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DEPARTMENT OF EDUCATION

[Docket ID ED–2009–OPE–0005]

34 CFR Parts 600, 668, 675, 686, 690, and 692

RIN 1840–AC99

General and Non-Loan Programmatic Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for Institutional Eligibility Under the Higher Education Act of 1965, the Student Assistance General Provisions, the Federal Work-Study (FWS) Programs, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Leveraging Educational Assistance Partnership Program (LEAP) to implement various general and non-loan provisions of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Opportunity Act of 2008 (HEOA) and other recently enacted legislation.

DATES: *Effective Date:* These regulations are effective July 1, 2010.

Implementation date: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA, that institutions may, at their discretion, choose to implement the new and amended provisions of §§ 600.32(d), 668.28, 668.23(d)(4), 668.43, 675.16, 675.18(g), 675.18(i), 686.41, and 686.42 on or after November 1, 2009. For further information, see the section entitled *Implementation Date of These Regulations* in the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: For general information or information regarding these regulations related to the non-title IV revenue requirement (90/10), John Kolotos. Telephone: (202) 502–7762 or via the Internet at: *John.Kolotos@ed.gov*.

For information related to all Federal Pell Grant Program issues and the LEAP/GAP Program, Fred Sellers and Jacquelyn Butler. Telephone: (202) 502–7502 and (202) 502–7890, respectively or via the Internet at: *Fred.Sellers@ed.gov* or *Jacquelyn.Butler@ed.gov*.

For information related to the provisions for readmission for servicemembers, teach-outs, peer-to-peer file sharing, baccalaureate in liberal arts, and institutional plans for improving the academic program, Wendy Macias. Telephone: (202) 502–7526 or via the Internet at: *Wendy.Macias@ed.gov*.

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For information related to the provisions for fire safety standards, missing students procedures, hate crime reporting, emergency response and evacuation, and students with intellectual disabilities, Jessica Finkel. Telephone: (202) 502–7647 or via the Internet at: *Jessica.Finkel@ed.gov*.

For information related to the provisions for extenuating circumstances under the TEACH Grant Program, Jacquelyn Butler. Telephone: (202) 502–7890 or via the Internet at: *Jacquelyn.Butler@ed.gov*.

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

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SUPPLEMENTARY INFORMATION: On August 21, 2009, the Secretary published a notice of proposed rulemaking (NPRM) for general and non-loan programmatic issues in the **Federal Register** (74 FR 42380).

In the preamble to the NPRM, the Secretary discussed on pages 42383 through 42415 the major regulations proposed in that document to implement provisions of the HEOA, including the following:

- Amending §§ 690.63(h), 690.64, and 690.67 to establish the conditions under which students may receive up to two Federal Pell Grant Scheduled Awards during a single award year.
- Amending §§ 686.12(c), 686.41, and 686.42(c) to establish the extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation.
- Amending § 675.18(g) to permit institutions to use FWS funds to compensate students employed in projects that teach civics in school, raise awareness of government functions or resources, or increase civic participation.
- Amending § 675.18 by adding paragraph (i) to allow institutions located in major disaster areas to make FWS payments to disaster-affected students.
- Amending §§ 675.41 and 675.43 to revise definitions and terms relating to work colleges.
- Adding § 668.28 to establish the requirement that proprietary institutions derive at least 10 percent of their revenue from sources other than Title IV, HEA program funds and specify how institutions calculate the revenue percentage.
- Amending § 668.41(a) and (d) and § 668.45 to expand the information that institutions must make available to prospective and enrolled students to include information on: the employment and placement of students; the retention rates of first-time, full-time undergraduate students; the placement rate for any program offered by the institution, if the institution calculates this rate; and the completion and graduation rate data that is disaggregated by gender, race, and grant or loan assistance.
- Amending § 668.41(e) to provide that institutions that maintain on-campus housing facilities must publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department.
- Amending § 668.46 by adding paragraph (h) to require institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information.
- Amending § 668.46(c) to expand the list of crimes that institutions must include in the hate crimes statistics reported to the Department.
- Amending § 668.46 by adding paragraph (g) to require institutions to include in their annual security report a statement of emergency response and evacuation procedures.
- Adding subpart O to 34 CFR part 668, to specify the conditions under which students with intellectual disabilities may receive Federal Pell Grant, FWS, and FSEOG Program funds.
- Adding § 668.18 to establish requirements under which an institution must readmit servicemembers to the same academic status they had when they last attended the institution.
- Amending § 600.32(d) to provide that an institution that conducts a teach-out at a site of a closed institution may,

under certain conditions, establish that site as an additional location.

• Amending § 600.5(a) and (e) to include in the definition of ''proprietary institution of higher education'' an institution that provides a program leading to a baccalaureate degree in liberal arts, if the institution provided that program since January 1, 2009, and has been accredited by a regional accrediting agency since October 1, 2007, or earlier.

• Amending § 668.14(b) to provide that an institution must have developed and implemented written plans to effectively combat unauthorized distribution of copyrighted material and that the institution will offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property.

