qualifies, in part, when the Department processes a SAR/ISIR with a valid EFC). As a result of this conforming change, the deadline date for receiving a valid SAR/ISIR in § 690.61(b)(2) no longer applies to a late disbursement of a Federal Pell Grant. Rather, the deadline date provisions for receiving a valid SAR/ISIR for the purpose of making a late disbursement of a Federal Pell Grant are now included as part of § 668.164(g)(4).

Notices and Authorizations (Section 668.165)

Comments: Many commenters supported the proposed change that would eliminate the requirement that an institution confirm receipt by a student of a notice sent electronically that Title IV loan funds were credited to a student's account.

Discussion: We are appreciative of the commenters' support.

Changes: None.

Timely Return of Funds (Sections 668.171 and 668.173)

Comments: Two commenters opposed the proposal under which an institution would have to return unearned Title IV program funds no later than 30 days after the institution determines that a student withdrew. The commenters stated that the process of determining which students unofficially withdrew, and the subsequent calculation of the amount of unearned funds, often takes longer than the 30-day period allowed for returning the funds.

Discussion: We did not propose any changes to the 30-day timeframe for returning unearned Title IV program funds, as currently provided in § 668.22. The proposed changes focused solely on establishing clear requirements for returning unearned Title IV funds within the existing 30-day timeframe and the consequences if that timeframe is not met. Consequently, we decline to accept the commenters' proposal.

Changes: None.

Comments: A few commenters objected to the 45-day proposal for returning unearned funds by check, arguing it would be unreasonable to hold an institution responsible for the time it takes the Secretary or an FFEL Program lender to cash a check. One of these commenters believed that we should not impose any requirements along these lines, unless there is a deliberate pattern of delaying the return of unearned funds.

Discussion: The Department or an FFEL lender (or its agent) will usually receive a check mailed by an institution within three to five days. Within the next day or two, that check is endorsed by the bank used by the Department or lender, resulting in a typical timeframe of four to seven days. Even if this process takes twice as long, an institution would still satisfy the requirements that unearned funds were returned in a timely manner (an institution must issue the check no later than 30 days after it determines the student withdrew, and the check must have been endorsed by the bank used by the Department or lender no later than 45 days after that date). Moreover, the regulations provide that if an institution can show that something unusual happened that delayed the delivery or receipt of a particular check, we will not hold the institution responsible.

Changes: None.

Comments: One commenter stated that the date on the back of the check is not necessarily the date it was received by an FFEL lender. To clarify the rule, the commenter suggested that we define the clearance date as the date the check clears the lender's or Department's bank account.

Discussion: In proposing this provision, we intended to describe the first date that appears on a cancelled check. In this regard, the Federal Reserve banking regulations under 12 CFR part 229, appendix D, require a depository bank (in this case, the bank used by the Department or FFEL lender) to evidence that it received a check by endorsing that check. Under those regulations, the bank's endorsement must include the routing number, the name of the bank, and the endorsement date. We agree to revise the regulations to clarify that the endorsement date is the date used to determine whether an institution returned unearned funds by check in a timely manner.

Changes: Section 668.173(b)(4)(ii) is revised to provide that if a check is used to return unearned funds, it must be endorsed by the bank used by the Department or FFEL Program lender no later than 45 days after the institution's determination that a student withdrew.

Comments: One commenter suggested another method of returning unearned funds. In cases where an institution needs Title IV program funds to make disbursements to additional eligible students, the institution should be permitted to use unearned funds of withdrawn students to make those disbursements instead of depositing or transferring those funds into the institution's Federal account.

Discussion: An institution that maintains a separate Federal bank account must deposit to that account, or transfer from its operating account to its Federal account, the amount of unearned program funds, as determined under § 668.22. The date the institution makes that deposit or transfer is the date used to determine whether the institution returned the funds within the 30-day timeframe permitted in the regulations. After that, the institution can use the unearned funds to make disbursements to other eligible students, provided those funds were originally received from the Department or from an FFEL lender under a process that allows the institution to use the unearned funds for this purpose.

However, unless the Department requires an institution to use a separate account, the institution may use its operating account for Title IV purposes. In this case, the institution must designate that account as its Federal bank account, as required under § 668.163(a), and have an auditable system of records showing that the funds have been allocated properly and returned in a timely manner. Absent a clear audit trail, the Department can require the institution to begin maintaining Title IV funds in a separate bank account.

Moreover, the institution has a fiduciary responsibility to segregate Federal funds from all other funds and to ensure that Federal funds are used only for the benefit of eligible students. Absent a separate Federal bank account, the institution must ensure that its accounting records clearly reflect that it segregates Federal funds. Under no circumstances may the institution use Federal funds for any other purpose, such as paying operating expenses, collateralizing or otherwise securing a loan, or earning interest or generating revenue in a manner that risks the loss of Federal funds or subjects Federal funds to liens or other attachments (such as would be the case with certain overnight investment arrangements or sweeps). Clearly, carrying out these fiduciary duties limits the ways the institution can otherwise manage cash in its operating account, simply because that account contains Federal funds.

In any event, we consider an institution that maintains (co-mingles) Federal Title IV, HEA program funds and general operating funds in the same bank account to satisfy the requirement under § 668.173(b)(1) that it return unearned funds on a timely basis if (1) the institution maintains subsidiary ledgers of each type of funds co-mingled in that account that clearly show how and when those funds were used and reconciled to its general ledger, (2) the subsidiary ledgers for each Federal program provide a detailed audit trail on a student-by-student basis that reconciles to the amount of Federal Title IV, HEA program funds received and disbursed by the institution, and (3) the institution updates the relevant subsidiary ledger accounts in its general ledger no later than 30 days after it determines that the student withdrew. More specifically, the return of an unearned funds transaction should be recorded as a debit to the Federal program fund subsidiary ledger account and credit to the institution's operating fund subsidiary ledger account. The date of the return is the date this transaction is posted to the institution's general ledger.

Changes: None.

Comments: One commenter felt that the letter of credit trigger should be changed from a finding that an institution has not returned unearned funds for ''10 percent or more'' of the sampled students, to a finding that an institution has not returned unearned funds for ''more than 10 percent'' of the sampled students. The commenter noted that a ''more than 10 percent''

trigger would be consistent with the Department's Program Review Guide and the Department's School Site Review Guide for Guaranty Agencies, which use a trigger of ''greater than 10 percent'' as an indication of a possible significant problem.

Discussion: We agree that the triggers should be consistent.

Changes: Section 668.173(d)(3)(iv) has been changed to require a letter of credit upon a finding that an institution has not returned unearned funds for more than 10 percent of the sampled students.

Federal Perkins Loan—Master Promissory Note (Sections 674.2 and 674.16)

Comments: Many commenters supported the proposal to adopt a Master Promissory Note (MPN) in the Federal Perkins Loan Program. These commenters believe that the MPN will simplify the loan process by eliminating the need for institutions to prepare, and students to sign, a promissory note each award year. They also stated that uniformity across the Title IV loan program regulations, where possible, is beneficial for institutions and borrowers.

One commenter representing several institutions participating in the Perkins Loan Program expressed concern about setting conditions under which an MPN would automatically expire. The commenter stated that there is no apparent reason for establishing arbitrary timeframes by which an MPN will automatically expire since participating institutions do not need to coordinate with a third party. The commenter believed that these timeframes would diminish the streamlining benefits of the MPN in the Perkins Loan Program and create additional burden on institutions because they would be required to ensure that funds are not advanced against an expired MPN.

Discussion: We appreciate the overwhelming support for an MPN in the Perkins Loan Program and agree with those commenters that consistency across the Title IV loan programs is beneficial to both institutions and borrowers. We disagree with the commenter who objected to the time limits on the use of an MPN. Because a Perkins Loan borrower will be signing the MPN only once, we believe it is necessary to have time limits on the use of the MPN to achieve an appropriate balance between consumer protection and simplification of the loan process. Further, we are not aware of any public or private loan program that has open-ended promissory notes. In addition, the expiration date provisions are consistent with the expiration date provisions for FFEL and Direct Loan MPNs, and ensure that borrowers across all three Title IV loan programs are treated consistently. We do not believe that these time limits diminish the benefit of an MPN or cause any additional workload for institutions.

Changes: None.

Federal Perkins Loan—Write-Offs (Sections 674.9 and 674.47)

Comments: Several commenters supported the proposed regulations in § 674.47(g) and (h) to allow institutions to write off accounts of less than $25, or less than $50, if the borrower has been billed for at least two years. These commenters also supported the provisions that would make it clear that a borrower whose balance has been written off is relieved of all repayment obligations. One commenter representing several Perkins Loan institutions recommended modifying the proposed language under § 674.47(h)(1)(ii) that would permit institutions to write off an account with a balance of less than $50 if the borrower has been billed for this balance for at least two years. The commenter recommended that the language be modified so that institutions would not be required, given the minimal amount owed, to keep accounts with balances of less than $50 open for two years before being able to write off these accounts. The commenter pointed out that institutions that outsource the servicing of their loans could pay nearly 50 percent of the value of the loan in servicing costs alone over that two-year period.

Discussion: We appreciate the commenters' support for the increased write-off authority. However, we disagree with the commenter who recommended modifying the proposed language in § 674.47(h) so that institutions would not be required to bill the borrower for two years before writing off accounts with balances of less than $50. We believe that the proposed language ensures program integrity and financing. The proposed language balances the need to maintain program integrity by attempting to make the institution's Perkins revolving fund whole with the need to provide institutions greater flexibility in servicing their Perkins loan portfolio. The failure to collect on these funds could affect the future level of the Perkins Loan Fund and the availability of loans for future borrowers. Institutions that outsource the servicing of their loans could possibly reduce servicing costs associated with these loans by recalling these accounts and performing the required collection action on their own. As stated in the preamble to the August 6, 2002 NPRM, we also believe that the changes approved by the negotiating committee will reduce costs and administrative burden on Perkins Loan institutions.

Changes: None.

Retention of Promissory Notes (Sections 674.19, 682.402, and 682.414)

Comments: Some commenters indicated that it would be simpler to state in § 682.414(a)(5)(ii) that an electronically signed promissory note must be stored ''electronically and it must be retrievable in a coherent format'' rather than using a cross-reference to 34 CFR 668.24(d)(3)(i) through (iv).

Discussion: We agree that it would be simpler if FFEL Program requirements were stated directly in the FFEL regulations to the extent practicable. Additionally, after reviewing the provisions in § 668.24(d)(3)(i)–(iv), we do not believe that they clearly address the maintenance of electronically signed documents.

Changes: We have revised § 682.414(a)(5)(ii) to replace the cross-reference with the language recommended by the commenters. For consistency, a comparable change also has been made in the Federal Perkins Loan regulations at 34 CFR 674.19(e)(4)(ii).

Initial and Exit Counseling (Sections 674.42, 682.604, and 685.304)

Comments: One commenter representing several institutions participating in the Perkins Loan Program noted that the proposed regulations in § 674.42(b) did not use the term ''institution'' consistently throughout the section. Instead, both the terms ''institution'' and ''school'' were used in the section.

Discussion: We appreciate the commenter pointing out that the term ''institution'' was not used consistently in § 674.42(b) and agree that the section should be revised accordingly.

Changes: We have revised § 674.42(b) by changing references to ''school'' to ''institution'' or ''the institution'' as appropriate.

Comments: One commenter representing financial aid administrators noted that the proposed language in §§ 682.605(f)(2)(v) and 685.304(a)(3)(iv) did not offer the option of basing the sample monthly repayment amounts that must be provided to FFEL and Direct Loan borrowers as part of initial counseling on the average indebtedness of borrowers with FFEL or Direct Loan

program loans for attendance in the borrower's program of study at the institution. The commenter believed that since this option is available under the corresponding exit counseling provisions it should also be available under the initial counseling provisions. The commenter noted that some institutions that have graduate programs or short-term programs may want to exercise the option of providing sample monthly repayment amounts based on a borrower's program of study and that adding the option would not impose an additional regulatory requirement on institutions because it would not be mandatory.

Discussion: We agree with the commenter that it is important to offer in initial counseling the option of basing sample monthly repayment amounts on the average indebtedness of borrowers with FFEL or Direct Loan program loans for attendance in the borrower's program of study at the institution. The final regulations reflect that this option is available to institutions and to parties that provide initial counseling for institutions.