• Amending § 668.43(a) to include, as part of the information an institution must make available to prospective and enrolled students, a description of any plans the institution has to improve its academic program.

• Amending § 692.10(b) to provide that the non-Federal share of student grants or work-study jobs under the LEAP Program must be State funds and that the non-Federal share no longer has to come from a direct appropriation of State funds.

• Amending § 692.21(k) to provide that the State program must notify students that grants are LEAP Grants that are funded by the Federal Government, the State, and, for LEAP Grants to students under the new Grants for Access and Persistence (GAP) Program, other contributing partners.

• Adding subpart C to 34 CFR part 692 to establish the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program.

Technical Amendments

In addition to the changes necessary to implement provisions of the HEOA, these final regulations also incorporate technical amendments made to the HEA by The Higher Education Technical Corrections (Pub. L. 111–39), enacted on July 1, 2009. These changes are as follows: In § 690.75(e) we proposed that a student whose parent was in the Armed Forces and died in Iraq or Afghanistan could receive the maximum Federal Pell Grant eligibility if the student was under 24 years old or enrolled in an institution of higher education at the time the parent died, in accordance with section 401(f)(4) of the HEA, as amended by the HEOA. However, Public Law 111–39 removed section 401(f)(4) from the HEA and added new sections 473(b) and 420R effective July 1, 2009. Section 401(f)(4) provided that, for purposes of Federal Pell Grants only, a student was deemed to have an expected family contribution (EFC) of zero if the student's parent was in the Armed Forces and died in Iraq or Afghanistan when the student was under 24 years old or enrolled in an institution of higher education at the time the parent died.

Section 473(b) was added to Part F—Need Analysis of the HEA and provides that, beginning with the 2009–2010 and succeeding award years, each student with a Federal Pell Grant-eligible EFC whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, will be determined to have an EFC of zero that will generally apply to all Title IV, HEA programs. Because part F of the HEA, where these changes are reflected, is subject to section 478(a) of the HEA, which generally prohibits regulating the requirements in part F, we are removing proposed § 690.75(e).

Section 420R of the HEA establishes a new, non-need-based program called the Iraq and Afghanistan Service Grants Program (IASG Program) starting in the 2010–2011 award year. To qualify for an IASG, a student must have a parent or guardian who died as a result of military service in Iraq or Afghanistan after September 11, 2001, and must be, at the time of the parent or guardian's death, less than 24 years of age or enrolled at an institution of higher education. A qualifying student who is not eligible for a Federal Pell Grant would be eligible to receive an IASG that is the same amount as a maximum Federal Pell Grant to assist in paying the student's cost of attendance at an institution of higher education. Grants under the IASG Program may not exceed the student's cost of attendance, and payments are adjusted like Federal Pell Grants if the student is enrolled less than full-time; unlike Federal Pell Grants, IASG Program grants are not considered to be estimated financial assistance. Under this program, the student's EFC will not be changed as a result of a parent or guardian's service. Regulations are necessary to implement this Title IV, HEA program. However, section 409 of Public Law 111–39 waives the provisions of sections 482 and 492 of the HEA concerning the master calendar for regulatory effective dates and the requirement to use negotiated rulemaking to formulate regulations for the IASG Program. We, therefore, expect to initiate the regulatory process without negotiated rulemaking and adopt the necessary regulations that would be effective on July 1, 2010, for the 2010–2011 award year.

• Section 401(a)(6) of Public Law 111–39 also amended section 415E(b)(1)(B) of the HEA governing allotments to States under the Grants for Access and Persistence Program (GAP). The allotment formula provides that a State with a prior year allotment shall receive not less than that amount in the next year's allotment. The HEA provides that, if a State received an allotment for 2010–2011 under 34 CFR part 692, subpart B, the Special Leveraging Educational Assistance Partnership Program (SLEAP), the State's 2011–2012 allotment for the GAP Program shall not be less than its 2010–2011 SLEAP allotment. We are revising § 692.110(a) to reflect this statutory change. We are also revising appendix A to subpart C of part 692 that provides a case study illustrating the requirements for allotting funds under the GAP Program to reflect these changes to the regulations.

We have also made a number of minor technical corrections and conforming changes. Changes that are statutory or that involve only minor technical corrections are generally not discussed in the *Analysis of Comments and Changes* section.

Waiver of Proposed Rulemaking for Additional Conforming Changes

These final regulations incorporate a statutory change made to the HEA by the HEOA that was not included on Team V's negotiating agenda or in the NPRM published on August 21, 2009. However, this statutory change in section 485(h) of the HEA is referenced in § 602.24 of the Team III (Accreditation) final regulations published in the **Federal Register** as Docket ID ED–2009–OPE–0009. We are amending § 668.43(a) of these regulations to reflect the statutory provisions by adding new paragraph (a)(11).

We are also amending § 690.6 by adding paragraph (e) to reflect a statutory change made by the HEOA to section 401(c)(5) of the HEA. Section 690.6(e) provides that, if a student receives a Federal Pell Grant for the first time on or after July 1, 2008, the student may receive no more than the equivalent of nine Scheduled Awards.