In reviewing the preamble to the August 6, 2002 NPRM and the proposed regulations, we discovered that our preamble discussion of the new requirement that sample monthly repayment amounts be provided to borrowers as part of initial counseling was inaccurate. Specifically, the preamble to the August 6, 2002 NPRM stated that this was a new exit counseling requirement under the FFEL Program. However, the proposed regulations reflected a new initial counseling requirement under the FFEL Program. We would like to take this opportunity to accurately explain the change.

The proposed regulations did not include any changes to the current exit counseling provisions in the Perkins, FFEL, and Direct Loan programs that require borrowers to be informed of average anticipated monthly repayment amounts. As part of exit counseling, Perkins, FFEL, and Direct Loan borrowers must be informed of the average anticipated monthly repayment amount based either on the borrower's indebtedness or on the average indebtedness of other borrowers who have obtained Perkins, FFEL, or Direct Loan program loans for attendance at the borrower's institution or in the borrower's program of study at the institution.

The proposed regulations did add to the FFEL Program's initial counseling regulations a provision requiring that sample monthly repayment amounts be provided to borrowers. The proposed regulations also modified an already existing repayment-related provision in the Direct Loan Program initial counseling regulations to mirror the new FFEL Program provision. As a result, the new initial counseling regulations require that FFEL and Direct Loan borrowers be informed of sample monthly repayment amounts. In both programs, the sample monthly repayment amounts may be based either on a range of student levels of indebtedness or on the average indebtedness of other borrowers.

Changes: We have changed §§ 682.604(f)(2)(v) and 685.304(a)(3)(iv) to reflect that sample monthly repayment amounts may be based on the average indebtedness of borrowers with FFEL or Direct Loan program loans for attendance in the borrower's program of study at the institution.

Comments: One commenter representing an institution expressed opposition to the provision in the proposed FFEL and Direct Loan program exit counseling regulations that requires a borrower to provide, as part of exit counseling updated personal information, as well as information about the borrower's expected permanent address, the address of the borrower's next of kin, and the name and address of the borrower's expected employer. The commenter stated that the regulations should not place on an institution (or a party that provides exit counseling for an institution) the burden of requiring a borrower to provide this information. Specifically, the commenter noted that some of the information may not be known to a borrower at the time exit counseling occurs and would make it difficult for an institution to enforce this requirement. The commenter requested that we revise the proposed regulations to state that exit counseling must ''request'' rather than ''require'' that a borrower provide the specified information.

Discussion: The exit counseling provision to which the commenter referred has been longstanding in the Perkins, FFEL, and Direct Loan programs and is based on section 485(b)(2) of the HEA. We are not aware of any problems in this area and decline to accept the commenter's suggested change to the regulatory language. However, we would like to assure the commenter that neither the statute nor the regulations requires a borrower to provide information that is not known to the borrower at the time exit counseling occurs.

Changes: None.

Comments: None.

Discussion: In reviewing the new requirement that exit counseling provide Perkins, FFEL, and Direct Loan borrowers with information about the availability of the Department's National Student Loan Data System (NSLDS), we realized that there may be questions about the information that is expected to be provided to borrowers. As agreed during negotiated rulemaking, it is important for borrowers to be informed that they may access NSLDS to review information about all of their Title IV loans. To achieve this goal, borrowers must be informed of the existence of NSLDS and of the fact that information about their Title IV loans is stored in NSLDS. We do not want to be prescriptive in this area. However, we believe it would be helpful to provide borrowers with the address for the NSLDS Web site and the toll-free phone number that borrowers may call if they do not have Internet access. The address for the NSLDS Web site is *http://www.nslds.ed.gov/*. The toll-free phone number that borrowers may call is 1–800–4–FED–AID.

Changes: None.

Perkins Loan—Credit Bureau Reporting (Section 674.45)

Comments: One commenter representing several Perkins Loan institutions agreed with the goal of clarifying when a borrower's default status is to be reported to a national credit bureau, but believed that the proposed change does not achieve that result. The commenter recommended modifying the proposed language in § 674.45(a)(1) to clarify that an institution must report the account as in default, ''if the institution has not already done so'' since such reporting typically occurs in advance of the collection procedures being initiated. The commenter further recommended removing the words ''before beginning collection procedures'' from § 674.43(f) to provide additional clarification.

Discussion: We do not agree with the commenter's suggested changes to the proposed language because we believe that such a change would give the false impression that reporting default status information to a national credit bureau for the first time is appropriate when done before beginning collection procedures. Institutions are required by the HEA to report to credit bureaus beginning when the loan is disbursed and to report information concerning the repayment and collection of any loan as soon as that loan is more than 30 days past due.

Changes: None.

Perkins Loan—Litigation (Section 674.46)

Comments: Several commenters supported the proposal to increase from $200 to $500 the amount that the Perkins Loan institution must use to determine if it must litigate. However, a few commenters pointed out that it was not cost effective to litigate accounts of $500 or less and recommended that the minimum dollar amount be increased to $1000. One commenter urged the Secretary to remove the two-year timeframe for reviewing accounts for litigation and eliminate the minimum dollar threshold because the institution is in the best position to make the assessment as to whether it is cost effective to litigate. This commenter pointed out that due to the institutional investment in the Perkins Loan Program and the inherent interest in recovering these funds, the Secretary should take every opportunity to eliminate unnecessary regulations that result in greater expense but do not yield greater debt recovery. The commenter felt that the proposed regulations requiring a two-year review and increasing the minimum threshold amount to $500 was a step in the right direction, but was not enough.

Discussion: We appreciate the support from most of the commenters. However, we do not accept the recommendations for changes made by some of the commenters. The preamble language contained in the NPRM accurately describes the basis on which a consensus was reached on this issue by the negotiators. As indicated in the preamble language, the decision to increase the litigation threshold amount from $200 to $500 was based upon average Perkins loan balance data and our view that the majority of these accounts should remain subject to litigation. In addition, we continue to believe that requiring a review once every two years ensures that these overdue accounts will remain subject to litigation. Failure to litigate on these overdue accounts in a relatively timely manner could result in the reduction of an institution's revolving fund, thereby decreasing the number of loans awarded to needy students.

Changes: None.

Federal Work-Study at For-Profit Institutions (Sections 675.2 and 675.21)

Comments: One commenter requested clarification on one of the revisions made to the definition of ''student services.'' One of the examples added to the definition of student services was assisting instructors in curriculum-related activities. The commenter recommended that the language in the regulation or the preamble clarify that this means that a student may be employed under the FWS Program as a teaching assistant.

Discussion: The amended definition of ''student services'' added more examples of acceptable jobs in which a proprietary institution may employ students on campus to work for the institution itself. The example of assisting instructors in curriculum-related activities was added to highlight that an FWS student is considered to be providing a student service when he or she is assisting an instructor in the lab or in other work that is related to the instructor's official academic duties at the proprietary institution. This change does allow a student to serve as a teaching assistant. However, an FWS student may not be hired to be an instructor at a proprietary institution, while remaining a FWS student.

Changes: None.

Comments: One commenter requested clarification on whether services provided to the institution's former students meets the definition of student services. The commenter stated that FWS students should be able to be employed in areas such as job placement and default management services in which the services are available to former students as well as to current students.

Discussion: Student services are those services that provide a benefit, either directly or indirectly, to students. Students are persons enrolled or accepted for enrollment at the institution. An FWS student whose job is to provide services only to the institution's former students would not be considered to be providing a student service because the service is not for currently enrolled students. However, if a student's FWS job involved providing services to both current students and to former students, the job would be considered one that provides student services. As an example, an FWS student is employed in the job placement office providing assistance in finding potential employers and helping prepare resumes for current students as well as for alumni of the institution. Because the FWS student is providing these services to current students, the fact that he or she is also helping alumni does not mean that the FWS student is not providing a student service. On the other hand, if an institution has a default management counselor job in which the employee assists only former students of the institution, the requirement that the job be one that provides student services would not be met because the service is not being provided to currently enrolled students.

Changes: None.

FFEL and Direct Loan—Loan Limits (Sections 682.204 and 685.203)

Comments: One commenter stated that he did not understand what types of abuses the new loan limit regulations are intended to address. However, the commenter felt strongly that if a program requires a student to complete two years of prerequisite coursework in order to be admitted, then the student should be considered a third-year student upon admission to that program.

Discussion: As we explained in the preamble to the proposed regulations, the new regulations clarify that an institution may not link separate, stand-alone programs to allow students to qualify for higher annual loan limits than they would otherwise be eligible to receive based on the length of the program. As an example, we noted that an institution may not allow students in one-year program ''B'' to borrow at the second-year loan level based on the fact that they were required to have previously completed one-year program ''A'' as a prerequisite for admission to program ''B''. Since program ''B'' is only one academic year in length, students enrolled in that program are restricted to first-year annual loan limits.

We remind the commenter that the new regulations do not affect the existing provisions in §§ 682.204 and 685.203, which allow undergraduate borrowers who enroll in programs that require prior completion of an associate or baccalaureate degree to borrow at the higher annual loan limits for third-year undergraduates. In addition, as we noted in the preamble to the proposed regulations, the new regulations do not restrict an institution from determining a student's grade level based on the number of hours earned at another institution that are applicable to the student's program at the new institution.

Changes: None.

Comments: One commenter requested that the loan limit regulations be revised to clearly state that second-year annual loan limits apply when prorating a loan for a student who is enrolled in the final period of study of a program that is more than one academic year in length, but less than two academic years in length. The commenter further recommended that the final regulations clarify the role of the Secretary's ''Eligibility and Certification Approval Report'' (ECAR) in determining whether a program is longer than one academic year in length for annual loan limit

purposes. The commenter noted that there has been some confusion as to whether first- or second-year annual loan limits apply for the final portion of programs that are longer than one academic year, but shorter than two academic years, because the section of the ECAR that identifies the highest educational program offered by an institution categorizes these programs as ''one year'' programs. The commenter believed that second-year annual loan limits should apply after a student has completed the first academic year of such a program, regardless of how the program is classified on the ECAR.

Discussion: The commenter is correct in understanding that a student who has completed the first academic year of a program that is more than one academic year in length, but less than two academic years in length, may receive a prorated loan at the second-year level for the final portion of the program. As noted below, the current regulations clearly support the understanding of the commenter. The proposed changes do not affect these provisions.

The current annual loan limit regulations in the FFEL and Direct Loan programs provide for second-year annual loan limits in the situation described by the commenter. Sections 682.204(a)(2)(ii), 682.204(d)(2)(ii), 685.203(a)(2)(ii), and 685.203(c)(2)(ii)(B) specify a prorated annual loan limit at the second-year undergraduate level for students who have completed the first year of study of a program and are in a remaining portion of the program that is less than one academic year in length. While the ECAR contains the information that forms the basis of an institution's approval to participate in the Title IV, HEA programs, including the highest level of program offered, annual loan limits are not strictly determined by the ECAR, but rather on the actual length of the academic program.

Changes: None.

FFEL—Unemployment Deferment (Sections 682.210 and by reference 685.204)

Comments: Some commenters recommended that the unemployment deferment regulations be revised in § 682.210(h)(3)(iv) to state that a borrower is not required to ''certify'' his or her search for full-time employment. The commenters noted that § 682.210(h)(2) uses the term ''certify'' rather than ''describe'' and believed these two regulatory provisions should use the same terminology.

Discussion: We agree that a borrower requesting a period of initial deferment is not required to describe his or her search for full-time employment at the time the deferment is granted. After examining the regulations, however, we have determined that the effect of recent regulatory changes and the proposed changes to this section of the regulations has caused the entire first sentence of § 682.210(h)(3)(iv), in which the commenter requested the change, to be duplicative and unnecessary.

Changes: We have deleted the first sentence of proposed § 682.210(h)(3)(iv) from these final regulations.

Comments: One commenter believed that it is no longer appropriate to require a ''written certification'' in § 682.210(h)(4) because § 682.210(h)(2) permits an alternative equivalent as approved by the Secretary. The commenter recommended that the word ''written'' be deleted from § 682.210(h)(4).

Discussion: The commenter's rationale for the deletion appears to be based on the presumption that the alternative equivalent form of borrower certification approved by the Secretary would not be in writing, therefore the requirement for a written certification in § 682.210(h)(4) should be modified accordingly. However, the regulatory provision permits both requirements to exist simultaneously independent of each other; a written certification and another that applies to an equivalent form of borrower certification approved by the Secretary. Even if the Secretary were to approve an equivalent that would not need to be in writing, that does not mean that the other requirement for a written certification needs to be undone. We believe it is clearer to amend § 682.210(h)(4) to reflect an alternate approved form of certification.

Changes: We have amended § 682.210(h)(4) to include reference to an approved equivalent.

FFEL and Direct Loan—Consolidation Loan Benefits (Sections 682.402, 685.212, and 685.220)

Comments: One commenter representing a guaranty agency recommended that the new provisions in §§ 682.402, 685.212, and 685.220 related to discharges of consolidation loans apply only to consolidation loans made on or after July 1, 2003. The commenter believed that they should not apply to consolidation loans made before July 1, 2003, since it would be very difficult for program participants to identify previous underlying loans that might qualify for discharge under the new regulations.

The commenter also asked how a lender would file a claim when only one of the borrowers of a joint consolidation loan qualifies for a loan discharge under the new provisions. The commenter suggested that such claims should be handled in a manner similar to the procedures for unpaid refund discharge claims.

Finally, the commenter asked how a guaranty agency would assign a portion of a joint consolidation loan to the Secretary—and who would hold the promissory note—when a preliminary determination has been made that one of the borrowers is totally and permanently disabled. The commenter recommended that the entire joint consolidation loan be assigned to the Secretary, instead of ''splitting'' the loan and assigning only the potentially dischargeable portion.

Discussion: As we explained in the preamble to the August 6, 2002 NPRM, we suggested the changes related to consolidation loan discharges because we believed that borrowers should be permitted to receive discharges that they would have qualified for if they had not consolidated their loans. We did not intend to provide the new benefits only to borrowers who receive consolidation loans in the future. Moreover, there was never any suggestion made during the negotiated rulemaking that discharge eligibility should be limited based on the date the consolidation loan was made, or the date the discharge condition was met. Accordingly, a consolidation loan borrower may qualify for a discharge under the new provisions regardless of when the consolidation loan was made or when the discharge condition was met, provided that the borrower still has an outstanding balance on the consolidation loan at the time of the borrower's discharge request. However, a borrower who would have qualified for a discharge of a consolidation loan under the new regulations may not apply for a discharge of a loan that has already been paid in full.

We would also like to note that we do not plan to attempt, nor do we expect guaranty agencies to attempt, to identify borrowers who were not eligible to receive loan discharges in the past, but who might qualify under the new regulations. However, we will work with interested parties to determine how to make information about the new consolidation loan benefits available to the public.

With regard to filing claims when only one of the borrowers of a joint consolidation loan qualifies for loan discharge under the new provisions, the procedures would be the same as the procedures for filing claims when a joint consolidation loan is partially discharged under current regulations

due to school closure, false certification, or unpaid refund.

The assignment of joint consolidation loans to the Secretary when one of the borrowers may qualify for a total and permanent disability discharge involves operational issues that are not regulated. We will work with lenders, servicers and guaranty agencies to address the issues raised by the commenter.

Changes: None.

Comments: None.

Discussion: We have determined that the language in the proposed regulations on loan discharge for consolidation loans did not clearly reflect our intentions. In the case of a discharge of a consolidation loan based on the death of the student for whom the parent had obtained a PLUS loan that was included in the consolidation loan, or the death or total and permanent disability of one of the borrowers of a joint consolidation loan, the borrower or the borrower's estate should receive the same discharge benefit that they would have received if the loan(s) had not been consolidated. Current loan discharge regulations in both the FFEL and Direct Loan programs provide that any payments received after the date of a borrower's (or dependent student's) death or after the date that a borrower became totally and permanently disabled are returned to the borrower or the borrower's estate. In the case of a consolidation loan, loan holders should return payments to the borrower or the borrower's estate only if there is no remaining balance on the consolidation loan after the discharge. Otherwise, payments received after the date the discharge condition was met should be reapplied to reduce the remaining outstanding balance of the consolidation loan. Payments received after the date the discharge condition was met should be reflected in the discharge amount, regardless of how that amount is determined. However, the proposed regulatory language might have suggested that the amount discharged is limited to the applicable portion of the current outstanding balance of the loan, and does not include a refund or reapplication of payments received after the date that the borrower met the eligibility requirements for the discharge.

Changes: We have revised §§ 682.402(a)(2), 685.212(a)(3), 685.220(l)(3)(i), and 685.220(l)(3)(ii) to reflect that the amount discharged is an amount equal to the applicable portion of the outstanding balance of the consolidation loan as of the date that the borrower met the eligibility requirements for the discharge.

Comments: Several commenters recommended that we add language to § 682.402(a)(2) clarifying that in the case of a joint consolidation loan that is partially discharged due to the death or total and permanent disability of one of the borrowers, neither that borrower nor that borrower's estate is any longer jointly and severally liable for repayment of the remaining portion of the consolidation loan. One commenter proposed the addition of similar language, but also recommended that the information in § 682.402(a)(2) related to the discharge amount be removed from that paragraph and placed in § 682.402(h), which covers the payment of discharge claims by a guaranty agency. That commenter recommended that § 682.402(a)(2) be revised to include only general discharge information.

Discussion: In the case of discharges involving the death of one of the borrowers of a joint consolidation loan, the suggested additional language is unnecessary. A borrower's joint and several liability for repayment of the balance of the joint consolidation loan ends upon the borrower's death, and an existing provision in § 682.402(b)(4) prohibits lenders from attempting to collect on a loan from the borrower's estate or from any endorser after making a determination that the borrower has died. The same policy applies in the Direct Loan Program.

The commenters are not correct in assuming that a total and permanent disability discharge of a portion of a joint consolidation loan eliminates joint and several liability for the remaining balance of the loan for either of the borrowers. In the case of a partial discharge of a joint consolidation loan for a reason other than the death of one of the borrowers, both borrowers remain jointly and severally liable for the remaining balance of the loan. For example, under current regulations, a joint consolidation loan may be partially discharged if one of the borrowers meets the eligibility requirements for discharge based on school closure, false certification, or an unpaid refund. However, both borrowers on the joint consolidation loan are still jointly and severally liable for the amount of the loan that remains after the discharge has been granted. Under the new regulations, this will also be true if a joint consolidation loan is partially discharged based on the total and permanent disability of one of the borrowers. That is, each borrower will remain jointly and severally liable for repayment of the remaining portion of the consolidation loan.

With regard to the suggestion that information on the discharge amount be moved from § 682.402(a)(2) to § 682.402(h), we understand the rationale for the commenter's recommendation. However, we believe that this information is presented more clearly and concisely in § 682.402(a)(2).

Changes: None.

Comments: Several commenters suggested that we restore language that was deleted from redesignated § 682.402(a)(3) in the proposed regulations. Specifically, they proposed that the words ''or a Consolidation loan was obtained by a married couple,'' be restored after the word ''co-makers''. The commenters believed that the deleted language ensures that when only one of the borrowers of a co-made PLUS loan or joint consolidation loan meets the requirements for loan discharge based on death, total and permanent disability, or bankruptcy, the other borrower remains obligated to repay the portion of the loan that is not discharged.

One commenter made a similar recommendation for revising redesignated § 682.402(a)(3) to specifically state that if one of the borrowers of a co-made PLUS loan or one of the borrowers of a joint consolidation loan dies or becomes totally and permanently disabled, the other borrower remains obligated to repay the remaining balance of the loan. The commenter further noted that the proposed regulations did not address bankruptcy situations, and recommended additional language for redesignated § 682.402(a)(3) specifying that if the loan obligation of one of the borrowers of a co-made PLUS loan or joint consolidation loan is stayed by a bankruptcy filing or discharged in bankruptcy, but the other borrower's obligation is not stayed or discharged, the other borrower remains obligated to repay the remaining balance of the loan.

Discussion: The commenters suggest that the new loan discharge provisions apply to both joint consolidation loans and PLUS loans obtained jointly by two parents as co-makers. That is incorrect. The proposed regulations that resulted from the negotiated rulemaking sessions apply only to joint consolidation loans, not to co-made PLUS loans.

Restoring the language that was deleted from redesignated § 682.402(a)(3) would not have the effect of ensuring that the other borrower is responsible for repaying the remaining portion of a partially discharged joint consolidation loan, as suggested by the commenters. In the current regulations, § 682.402(a)(2) (redesignated § 682.402(a)(3)) prohibits partial discharges of both joint consolidation loans and PLUS loans obtained by two parents as co-makers if one of the two

borrowers dies or becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, but the other borrower does not qualify for any type of discharge. In such cases, current regulations provide that the other borrower is responsible for repaying the entire loan. The new regulations provide for the partial discharge of a joint consolidation loan—but not a PLUS loan obtained by two parents as co-makers—if one of the borrowers dies or becomes totally and permanently disabled. To allow for this new provision, it was necessary to remove the reference to joint consolidation loans from redesignated § 682.402(a)(3). If the language of the current regulations were restored, there would be a conflict with the new provisions related to discharges of joint consolidation loans.

We do not believe that it is necessary to explicitly state in the regulations that when a joint consolidation loan is partially discharged as a result of the death of one of the borrowers, the other borrower remains responsible for repaying the outstanding balance of the loan. We also do not believe that it is necessary to state in the regulations that, as explained elsewhere in this preamble, each borrower of a joint consolidation loan remains jointly and severally liable for repayment of the remaining balance of the loan if the loan is partially discharged based on the total and permanent disability of one of the borrowers.

The new provisions related to the discharge of joint consolidation loans do not specifically address the discharge of joint consolidation loans due to bankruptcy, since our regulations do not determine whether one or both of the borrowers of a joint consolidation loan is relieved of any repayment obligation as the result of a bankruptcy filing. Such determinations are made by a bankruptcy court in accordance with the Bankruptcy Code.

Changes: None.

Comments: Several commenters recommended that, based on the new regulations which allow partial discharges of joint consolidation loans based on the death or total and permanent disability of one of the borrowers, we make a conforming change to § 682.402(k)(2)(iii) by eliminating language that provides, in the case of claims for reimbursement on joint consolidation loans, for the Secretary to reimburse a guaranty agency only if each of the co-makers of the loan has died or become totally and permanently disabled. Some commenters also suggested additional technical changes to this paragraph to reflect the fact that under the current total and permanent disability discharge regulations, a guaranty agency does not make the determination that a borrower is totally and permanently disabled.

Discussion: We agree that most of the changes suggested by the commenters are appropriate. However, the commenters' proposed conforming change to § 682.402(k)(2)(iii) would retain current language specifying that in the case of a bankruptcy claim, both co-makers of a joint consolidation loan must file a petition for relief in bankruptcy in order for a guaranty agency to be reimbursed. As explained elsewhere in this preamble, the new provisions for the discharge of joint consolidation loan do not address bankruptcy, since our regulations do not determine whether a borrower who has filed for bankruptcy is relieved of the obligation to repay a loan. For the same reason, we do not believe that it is appropriate for § 682.402(k)(2)(iii) to specify that both co-makers of a joint consolidation loan must file for bankruptcy.

Changes: We have revised § 682.402(k)(2)(iii) by removing language that provides for reimbursement by the Secretary only if each of the co-makers of a joint consolidation loan has died or become totally and permanently disabled. We have also removed the reference to determination of a borrower's total and permanent disability by the guaranty agency.

Comments: One commenter objected to the proposed changes related to consolidation loan discharges in §§ 685.212(a)(3) and 685.220(l)(3) on the basis that comparable provisions were not proposed for the FFEL Program. The commenter believed that the proposed changes would give an unfair advantage to Direct Loan borrowers, and felt that the new consolidation loan discharge benefits should be made available to FFEL Program borrowers as well.

Discussion: We disagree with the commenter. The August 6, 2002 NPRM included proposed changes in §§ 682.402(a)(2) and 682.402(b)(6) of the FFEL Program regulations that provide the same benefits as the proposed changes in § 685.212(a)(3) and 685.220(l)(3) of the Direct Loan Program regulations.

Changes: None.

Direct Loans—Expiration of Master Promissory Note (Section 685.102)

Comments: None.

Discussion: In reviewing the proposed regulations, we realized that the Direct Loan MPN expiration date provision based on a borrower providing written notice that no further loans may be made under an MPN was not stated correctly. Instead of referring to a written notice that no further loans may be ''made,'' the proposed regulations referred to a written notice that no further loans may be ''disbursed.'' To be technically correct, the regulations need to refer to a written notice that no further loans may be made.

Changes: We have revised § 685.102(b)(3)(i) in the definition of Master Promissory Note (MPN) to refer to a written notice that no further loans may be made.

GEAR UP Program (Section 694.10)

Comments: One commenter requested clarification on whether GEAR UP funds may be used to replace a student's expected family contribution (EFC).

Discussion: Section 404E(c) of the HEA provides that a GEAR UP scholarship ''* * * shall not be considered for purpose of awarding Federal grant assistance under this title, except that in no case shall the total amount of student financial assistance awarded to a student under this title exceed such student's total cost of attendance.'' Thus, a GEAR UP scholarship can be awarded without considering the student's EFC as long as the total Title IV aid, including the GEAR UP scholarship, does not exceed the student's cost of attendance. Also, when awarding other Title IV grants, a GEAR UP scholarship is not to be considered. The combination of these two provisions means, in effect, that a GEAR UP scholarship may be used to replace EFC for Title IV grants, including FSEOG. However, when awarding FWS, Federal Perkins Loans, and subsidized FFEL or Direct Loans to a student who is receiving a GEAR UP scholarship, GEAR UP funds may not be used to replace the EFC.

Changes: None.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

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

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the August 6, 2002, NPRM (67 FR 51046) and in the preamble to the August 8, 2002, NPRM (67 FR 51733).

Paperwork Reduction Act of 1995

We received no comments on the Paperwork Reduction Act portion of the rule. The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. OMB has approved the information collection request and assigned the following numbers to the collections of information in these final regulations:

Section 600.21	1845–0012
Section 600.31	1845–0012
Section 668.22	1845–0022
Section 668.165	1845–0038
Section 668.173	1845–0022
Section 668.183	1845–0022
Section 668.193	1845–0022
Section 673.5	1845–0019
Section 674.16	1845–0019
Section 674.19	1845–0019
Section 674.33	1845–0019
Section 674.34	1845–0019
Section 674.39	1845–0023
Section 674.42	1845–0023
Section 674.43	1845–0023
Section 674.45	1845–0023
Section 674.47	1845–0023
Section 674.50	1845–0019
Section 682.200	1845–0020
Section 682.209	1845–0020
Section 682.210	1845–0020
Section 682.211	1845–0020
Section 682.402	1845–0020
Section 682.405	1845–0020
Section 682.414	1845–0020
Section 682.604	1845–0020
Section 685.212	1845–0021
Section 685.220	1845–0021
Section 685.304	1845–0021

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.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; and 84.268 William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Parts 600 and 668

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

34 CFR Parts 673 and 675

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

34 CFR Parts 674, 682, and 685

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

34 CFR Part 690

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

34 CFR Part 694

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

Dated: October 23, 2002.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 600, 668, 673, 674, 675, 682, 685, 690, and 694 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

§ 600.8 [Amended]

2. Section 600.8 is amended by adding ''proprietary institution of higher education or a postsecondary vocational'' after ''eligible''.

3. Section 600.21 is amended:

A. By revising paragraph (f);

B. By revising the Office of Management and Budget control number.

The revisions read as follows:

§ 600.21 Updating application information.

* * * * *

(f) *Definition.* A family member includes a person's—

(1) Parent or stepparent, sibling or step-sibling, spouse, child or stepchild, or grandchild or step-grandchild;

(2) Spouse's parent or stepparent, sibling or step-sibling, child or stepchild, or grandchild or step-grandchild;

(3) Child's spouse; and

(4) Sibling's spouse.

(Approved by the Office of Management and Budget under control number 1845–0012)

4. Section 600.31 is amended:

A. By revising paragraph (e);

B. By revising the Office of Management and Budget control number.

The revisions read as follows:

§ 600.31 Change in ownership resulting in a change in control for private nonprofit, private for-profit and public institutions.

* * * * *

(e) *Excluded transactions.* A change in ownership and control reported under § 600.21 and otherwise subject to this section does not include a transfer of ownership and control of all or part of an owner's equity or partnership interest in an institution, the

institution's parent corporation, or other legal entity that has signed the institution's Program Participation Agreement—

(1) From an owner to a ''family member'' of that owner as defined in § 600.21(f); or

(2) Upon the retirement or death of the owner, to a person with an ownership interest in the institution who has been involved in management of the institution for at least two years preceding the transfer and who has established and retained the ownership interest for at least two years prior to the transfer.

(Approved by the Office of Management and Budget under control number 1845–0012)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.2 [Amended]

6. Section 668.2(b) is amended by removing the definition of ''Academic year''.

7. Section 668.3 is revised to read as follows:

§ 668.3 Academic year.

(a) *General.* Except as provided in paragraph (c) of this section, an academic year is a period that begins on the first day of classes and ends on the last day of classes or examinations during which—

(1) An institution provides a minimum of 30 weeks of instructional time; and

(2) For an undergraduate educational program, a full-time student is expected to complete at least—

(i) Twenty-four semester or trimester credit hours or 36 quarter credit hours for a program measured in credit hours; or

(ii) 900 clock hours for a program measured in clock hours.

(b) *Definitions.* For purposes of paragraph (a) of this section—

(1) A week is a consecutive seven-day period;

(2) A week of instructional time is any week in which at least one day of regularly scheduled instruction or examinations occurs or, after the last scheduled day of classes for a term or payment period, at least one day of study for final examinations occurs; and

(3) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

(c) *Reduction in the length of an academic year.*

(1) Upon the written request of an institution, the Secretary may approve, for good cause, an academic year of 26 through 29 weeks of instructional time for educational programs offered by the institution if the institution offers a two-year program leading to an associate degree or a four-year program leading to a baccalaureate degree.

(2) An institution's written request must—

(i) Identify each educational program for which the institution requests a reduction, and the requested number of weeks of instructional time for that program;

(ii) Demonstrate good cause for the requested reductions; and

(iii) Include any other information that the Secretary may require to determine whether to grant the request.

(3)(i) The Secretary approves the request of an eligible institution for a reduction in the length of its academic year if the institution has demonstrated good cause for granting the request and the institution's accrediting agency and State licensing agency have approved the request.

(ii) If the Secretary approves the request, the approval terminates when the institution's program participation agreement expires. The institution may request an extension of that approval as part of the recertification process.

(Approved by the Office of Management and Budget under control number 1845–0022)

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

8. Section 668.4 is revised to read as follows:

§ 668.4 Payment period.

(a) *Payment periods for an eligible program that measures progress in credit hours and has academic terms.* For a student enrolled in an eligible program that measures progress in credit hours and has academic terms, the payment period is the academic term.

(b) *Payment periods for an eligible program that measures progress in credit hours and does not have academic terms.* (1) For a student enrolled in an eligible program that is one academic year or less in length—

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

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

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

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

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

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

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

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

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

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

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, if an institution is unable to determine when a student has completed half of the credit hours in a program, academic year, or remainder of a program; the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of—

(i) The date, as determined by the institution, on which the student has completed half of the academic coursework in the program, academic year, or remainder of the program; or

(ii) The calendar midpoint between the first and last scheduled days of class of the program, academic year, or remainder of the program.

(c) *Payment periods for an eligible program that measures progress in clock hours.* (1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student completes half the number of clock hours in the program; and

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

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

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

(A) The first payment period is the period of time in which the student completes half the number of clock hours in the academic year; and

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

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

(A) The first payment period is the period of time in which the student completes half the number of clock hours in the remaining portion of the program; and

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

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

(d) *Number of payment periods.* Notwithstanding paragraphs (b) and (c) of this section, an institution may choose to have more than two payment periods. If an institution so chooses, the regulations in paragraphs (b) and (c) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year in a program that measures progress in credit hours but does not have academic terms, each payment period must correspond to one-third of the academic year measured in both credit hours and weeks of instruction.

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

(f) *Re-entry after 180 days or transfer.* (1) Subject to the conditions of paragraph (f)(2) of this section, an institution calculates new payment periods for the remainder of a student's program based on paragraphs (b) through (d) of this section, for a student who withdraws from a program described in paragraph (b) or (c) of this section, and—

(i) Reenters that program after 180 days,

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

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

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

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

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

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

9. Section 668.8 is amended by:

A. Revising paragraph (b)(3).

B. Removing paragraph (b)(4).

The revision reads as follows:

§ 668.8 Eligible program.

* * * * *

(b) * * *

(3)(i) The Secretary considers that an institution provides one week of instructional time in an academic program during any week the institution provides at least one day of regularly scheduled instruction or examinations, or, after the last scheduled day of classes for a term or a payment period, at least one day of study for final examinations.

(ii) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

* * * * *

10. Section 668.14(b)(22) is revised to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(22)(i) It will not provide any commission, bonus, or other incentive payment based directly or indirectly upon success in securing enrollments or financial aid to any person or entity engaged in any student recruiting or admission activities or in making decisions regarding the awarding of title IV, HEA program funds, except that this limitation does not apply to the recruitment of foreign students residing in foreign countries who are not eligible to receive title IV, HEA program funds.

(ii) Activities and arrangements that an institution may carry out without violating the provisions of paragraph (b)(22)(i) of this section include, but are not limited to:

(A) The payment of fixed compensation, such as a fixed annual salary or a fixed hourly wage, as long as that compensation is not adjusted up or down more than twice during any twelve month period, and any adjustment is not based solely on the number of students recruited, admitted, enrolled, or awarded financial aid. For this purpose, an increase in fixed compensation resulting from a cost of living increase that is paid to all or substantially all full-time employees is not considered an adjustment.

(B) Compensation to recruiters based upon their recruitment of students who enroll only in programs that are not eligible for title IV, HEA program funds.

(C) Compensation to recruiters who arrange contracts between the institution and an employer under which the employer's employees enroll in the institution, and the employer pays, directly or by reimbursement, 50 percent or more of the tuition and fees charged to its employees; provided that the compensation is not based upon the number of employees who enroll in the institution, or the revenue they generate, and the recruiters have no contact with the employees.

(D) Compensation paid as part of a profit-sharing or bonus plan, as long as those payments are substantially the same amount or the same percentage of salary or wages, and made to all or substantially all of the institution's full-time professional and administrative staff. Such payments can be limited to all, or substantially all of the full-time employees at one or more organizational level at the institution, except that an organizational level may not consist predominantly of recruiters, admissions staff, or financial aid staff.

(E) Compensation that is based upon students successfully completing their educational programs, or one academic year of their educational programs, whichever is shorter. For this purpose, successful completion of an academic year means that the student has earned at least 24 semester or trimester credit hours or 36 quarter credit hours, or has successfully completed at least 900 clock hours of instruction at the institution.

(F) Compensation paid to employees who perform clerical ''pre-enrollment'' activities, such as answering telephone calls, referring inquiries, or distributing institutional materials.

(G) Compensation to managerial or supervisory employees who do not directly manage or supervise employees who are directly involved in recruiting or admissions activities, or the awarding of title IV, HEA program funds.

(H) The awarding of token gifts to the institution's students or alumni, provided that the gifts are not in the form of money, no more than one gift is provided annually to an individual, and

the cost of the gift is not more than $100.

(I) Profit distributions proportionately based upon an individual's ownership interest in the institution.

(J) Compensation paid for Internet-based recruitment and admission activities that provide information about the institution to prospective students, refer prospective students to the institution, or permit prospective students to apply for admission on-line.

(K) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, provided that none of the services involve recruiting or admission activities, or the awarding of title IV, HEA program funds.

(L) Payments to third parties, including tuition sharing arrangements, that deliver various services to the institution, even if one of the services involves recruiting or admission activities or the awarding of title IV, HEA program funds, provided that the individuals performing the recruitment or admission activities, or the awarding of title IV, HEA program funds, are not compensated in a manner that would be impermissible under paragraph (b)(22) of this section.

* * * * *

11. Section 668.22 is amended by:

A. In paragraph (a)(3), removing ''§ 668.164(g)(2)'' and adding, in its place, ''§ 668.164(g)''.

B. In paragraph (a)(4)(ii)(B), removing ''90'' and adding, in its place, ''120''.

C. Revising paragraph (b)(3)(i).

D. Revising paragraph (d)(1)(vi).

E. Removing paragraph (d)(1)(vii).

F. Redesignating paragraphs (d)(1)(viii) and (d)(1)(ix) as paragraphs (d)(1)(vii) and (d)(1)(viii), respectively, and revising the newly designated paragraph (d)(1)(vii).

G. Removing paragraph (d)(2).

H. Redesignating paragraphs (d)(3) and (d)(4) as paragraphs (d)(2) and (d)(3), respectively.

I. Removing ''on'' and adding, in its place, ''at'' in newly redesignated paragraph (d)(2).

J. Removing ''are'' and adding, in its place, ''is'' in newly redesignated paragraph (d)(3)(i).

K. Adding '', that includes the reason for the request,'' after ''request'' in the first sentence in newly redesignated paragraph (d)(3)(iii)(B).

L. Adding ''The timeframe for returning funds is further described in § 668.173(b).'' at the end of paragraph (j)(1).

The revisions and additions read as follows:

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

* * * * *

(b) * * *

(3)(i) An institution is required to take attendance if an outside entity (such as the institution's accrediting agency or a State agency) has a requirement, as determined by the entity, that the institution take attendance.

* * * * *

(d) * * *

(1) * * *

(vi) The number of days in the approved leave of absence, when added to the number of days in all other approved leaves of absence, does not exceed 180 days in any 12-month period;

(vii) Except for a clock hour or nonterm credit hour program, upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

* * * * *

§ 668.32 [Amended]

12. Section 668.32(e)(2) is amended by removing ''within 12 months before the date the student initially receives title IV, HEA program assistance,''.

13. Section 668.35 is amended:

A. In paragraph (a)(2), by adding new introductory text.

B. By redesignating paragraphs (b), (c), (d), (e), and (f) as paragraphs (d), (e), (f), (g), and (h) respectively.

C. By adding new paragraphs (b) and (c).

D. By revising newly redesignated paragraph (e).

The revision and additions read as follows:

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

(a) * * *

(2) Except as limited by paragraph (c) of this section—

* * * * *

(b) A student who is subject to a judgment for failure to repay a loan made under a title IV, HEA loan program may nevertheless be eligible to receive title IV, HEA program assistance if the student—

(1) Repays the debt in full; or

(2) Except as limited by paragraph (c) of this section—

(i) Makes repayment arrangements that are satisfactory to the holder of the debt; and

(ii) Makes at least six consecutive, voluntary monthly payments under those arrangements. Voluntary payments are those payments made directly by the borrower, and do not include payments obtained by Federal offset, garnishment, or income or asset execution.

(c) A student who reestablishes eligibility under either paragraph (a)(2) of this section or paragraph (b)(2) of this section may not reestablish eligibility again under either of those paragraphs.

* * * * *

(e) A student who receives an overpayment under the Federal Perkins Loan Program, or under a title IV, HEA grant program may nevertheless be eligible to receive title IV, HEA program assistance if—

(1) The student pays the overpayment in full;

(2) The student makes arrangements satisfactory to the holder of the overpayment debt to pay the overpayment; or

(3) The overpayment amount is less than $25 and is neither a remaining balance nor a result of the application of the overaward threshold in 34 CFR 673.5(d).

* * * * *

§ 668.151 [Amended]

14. Section 668.151(a)(2) is amended by adding the words ''it received from an approved test publisher or assessment center'' after ''an approved test''.

15. Section 668.164(g) is revised to read as follows:

§ 668.164 Disbursing funds.

* * * * *

(g) *Late disbursements.* (1) *Ineligible student.* For purposes of this paragraph, an otherwise eligible student becomes ineligible to receive title IV, HEA program funds on the date that—

(i) For a loan under the FFEL and Direct Loan programs, the student is no longer enrolled at the institution as at least a half-time student for the period of enrollment for which the loan was intended; or

(ii) For an award under the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for a late disbursement.* Except as limited under paragraph (g)(4) of this section, a student who becomes ineligible (or the student's parent in the case of a PLUS loan) qualifies for a late disbursement if, before the date the student became ineligible—

(i) Except in the case of a PLUS loan, the Secretary processed a SAR or ISIR with an official expected family contribution; and

(ii) (A) For a loan under the FFEL or Direct Loan programs, the institution certified or originated the loan; or

(B) For an award under the Federal Perkins Loan or FSEOG programs, the institution made that award to the student.

(3) *Making a late disbursement.* Provided that the conditions described in paragraph (g)(2) of this section are satisfied—

(i) If the student withdrew from the institution during a payment period or period of enrollment, the institution must make any post-withdrawal disbursement required under § 668.22(a)(3) in accordance with the provisions of § 668.22(a)(4);

(ii) If the student successfully completed the payment period or period of enrollment, the institution must provide the student (or parent) the opportunity to receive the amount of title IV, HEA program funds that the student (or parent) was eligible to receive while the student was enrolled at the institution. For a late disbursement in this circumstance, the institution may credit the student's account to pay for current and allowable charges as described in paragraph (d) of this section, but must pay or offer any remaining amount to the student or parent; or

(iii) If the student did not withdraw but ceased to be enrolled as at least a half-time student, the institution may make the late disbursement of a loan under the FFEL or Direct Loan programs to pay for educational costs that the institution determines the student incurred for the period in which the student was eligible.

(4) *Limitations.* (i) Generally, an institution may not make a late disbursement later than 120 days after the date of the institution's determination that the student withdrew, as provided under § 668.22, or, for a student who did not withdraw, 120 days after the date the student otherwise became ineligible. On an exception basis, and with the approval of the Secretary, an institution may make a late disbursement after the applicable 120-day period, if the reason the late disbursement was not made within the 120-day period was not the fault of the student.

(ii) An institution may not make a second or subsequent late disbursement of a loan under the FFEL or Direct Loan programs unless the student successfully completed the period of enrollment for which the loan was intended.

(iii) An institution may not make a late disbursement of a loan under the FFEL or Direct Loan programs if the student was a first-year, first-time borrower unless the student completed the first 30 days of his or her program of study. This limitation does not apply if the institution is exempt from the 30-day delayed disbursement requirements under § 682.604(c)(5)(i), (ii), or (iii) or § 685.303(b)(4)(i)(A), (B), or (C) of this chapter.

(iv) An institution may not make a late disbursement of a Federal Pell Grant unless it received a valid SAR or a valid ISIR for the student by the deadline date established by the Secretary in a notice published in the **Federal Register**.

16. Section 668.165 is amended:

A. By revising paragraph (a)(3);

B. By revising the Office of Management and Budget control number.

The revisions read as follows:

§ 668.165 Notices and authorizations.

(a) * * *

(3) The institution must send the notice described in paragraph (a)(2) of this section in writing no earlier than 30 days before, and no later than 30 days after, crediting the student's account at the institution.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0038)

§ 668.171 [Amended]

17. Section 668.171(b) is amended by:

A. Removing ''refunds'' and adding, in its place, ''returns of unearned title IV HEA program funds'' in paragraph (b)(2).

B. Removing ''and the payment of post-withdrawal disbursements under § 668.22'' in paragraph (b)(4)(i).

18. Section 668.173 is amended by:

A. Revising paragraphs (a) through (c).

B. Redesignating paragraph (d) as paragraph (f).

C. Adding new paragraphs (d) and (e).

D. Adding an Office of Management and Budget control number.

The revisions and additions read as follows:

§ 668.173 Refund reserve standards.

(a) *General.* The Secretary considers that an institution has sufficient cash reserves, as required under § 668.171(b)(2), if the institution—

(1) Satisfies the requirements for a public institution under § 668.171(c)(1);

(2) Is located in a State that has a tuition recovery fund approved by the Secretary and the institution contributes to that fund; or

(3) Returns, in a timely manner as described in paragraph (b) of this section, unearned title IV, HEA program funds that it is responsible for returning under the provisions of § 668.22 for a student that withdrew from the institution.

(b) *Timely return of title IV, HEA program funds.* In accordance with procedures established by the Secretary or FFEL Program lender, an institution returns unearned title IV, HEA funds timely if—

(1) The institution deposits or transfers the funds into the bank account it maintains under § 668.163 no later than 30 days after the date it determines that the student withdrew;

(2) The institution initiates an electronic funds transfer (EFT) no later than 30 days after the date it determines that the student withdrew;

(3) The institution initiates an electronic transaction, no later than 30 days after the date it determines that the student withdrew, that informs an FFEL lender to adjust the borrower's loan account for the amount returned; or

(4) The institution issues a check no later than 30 days after the date it determines that the student withdrew. However, the Secretary considers that the institution did not satisfy this requirement if—

(i) The institution's records show that the check was issued more than 30 days after the date the institution determined that the student withdrew; or

(ii) The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 45 days after the date the institution determined that the student withdrew.

(c) *Compliance thresholds.* (1) An institution does not comply with the reserve standard under § 668.173(a)(3) if, in a compliance audit conducted under § 668.23, an audit conducted by the Office of the Inspector General, or a program review conducted by the Department or guaranty agency, the auditor or reviewer finds—

(i) In the sample of student records audited or reviewed that the institution did not return unearned title IV, HEA program funds within the timeframes described in paragraph (b) of this section for 5% or more of the students in the sample. (For purposes of determining this percentage, the sample includes only students for whom the institution was required to return unearned funds during its most recently completed fiscal year.); or

(ii) A material weakness or reportable condition in the institution's report on internal controls relating to the return of unearned title IV, HEA program funds.

(2) The Secretary does not consider an institution to be out of compliance with the reserve standard under § 668.173(a)(3) if the institution is cited in any audit or review report because it did not return unearned funds in a timely manner for one or two students,

or for less than 5% of the students in the sample referred to in paragraph (c)(1)(i) of this section.

(d) *Letter of credit.* (1) Except as provided under paragraph (e)(1) of this section, an institution that can satisfy the reserve standard only under paragraph (a)(3) of this section, must submit an irrevocable letter of credit acceptable and payable to the Secretary if a finding in an audit or review shows that the institution exceeded the compliance thresholds in paragraph (c) of this section for either of its two most recently completed fiscal years.

(2) The amount of the letter of credit required under paragraph (d)(1) of this section is 25 percent of the total amount of unearned title IV, HEA program funds that the institution was required to return under § 668.22 during the institution's most recently completed fiscal year.

(3) An institution that is subject to paragraph (d)(1) of this section must submit to the Secretary a letter of credit no later than 30 days after the earlier of the date that—

(i) The institution is required to submit its compliance audit;

(ii) The Office of the Inspector General issues a final audit report;

(iii) The designated department official issues a final program review determination;

(iv) The Department issues a preliminary program review report or draft audit report, or a guaranty agency issues a preliminary report showing that the institution did not return unearned funds for more than 10% of the sampled students; or

(v) The Secretary sends a written notice to the institution requesting the letter of credit that explains why the institution has failed to return unearned funds in a timely manner.

(e) *Exceptions.* With regard to the letter of credit described in paragraph (d) of this section—

(1) An institution does not have to submit the letter of credit if the amount calculated under paragraph (d)(2) of this section is less than $5,000 and the institution can demonstrate that it has cash reserves of at least $5,000 available at all times.

(2) An institution may delay submitting the letter of credit and request the Secretary to reconsider a finding made in its most recent audit or review report that it failed to return unearned title IV, HEA program funds in a timely manner if—

(i)(A) The institution submits documents showing that the unearned title IV, HEA program funds were not returned in a timely manner solely because of exceptional circumstances beyond the institution's control and that the institution would not have exceeded the compliance thresholds under paragraph (c)(1) of this section had it not been for these exceptional circumstances; or

(B) The institution submits documents showing that it did not fail to make timely refunds as provided under paragraphs (b) and (c) of this section; and

(ii) The institution's request, along with the documents described in paragraph (e)(2)(i) of this section, is submitted to the Secretary no later than the date it would otherwise be required to submit a letter of credit under paragraph (d)(3).

(3) If the Secretary denies the institution's request under paragraph (e)(2) of this section, the Secretary notifies the institution of the date it must submit the letter of credit.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0022)

19. Section 668.174(c)(4) is revised to read as follows:

§ 668.174 Past performance.

* * * * *

(c) * * *

(4) ''Family member'' is defined in § 600.21(f) of this chapter.

§ 668.183 [Amended]

20. Section 668.183(c)(1) is amended as follows:

A. In paragraph (c)(1)(ii), by adding ''or'' after the semi-colon.

B. By removing paragraph (c)(1)(iii).

C. By redesignating paragraph (c)(1)(iv) as paragraph (c)(1)(iii).

§ 668.193 [Amended]

21. Section 668.193 is amended:

A. In paragraph (d)(1), by removing the last sentence.

B. By removing paragraph (f)(3).

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

22. The authority citation for part 673 continues to read as follows:

Authority: 20 U.S.C. 421–429, 1070b–1070b–3, and 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

23. Section 673.5(f) is revised to read as follows:

§ 673.5 Overaward.

* * * * *

(f) *Liability for and recovery of Federal Perkins loans and FSEOG overpayments.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, a student is liable for any Federal Perkins loan or FSEOG overpayment made to him or her. An FSEOG overpayment for purposes of this paragraph does not include the non-Federal share of an FSEOG award if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method.

(2) The institution is liable for a Federal Perkins loan or FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part or 34 CFR parts 668, 674, or 676. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund for a Federal Perkins loan overpayment or to its FSEOG account for an FSEOG overpayment.

(3) A student is not liable for, and the institution is not required to attempt recovery of, a Federal Perkins loan or FSEOG overpayment, nor is the institution required to refer an FSEOG overpayment to the Secretary, if the overpayment—

(i) Is less than $25; and

(ii) Is neither a remaining balance nor a result of the application of the overaward threshold in paragraph (d) of this section.

(4)(i) Except as provided in paragraph (f)(3) of this section, if an institution makes a Federal Perkins loan or FSEOG overpayment for which it is not liable, it shall promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to pay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the overpayment.

(ii) If a student objects to the institution's Federal Perkins loan or FSEOG overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted.

(5) Except as provided in paragraph (f)(3) of this section, if a student fails to repay an FSEOG overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the FSEOG overpayment after the institution has taken the action required by paragraph (f)(4) of this section, the institution must refer the FSEOG overpayment to the Secretary for

collection purposes in accordance with procedures required by the Secretary. After referring the FSEOG overpayment to the Secretary under this section, the institution need make no further effort to recover the overpayment.

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

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

25. Section 674.2(b) is amended:

A. By revising the definition of ''Making of a loan''.

B. By adding, in alphabetical order, a new definition of ''Master Promissory Note (MPN)''.

The revision and addition read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Making of a loan: When the institution makes the first disbursement of a loan to a student for an award year.

Master Promissory Note (MPN): A promissory note under which the borrower may receive loans for a single award year or multiple award years.

* * * * *

26. Section 674.9 is amended:

A. By removing paragraph (g).

B. By redesignating paragraphs (h), (i), (j), (k) and (l) as paragraphs (g), (h), (i), (j) and (k), respectively.

C. In newly redesignated paragraph (g)(3), by removing ''(h)(1) and (h)(2)'' and adding, in its place, ''(g)(1) and (g)(2)''; and by removing the period at the end of the last sentence and adding, in its place, a ''; and''.

D. By revising newly redesignated paragraph (j).

The revision reads as follows:

§ 674.9 Student eligibility.

* * * * *

(j) In the case of a borrower who is in default on a Federal Perkins Loan, NDSL or Defense loan, satisfies one of the conditions contained in § 674.5(c)(3)(i) or (ii) except that—

(1) For purposes of this section, voluntary payments made by the borrower under paragraph (i) of this section are those payments made directly by the borrower; and

(2) Voluntary payments do not include payments obtained by Federal offset, garnishment, or income or asset execution.

* * * * *

27. Section 674.16 is amended:

A. By revising paragraph (d)(2).

B. By adding a new paragraph (d)(3).

The revision and addition read as follows:

§ 674.16 Making and disbursing loans.

* * * * *

(d) * * *

(2) The institution shall ensure that each loan is supported by a legally enforceable promissory note as proof of the borrower's indebtedness.

(3) If the institution uses a Master Promissory Note (MPN), the institution's ability to make additional loans based on that MPN will automatically expire upon the earliest of—

(i) The date the institution receives written notification from the borrower requesting that the MPN no longer be used as the basis for additional loans;

(ii) Twelve months after the date the borrower signed the MPN if no disbursements are made by the institution under that MPN; or

(iii) Ten years from the date the borrower signed the MPN or the date the institution receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

* * * * *

§ 674.17 [Amended]

28. Section 674.17 is amended:

A. In paragraph (a), by removing in the introductory text ''one or more of''.

B. By removing paragraph (a)(2).

C. By redesignating paragraph (a)(3) as paragraph (a)(2).

D. In newly redesignated paragraph (a)(2), by removing ''transfer'' and adding, in its place, ''assignment''; and by removing ''Department of Education'' and adding, in its place, ''United States''.

E. In paragraph (b), by removing ''transfers'' and adding, in its place, ''assigns''.

F. By removing paragraphs (c), (d), and (e).

29. Section 674.19(e)(4) is revised to read as follows:

§ 674.19 Fiscal procedures and records.

* * * * *

(e) * * *

(4) *Manner of retention of promissory notes and repayment schedules.* An institution shall keep the original promissory notes and repayment schedules until the loans are satisfied. If required to release original documents in order to enforce the loan, the institution must retain certified true copies of those documents.

(i) An institution shall keep the original paper promissory note or original paper Master Promissory Note (MPN) and repayment schedules in a locked, fireproof container.

(ii) If a promissory note was signed electronically, the institution must store it electronically and the promissory note must be retrievable in a coherent format.

(iii) After the loan obligation is satisfied, the institution shall return the original or a true and exact copy of the note marked ''paid in full'' to the borrower, or otherwise notify the borrower in writing that the loan is paid in full, and retain a copy for the prescribed period.

(iv) An institution shall maintain separately its records pertaining to cancellations of Defense, NDSL, and Federal Perkins Loans.

(v) Only authorized personnel may have access to the loan documents.

30. Section 674.33(b) is amended:

A. By revising the introductory text following the heading in paragraph (b)(2).

B. By revising the text following the heading of paragraph (b)(3).

The revisions read as follows:

§ 674.33 Repayment.

* * * * *

(b) * * *

(2) * * * If a borrower has received loans from more than one institution and has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, the following rules apply:

* * * * *

(3) * * * If the borrower has notified the institution that he or she wants the minimum monthly payment determination to be based on payments due to other institutions, and if the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month.

* * * * *

31. Section 674.34 is amended:

A. In paragraph (e)(4), by removing ''(e)(9)'' and adding, in its place, ''(e)(10)''.

B. In paragraph (e)(5), by adding ''as determined under paragraph (e)(10) of this section'' after the first occurrence of ''burden''.

C. By revising paragraph (e)(10).

The revision reads as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans, NDSLs and Defense loans.

* * * * *

(e) * * *

(10) In determining a borrower's Federal education debt burden under paragraphs (e)(4) and (e)(5) of this section, the institution shall—

(i) If the Federal postsecondary education loan is scheduled to be repaid

in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly); or

(ii) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years.

* * * * *

§ 674.39 [Amended]

32. Section 674.39(a) is amended:

A. In the first sentence of the introductory text in paragraph (a), by adding ‘‘, except for loans for which a judgment has been secured’’ after ‘‘part’’.

B. In paragraph (a)(2), by removing ‘‘; and’’ and adding, in its place, a period.

C. By removing paragraph (a)(3).

33. Section 674.42 is amended:

A. By revising paragraph (a)(10).

B. By adding a new paragraph (a)(11).

C. By revising paragraph (b)(1) and the introductory text in paragraph (b)(2).

D. In paragraph (b)(2)(i), by removing ‘‘that school’’ and adding, in its place, ‘‘the institution’’.

E. By revising paragraph (b)(2)(iii).

F. In paragraph (b)(2)(v), by removing ‘‘in forceful terms’’.

G. In paragraph (b)(2)(vi), by removing ‘‘school’’ and adding, in its place, ‘‘institution’’.

H. In paragraph (b)(2)(vii), by removing ‘‘with’’ and adding, in its place, ‘‘for’’.

I. In paragraph (b)(2)(viii), by removing ‘‘corrections to the institution’s records’’ and adding, in its place, ‘‘current information’’; and by removing ‘‘and’’ following the semi-colon.

J. In paragraph (b)(2)(ix), by removing ‘‘with’’ and adding, in its place, ‘‘for’’; and by removing the period and adding, in its place, ‘‘; and’’.

K. By adding a new paragraph (b)(2)(x).

L. By removing paragraph (b)(3).

M. By redesignating paragraphs (b)(4) and (b)(5) as paragraphs (b)(3) and (b)(4), respectively.

N. By revising newly redesignated paragraph (b)(3).

O. In newly redesignated paragraph (b)(4), by removing ‘‘school’s’’ and adding, in its place, ‘‘institution’s’’.

The revisions and additions read as follows:

§ 674.42 Contact with the borrower.

(a) * * *

(10) The contact information of a party who, upon request of the borrower, will provide the borrower with a copy of his or her signed promissory note.

(11) An explanation that if a borrower is required to make minimum monthly repayments, and the borrower has received loans from more than one institution, the borrower must notify the institution if he or she wants the minimum monthly payment determination to be based on payments due to other institutions.

(b) * * * (1) An institution must ensure that exit counseling is conducted with each borrower either in person, by audiovisual presentation, or by interactive electronic means. The institution must ensure that exit counseling is conducted shortly before the borrower ceases at least half-time study at the institution. As an alternative, in the case of a student enrolled in a correspondence program or a study-abroad program that the institution approves for credit, the borrower may be provided with written counseling material by mail within 30 days after the borrower completes the program. If a borrower withdraws from the institution without the institution’s prior knowledge or fails to complete an exit counseling session as required, the institution must ensure that exit counseling is provided through either interactive electronic means or by mailing counseling materials to the borrower at the borrower’s last known address within 30 days after learning that the borrower has withdrawn from the institution or failed to complete exit counseling as required.

(2) The exit counseling must—

* * * * *

(iii) Suggest to the borrower debt-management strategies that would facilitate repayment;

* * * * *

(x) Inform the borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(3) If exit counseling is conducted through interactive electronic means, the institution must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

* * * * *

§ 674.43 [Amended]

34. Section 674.43(b)(2) is amended in the introductory text by removing ‘‘shall’’ and adding, in its place, ‘‘may’’.

§ 674.45 [Amended]

35. Section 674.45(a)(1) is amended by removing ‘‘defaulted account’’ and adding, in its place, ‘‘account as being in default’’.

§ 674.46 [Amended]

36. Section 674.46(a) is amended as follows:

A. In the introductory text of paragraph (a)(1), by removing ‘‘annually’’ and adding, in its place, ‘‘once every two years’’.

B. In paragraph (a)(1)(i), by removing ‘‘$200’’ and adding, in its place, ‘‘$500’’.

37. Section 674.47 is amended:

A. By removing paragraph (g)(1).

B. By redesignating paragraphs (g)(2), (g)(2)(i), and (g)(2)(ii) as paragraph (g) introductory text, paragraph (g)(1), and paragraph (g)(2) respectively.

C. In newly redesignated paragraph (g)(1), by removing the last ‘‘the’’ and adding, in its place, ‘‘this’’.

D. In the paragraph (h) heading, by removing ‘‘of less than $5’’.

E. By revising paragraph (h)(1).

F. By adding a new paragraph (h)(3).

The revision and addition read as follows:

§ 674.47 Costs chargeable to the Fund.

* * * * *

(h) * * *

(1) Notwithstanding any other provision of this subpart, an institution may write off an account, including outstanding principal, accrued interest, collection costs, and late charges, with a balance of—

(i) Less than $25; or

(ii) Less than $50 if, for a period of at least 2 years, the borrower has been billed for this balance in accordance with § 674.43(a).

* * * * *

(3) When the institution writes off an account, the borrower is relieved of all repayment obligations.

§ 674.50 [Amended]

38. Section 674.50 is amended:

A. In paragraph (e)(2)(ii), by adding ‘‘or’’ after the semicolon.

B. In paragraph (e)(3), by deleting ‘‘; or’’ at the end of the paragraph and adding, in its place, a period.

C. By removing paragraph (e)(4).

D. In paragraph (g)(2), by adding ‘‘Secretary may require the’’ after ‘‘The’’; and by removing ‘‘shall’’ and adding, in its place, ‘‘to’’.

PART 675—FEDERAL WORK-STUDY PROGRAMS

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

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

40. Section 675.2(b) is amended by revising the definition of ''Student services'' to read as follows:

§ 675.2 Definitions.

* * * * *

(b) * * *

Student services: Services that are offered to students that may include, but are not limited to, financial aid, library, peer guidance counseling, job placement, assisting an instructor with curriculum-related activities, security, and social, health, and tutorial services. Student services do not have to be direct or involve personal interaction with students. For purposes of this definition, facility maintenance, cleaning, purchasing, and public relations are never considered student services.

* * * * *

41. Section 675.21(b)(2)(i) is revised to read as follows:

§ 675.21 Institutional employment.

* * * * *

(b) * * *

(2) * * *

(i) Involve the provision of student services as defined in § 675.2(b) that are directly related to the work-study student's training or education;

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

43. Section 682.200(b) is amended:

A. By adding a sentence at the end of paragraph (2)(ii) of the definition of ''Lender'' to read as follows: ''For purposes of this paragraph, loans held in trust by a trustee lender are not considered part of the trustee lender's consumer credit function.''

B. In the definition of ''Master promissory note (MPN)'', by changing ''Master promissory note (MPN)'' to ''Master Promissory Note (MPN)''.

44. Section 682.204 is amended:

A. By adding new paragraphs (a)(8), (a)(9), (d)(7), and (d)(8).

B. In paragraph (l) by removing ''34 CFR 668.2'' and adding, in its place, ''34 CFR 668.3''.

The additions read as follows:

§ 682.204 Maximum loan amounts.

(a) * * *

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

* * * * *

(d) * * *

(7) Except as provided in paragraph (d)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(8) Except as provided in paragraph (d)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (d)(2) of this section.

* * * * *

45. Section 682.209(a) is amended by:

A. Removing the number ''45'' each time it appears in paragraphs (a)(3)(ii)(A), (a)(3)(ii)(B), and (a)(3)(ii)(C) and adding, in its place, the number ''60''.

B. Adding a new paragraph (a)(3)(iii).

C. Revising the last sentence in paragraph (a)(8)(iv).

The revisions and addition read as follows:

§ 682.209 Repayment of a loan.

(a) * * *

(3) * * *

(iii) When determining the date that the student was no longer enrolled on at least a half-time basis, the lender must use a new date it receives from a school, unless the lender has already disclosed repayment terms to the borrower and the new date is within the same month and year as the most recent date reported to the lender.

* * * * *

(8) * * *

(iv) * * * Subject to paragraph (a)(8)(iii) of this section, a borrower who makes such a request may notify the lender at any time to extend the repayment period to a minimum of 5 years.

* * * * *

46. Section 682.210 is amended by revising paragraphs (h)(2), (h)(3)(iv), (h)(4), (s)(6)(vii), and (s)(6)(ix) to read as follows:

§ 682.210 Deferment.

* * * * *

(h) * * *

(2) A borrower also qualifies for an unemployment deferment by providing to the lender a written certification, or an equivalent as approved by the Secretary, that—

(i) The borrower has registered with a public or private employment agency, if one is available to the borrower within a 50-mile radius of the borrower's current address; and

(ii) For all requests beyond the initial request, the borrower has made at least six diligent attempts during the preceding 6-month period to secure full-time employment.

(3) * * *

(iv) The initial period of unemployment deferment may be granted for a period of unemployment beginning up to 6 months before the date the lender receives the borrower's request, and may be granted for up to 6 months after that date.

(4) A lender may not grant an unemployment deferment beyond the date that is 6 months after the date the borrower provides evidence of the borrower's eligibility for unemployment insurance benefits under paragraph (h)(1) of this section or the date the borrower provides the written certification, or an approved equivalent, under paragraph (h)(2) of this section.

* * * * *

(s) * * *

(6) * * *

(vii) In determining a borrower's Federal education debt burden for purposes of an economic hardship deferment under paragraphs (s)(6)(iv) and (v) of this section, the lender shall—

(A) If the Federal postsecondary education loan is scheduled to be repaid in 10 years or less, use the actual monthly payment amount (or a proportional share if the payments are due less frequently than monthly);

(B) If the Federal postsecondary education loan is scheduled to be repaid in more than 10 years, use a monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been due on the loan if the loan had been scheduled to be repaid in 10 years; and

(C) Require the borrower to provide evidence that would enable the lender to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period.

* * * * *

(ix) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (s)(6)(iii) through (v) of this section, the lender must require the borrower to submit evidence showing the amount of the borrower's monthly income or a copy of the borrower's most recently filed Federal income tax return.

* * * * *

47. Section 682.211 is amended by:

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

B. Amending the introductory text of paragraph (f) by adding the words ''or would be due'' after the word ''overdue''.

C. Amending paragraph (f)(2) by removing the reference to paragraph ''(f)(10)'' and adding, in its place, ''(f)(11)''.

D. Revising paragraph (f)(11).

E. Redesignating paragraph (h)(3) as paragraph (h)(4).

F. Adding a new paragraph (h)(3).

The revisions and addition read as follows:

§ 682.211 Forbearance.

* * * * *

(b) A lender may grant forbearance if—

(1) The lender and the borrower or endorser agree to the terms of the forbearance and, unless the agreement was in writing, the lender sends, within 30 days, a notice to the borrower or endorser confirming the terms of the forbearance; or

(2) In the case of forbearance of interest during a period of deferment, if the lender informs the borrower at the time the deferment is granted that interest payments are to be forborne.

(c) A lender may grant forbearance for a period of up to one year at a time if both the borrower or endorser and an authorized official of the lender agree to the terms of the forbearance. If the lender and the borrower or endorser agree to the terms orally, the lender must notify the borrower or endorser of the terms within 30 days of that agreement.

* * * * *

(e) Except in the case of forbearance of interest payments during a deferment period, if a forbearance involves the postponement of all payments, the lender must contact the borrower or endorser at least once every six months during the period of forbearance to inform the borrower or endorser of—

(1) The outstanding obligation to repay;

(2) The amount of the unpaid principal balance and any unpaid interest that has accrued on the loan;

(3) The fact that interest will accrue on the loan for the full term of the forbearance; and

(4) The borrower's or endorser's option to discontinue the forbearance at any time.

(f) * * *

(11) For a period not to exceed 3 months when the lender determines that a borrower's ability to make payments has been adversely affected by a natural disaster, a local or national emergency as declared by the appropriate government agency, or a military mobilization.

* * * * *

(h) * * *

(3) *Written agreement.* The terms of the forbearance must be agreed to in writing—

(i) By the lender and the borrower for a forbearance under paragraphs (h)(1) or (h)(2)(ii)(A) of this section; or

(ii) By the lender and the borrower or endorser for a forbearance under paragraph (h)(2)(i) of this section.

* * * * *

§ 682.401 [Amended]

48. Section 682.401 is amended by adding a sentence after the heading of paragraph (b)(4) to read as follows: ''Except as provided in § 668.35(b) for a borrower with a defaulted loan on which a judgment has been obtained, reinstatement of Title IV eligibility for a borrower with a defaulted loan must be in accordance with this paragraph (b)(4).''

49. Section 682.402 is amended by:

A. Redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5), respectively.

B. Adding a new paragraph (a)(2).

C. Amending newly redesignated paragraph (a)(3) by removing the words ''or a Consolidation loan was obtained by a married couple,''.

D. Amending newly redesignated paragraph (a)(5)(iii) by removing the reference to paragraph ''(a)(4)(i) or (ii)'' and adding, in its place, ''(a)(5)(i) or (ii)''.

E. Adding a new paragraph (b)(6).

F. Revising paragraph (f)(4).

G. Revising paragraph (g)(1)(i).

H. Revising paragraph (h)(1)(i).

I. Revising paragraph (h)(3)(iii).

J. Revising paragraph (k)(2)(iii).

The revisions and additions read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

(a) * * *

(2) If a Consolidation loan was obtained jointly by a married couple, the amount of the Consolidation loan that is discharged if one of the borrowers dies or becomes totally and permanently disabled is equal to the portion of the outstanding balance of the Consolidation loan, as of the date the borrower died or became totally and permanently disabled, attributable to any of that borrower's loans that would have been eligible for discharge.

* * * * *

(b) * * *

(6) In the case of a Federal Consolidation Loan that includes a Federal PLUS or Direct PLUS loan borrowed for a dependent who has died, the obligation of the borrower or any endorser to make any further payments on the portion of the outstanding balance of the Consolidation Loan attributable to the Federal PLUS or Direct PLUS loan is discharged as of the date of the dependent's death.

* * * * *

(f) * * *

(4) *Proof of claim.* (i) Except as provided in paragraph (f)(4)(ii) of this section, the holder of the loan shall file a proof of claim with the bankruptcy court within—

(A) 30 days after the holder receives a notice of first meeting of creditors unless, in the case of a proceeding under chapter 7, the notice states that the borrower has no assets; or

(B) 30 days after the holder receives a notice from the court stating that a chapter 7 no-asset case has been converted to an asset case.

(ii) A guaranty agency that is a state guaranty agency, and on that basis may assert immunity from suit in bankruptcy court, and that does not assign any loans affected by a bankruptcy filing to another guaranty agency—

(A) Is not required to file a proof of claim on a loan already held by the guaranty agency; and

(B) May direct lenders not to file proofs of claim on loans guaranteed by that agency.

* * * * *

(g) * * *

(1) * * *

(i) The original or a true and exact copy of the promissory note.

* * * * *

(h) * * *

(1) * * *

(i) The guaranty agency shall review a death, disability, bankruptcy, closed school, or false certification claim promptly and shall pay the lender on an approved claim the amount of loss in accordance with paragraphs (h)(2) and (h)(3) of this section—

(A) Not later than 45 days after the claim was filed by the lender for death and bankruptcy claims; and

(B) Not later than 90 days after the claim was filed by the lender for disability, closed school, or false certification claims.

* * * * *

(3) * * *

(iii) During the period required by the guaranty agency to approve the claim and to authorize payment or to return the claim to the lender for additional documentation not to exceed—

(A) 45 days for death or bankruptcy claims; or

(B) 90 days for disability, closed school, or false certification claims.

* * * * *

(k) * * *

(2) * * *

(iii) In the case of a Consolidation loan, the borrower (or one of the co-makers) has died, is determined to be totally and permanently disabled under § 682.402(c), or has filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period;

* * * * *

50. Section 682.405 is amended by:

A. Adding the words ‘‘, except for loans for which a judgment has been obtained,’’ after ‘‘defaulted loans’’ in paragraph (a)(1).

B. Removing paragraph (a)(4).

C. Revising the fifth sentence in paragraph (b)(1).

The revision reads as follows:

§ 682.405 Loan rehabilitation agreement.

* * * * *

(b) * * *

(1) * * * Voluntary payments are those made directly by the borrower, and do not include payments obtained by Federal offset, garnishment, income or asset execution, or after a judgment has been entered on a loan. * * *

* * * * *

51. Section 682.414 is amended by revising paragraph (a)(5)(ii) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) * * *

(5) * * *

(ii) If a promissory note was signed electronically, the guaranty agency or lender must store it electronically and it must be retrievable in a coherent format.

* * * * *

§ 682.603 [Amended]

52. Sections 682.603(f)(1)(ii)(B) and (f)(2)(i) are amended by removing ‘‘34 CFR 668.2’’ and adding, in its place, ‘‘34 CFR 668.3’’.

53. Section 682.604 is amended by:

A. Revising paragraph (f)(1).

B. Revising the introductory text of paragraph (f)(2).

C. Revising paragraph (f)(2)(iii).

D. In paragraph (f)(2)(iv), removing the period and adding, in its place, ‘‘; and’’.

E. Adding a new paragraph (f)(2)(v).

F. Revising paragraph (f)(3).

G. Revising paragraph (g)(1).

H. Revising paragraph (g)(2).

I. Revising paragraph (g)(3).

The revisions and addition read as follows:

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

* * * * *

(f) * * *

(1) A school must ensure that initial counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means prior to its release of the first disbursement, unless the student borrower has received a prior Federal Stafford, Federal SLS, or Direct subsidized or unsubsidized loan. A school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions regarding those programs. As an alternative, in the case of a student borrower enrolled in a correspondence program or a student borrower enrolled in a study-abroad program that the home institution approves for credit, the counseling may be provided through written materials, prior to releasing those loan proceeds.

(2) The initial counseling must—

* * * * *

(iii) Describe the likely consequences of default, including adverse credit reports, Federal offset, and litigation;

* * * * *

(v) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Stafford loan borrowers at the same school or in the same program of study at the same school.

(3) If initial counseling is conducted through interactive electronic means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

* * * * *

(g) * * *

(1) A school must ensure that exit counseling is conducted with each Stafford loan borrower either in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that this counseling is conducted shortly before the student borrower ceases at least half-time study at the school, and that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program that the home institution approves for credit, written counseling materials may be provided by mail within 30 days after the student borrower completes the program. If a student borrower withdraws from school without the school's prior knowledge or fails to complete an exit counseling session as required, the school must ensure that exit counseling is provided through either interactive electronic means or by mailing written counseling materials to the student borrower at the student borrower's last known address within 30 days after learning that the student borrower has withdrawn from school or failed to complete the exit counseling as required.

(2) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of student borrowers who have obtained Stafford or SLS loans for attendance at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment options, including standard, graduated, extended, and

income-sensitive repayment plans and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Include the matters described in paragraph (f)(2) of this section;

(v) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial discharge of a loan;

(vi) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known). The school must ensure that this information is provided to the guaranty agency or agencies listed in the student borrower's records within 60 days after the student borrower provides the information;

(vii) Review for the student borrower information on the availability of the Student Loan Ombudsman's office; and

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(3) If exit counseling is conducted by electronic interactive means, the school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the counseling.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

55. Section 685.102(b) is amended:

A. By revising the definition of ''Master promissory note (MPN)''.

B. In the second sentence of paragraph (3) in the definition of ''Satisfactory repayment arrangement'', by removing '', regardless of whether there is a judgment against the borrower,''; and by removing ''income tax'' and adding, in its place, ''Federal''.

The revision reads as follows:

§ 685.102 Definitions.

* * * * *

(b) * * *

Master Promissory Note (MPN): (1) A promissory note under which the borrower may receive loans for a single academic year or multiple academic years.

(2) For MPNs processed by the Secretary before July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be disbursed;

(ii) One year after the date of the borrower's first anticipated disbursement if no disbursement is made during that twelve-month period; or

(iii) Ten years after the date of the first anticipated disbursement, except that a remaining portion of a loan may be disbursed after this date.

(3) For MPNs processed by the Secretary on or after July 1, 2003, loans may no longer be made under an MPN after the earliest of—

(i) The date the Secretary or the school receives the borrower's written notice that no further loans may be made;

(ii) One year after the date the borrower signed the MPN or the date the Secretary receives the MPN, if no disbursements are made under that MPN; or

(iii) Ten years after the date the borrower signed the MPN or the date the Secretary receives the MPN, except that a remaining portion of a loan may be disbursed after this date.

* * * * *

56. Section 685.203 is amended:

A. By adding new paragraphs (a)(8) and (a)(9).

B. By adding new paragraphs (c)(2)(viii) and (c)(2)(ix).

C. By adding in paragraph (h) '', as defined in 34 CFR 668.3'' after ''year''.

The additions read as follows:

§ 685.203 Loan limits.

(a) * * *

(8) Except as provided in paragraph (a)(4) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(9) Except as provided in paragraph (a)(4) of this section—

(i) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(1) of this section.

(ii) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (a)(2) of this section.

* * * * *

(c) * * *

(2) * * *

(viii) Except as provided in paragraph (c)(2)(iv) of this section, an undergraduate student who is enrolled in a program that is one academic year or less in length may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(ix) Except as provided in paragraph (c)(2)(iv) of this section—

(A) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has not successfully completed the first year of that program may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(i) of this section.

(B) An undergraduate student who is enrolled in a program that is more than one academic year in length and who has successfully completed the first year of that program, but has not successfully completed the second year of the program, may not borrow an amount for any academic year of study that exceeds the amounts in paragraph (c)(2)(ii) of this section.

* * * * *

57. Section 685.211(f) is revised to read as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(f) *Rehabilitation of defaulted loans.* (1) A defaulted Direct Loan, except for a loan on which a judgment has been obtained, is rehabilitated if the borrower makes 12 consecutive, on-time, reasonable, and affordable monthly payments. The amount of such a payment is determined on the basis of the borrower's total financial circumstances. If a defaulted loan is rehabilitated, the Secretary instructs any credit bureau to which the default was reported to remove the default from the borrower's credit history.

(2) A defaulted Direct Loan on which a judgment has been obtained may not be rehabilitated.

58. Section 685.212 is amended by adding a new paragraph (a)(3) to read as follows:

§ 685.212 Discharge of a loan obligation.

(a) * * *

(3) In the case of a Direct PLUS Consolidation Loan that repaid a Direct PLUS Loan or a Federal PLUS Loan obtained on behalf of a student who dies, the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the student's death, attributable to that Direct PLUS Loan or Federal PLUS Loan.

* * * * *

59. Section 685.220(l)(3) is revised to read as follows:

§ 685.220 Consolidation.

* * * * *

(l) * * *

(3) *Discharge.* (i) If a borrower dies and the Secretary receives the documentation described in § 685.212(a), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date of the borrower's death, attributable to any of that borrower's loans that were repaid by the consolidation loan.

(ii) If a borrower meets the requirements for total and permanent disability discharge under § 685.212(b), the Secretary discharges an amount equal to the portion of the outstanding balance of the consolidation loan, as of the date the borrower became totally and permanently disabled, attributable to any of that borrower's loans that were repaid by the consolidation loan.

(iii) If a borrower meets the requirements for discharge under § 685.212(d), (e), or (f) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary discharges the portion of the consolidation loan equal to the amount of the loan that would be eligible for discharge under the provisions of § 685.212(d), (e), or (f) as applicable, and that was repaid by the consolidation loan.

(iv) If a borrower meets the requirements for loan forgiveness under § 685.212(h) on a loan that was consolidated into a joint Direct Consolidation Loan, the Secretary repays the portion of the outstanding balance of the consolidation loan attributable to the loan that would be eligible for forgiveness under the provisions of § 685.212(h), and that was repaid by the consolidation loan.

§ 685.301 [Amended]

60. Sections 685.301(a)(9)(i)(B)(*2*) and (a)(9)(ii)(A) are amended by removing ''34 CFR 668.2'' and adding, in its place, ''34 CFR 668.3''.

61. Section 685.304 is amended:

A. By revising paragraphs (a)(1), (a)(2), (a)(3), and (a)(5).

B. In paragraph (b)(1), by removing ''conduct'' and adding, in its place, ''ensure that''; by adding ''is conducted'' after ''counseling''; and by adding ''Loan'' after ''Subsidized''.

C. In paragraph (b)(2), by adding, in the first sentence, ''exit'' after ''The''; by removing, in the second sentence, ''knowledge of'' and adding, in its place, ''expertise in''; by removing, in the last sentence, ''the school may provide''; and by adding, in the last sentence, ''may be provided'' after the second occurrence of ''borrower''.

D. In paragraph (b)(3), by removing ''school must provide''; and by adding ''must be provided'' after the second occurrence of ''counseling''.

E. By revising paragraph (b)(4).

F. By revising paragraph (b)(5).

G. By redesignating paragraph (b)(6) as paragraph (b)(7).

H. By adding a new paragraph (b)(6).

The revisions and addition read as follows:

§ 685.304 Counseling borrowers.

(a) * * * (1) Except as provided in paragraph (a)(4) of this section, a school must ensure that initial counseling is conducted with each Direct Subsidized Loan or Direct Unsubsidized Loan student borrower prior to making the first disbursement of the proceeds of a loan to a student borrower unless the student borrower has received a prior Direct Subsidized, Direct Unsubsidized, Federal Stafford, or Federal SLS Loan.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the school must ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the student borrower's questions. As an alternative, in the case of a student borrower enrolled in a correspondence program or a study-abroad program approved for credit at the home institution, the student borrower may be provided with written counseling materials before the loan proceeds are disbursed.

(3) The initial counseling must—

(i) Explain the use of a Master Promissory Note (MPN);

(ii) Emphasize to the borrower the seriousness and importance of the repayment obligation the student borrower is assuming;

(iii) Describe the likely consequences of default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;

(iv) Inform the student borrower of sample monthly repayment amounts based on a range of student levels of indebtedness or on the average indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers at the same school or in the same program of study at the same school; and

(v) Emphasize that the student borrower is obligated to repay the full amount of the loan even if the student borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the student borrower purchased from the school.

* * * * *

(5) If initial counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the initial counseling.

* * * * *

(b) * * *

(4) The exit counseling must—

(i) Inform the student borrower of the average anticipated monthly repayment amount based on the student borrower's indebtedness or on the average indebtedness of Direct Subsidized Loan and Direct Unsubsidized Loan borrowers at the same school or in the same program of study at the same school;

(ii) Review for the student borrower available repayment options including the standard repayment, extended repayment, graduated repayment, and income contingent repayment plans, and loan consolidation;

(iii) Suggest to the student borrower debt-management strategies that would facilitate repayment;

(iv) Explain to the student borrower how to contact the party servicing the student borrower's Direct Loans;

(v) Meet the requirements described in paragraphs (a)(3)(i), (ii), (iii), and (v) of this section;

(vi) Review for the student borrower the conditions under which the student borrower may defer or forbear repayment or obtain a full or partial discharge of a loan;

(vii) Review for the student borrower information on the availability of the Department's Student Loan Ombudsman's office;

(viii) Inform the student borrower of the availability of title IV loan information in the National Student Loan Data System (NSLDS); and

(ix) Require the student borrower to provide current information concerning name, address, social security number, references, and driver's license number and State of issuance, as well as the

student borrower's expected permanent address, the address of the student borrower's next of kin, and the name and address of the student borrower's expected employer (if known).

(5) The school must ensure that the information required in paragraph (b)(4)(ix) of this section is provided to the Secretary within 60 days after the student borrower provides the information.

(6) If exit counseling is conducted through interactive electronic means, a school must take reasonable steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

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

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

§ 690.61 [Amended]

63. In paragraph (b) by removing ''34 CFR 668.60,'' and adding, in its place, ''the verification provisions of § 668.60 and the late disbursement provisions of § 668.164(g) of this chapter,''.

64. Section 690.75(a) is revised to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Federal Pell Grant to an eligible student only after it determines that the student—

(1) Qualifies as an eligible student under 34 CFR Part 668, Subpart C;

(2) Is enrolled in an eligible program as an undergraduate student; and

(3) If enrolled in a credit hour program without terms or a clock hour program, has completed the payment period as defined in § 668.4 for which he or she has been paid a Federal Pell Grant.

* * * * *

65. Section 690.79 is revised to read as follows:

§ 690.79 Liability for and recovery of Federal Pell Grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, a student is liable for any Federal Pell Grant overpayment made to him or her.

(2) The institution is liable for a Federal Pell Grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or 34 CFR Part 668. The institution must restore an amount equal to the overpayment to its Federal Pell Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a Federal Pell Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes a Federal Pell Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the Federal Pell Grant overpayment.

(2) If a student objects to the institution's Federal Pell Grant overpayment determination on the grounds that it is erroneous, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay a Federal Pell Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the Federal Pell Grant overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection purposes in accordance with procedures required by the Secretary. After referring the Federal Pell Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070a)

PART 694—GAINING EARLY AWARENESS AND READINESS FOR UNDERGRADUATE PROGRAMS (GEAR UP)

66. The authority citation for part 694 continues to read as follows:

Authority: 20 U.S.C. 1070a–21 to 1070a–28.

67. Section 694.10(e) is revised to read as follows:

§ 694.10 What are the requirements for awards under the program's scholarship component under section 404E of the HEA?

* * * * *

(e) *Other grant assistance.* A GEAR UP scholarship may not be considered in the determination of a student's eligibility for other grant assistance provided under title IV of the HEA.

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