Because these amendments implement changes to the HEA that were not negotiated, we do not discuss them in the *Analysis of Comments and Changes* section.

Under the Administrative Procedure Act (5 U.S.C. 553) (APA), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to issuing final regulations. In addition, all Department regulations for programs authorized under title IV of the HEA are subject to the negotiated rulemaking requirements of section 492 of the HEA. However, both the APA and the HEA provide for exemptions from these rulemaking requirements. The APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. Similarly, section 492 of the HEA provides that the Secretary is not required to conduct negotiated rulemaking for Title IV, HEA program regulations if the Secretary determines that applying that requirement is impracticable, unnecessary, or contrary to the public interest within the meaning of the HEA.

Although the regulations implementing the HEOA are subject to the APA's notice-and-comment and the HEA's negotiated rulemaking requirements, the Secretary determined that it was unnecessary to conduct negotiated rulemaking or notice-and-comment rulemaking on the changes needed in § 668.43. These changes simply amend the Department's regulations to reflect statutory changes made by the HEOA to paragraph (h) of section 485 of the HEA, and these changes are already effective. The Secretary does not have discretion in whether or how to implement these changes. Accordingly, negotiated rulemaking and notice-and-comment rulemaking are unnecessary.

Implementation Date of These Regulations

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

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the Title IV, HEA programs, the Secretary is using the authority granted him under section 482(c) of the HEA to designate the following new and amended provisions for early implementation, at the discretion of each institution, lender, guaranty agency, or servicer, as appropriate:

- The closed school teach out provisions in § 600.32(d).
- The readmission requirements for returning servicemembers in § 668.18.
- The 90/10 revenue requirements in §§ 668.28 and 668.23(d)(4).
- The institutional information requirements in § 668.43.
- The FWS provisions in §§ 675.16, 675.18(g), and 675.18(i).
- The teach grant provisions regarding extenuating circumstances in §§ 686.12, 686.41, and 686.42.

In addition, the revisions to §§ 690.63, 690.64, and 690.67 of the Federal Pell Grant Program regulations may apply to the crossover payment period that is in both the 2009–10 and 2010–11 award years, *i.e.,* a payment period that includes June 30, 2010, and July 1, 2010. If an institution does not implement these regulations prior to July 1, 2010, but, prior to July 1, 2010, designates a student's 2010 crossover payment period as being in the 2009–10 award year, the Secretary does not consider these revisions to be applicable to the crossover payment period. Nothing will prevent the institution from subsequently designating the 2010 payment period as being in the 2009–10 award year with the revisions to §§ 690.63, 690.64, and 690.67 then being applicable.

Analysis of Comments and Changes

Except as noted under *Waiver of Proposed Rulemaking for Additional Conforming 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 must 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. The negotiated rulemaking committee did not reach consensus on the proposed regulations that were published on August 21, 2009. The Secretary invited comments on the proposed regulations by September 21, 2009. More than 113 parties submitted comments, a number of which were substantially similar. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

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

Part 600 Institutional Eligibility Under the Higher Education Act of 1965, as Amended

Definition of Baccalaureate Liberal Arts Programs Offered by Proprietary Institutions (§ 600.5)

Comments: One commenter supported the proposed change, stating that it was a reasonable way to clarify the term *program leading to a baccalaureate degree in liberal arts.* One commenter stated that the requirement that an institution ''has provided that program since January 1, 2009'' should be interpreted to mean that any new liberal arts program added from January 1, 2009, forward will qualify an otherwise eligible institution as an eligible proprietary institution, so long as the institution has been accredited by a recognized regional accrediting agency or association since October 1, 2007, or earlier.

Discussion: The Department does not agree that the requirement that the institution ''has provided that program since January 1, 2009'' should be interpreted to mean that any new liberal arts program added from January 1, 2009, forward will qualify an otherwise eligible institution as an eligible proprietary institution. Rather, the requirement means that an institution was providing the program (*i.e.,* was enrolling students in the program) on January 1, 2009, and has continued to do so.

Changes: Section 600.5(a)(5)(i)(B)(*1*) has been revised to clarify that an institution meets the definition of a *proprietary institution of higher education* if, in addition to being accredited by a recognized regional accrediting agency or association continuously since October 1, 2007, it has provided a program leading to a baccalaureate degree in liberal arts continuously since January 1, 2009.

Institutional Requirements for Teach-Outs and Eligibility and Certification Procedures (§§ 600.2, 600.32, 668.14)

Comments: Several commenters supported the proposed changes. One commenter stated that § 600.32(d) should be expanded to provide that the exemptions from the two-year in existence requirement, the assumption of liabilities, and the assumption of the cohort default rate apply when an institution conducts a teach-out at an institution that closes because a guaranty agency initiated an action to limit, suspend, or terminate (LS&T) the participation of an institution, or took an emergency action against the institution. One commenter explained that a closing can be a very confusing time for students if they were not given accurate information about what was happening at their institution, and urged the Department to monitor closely the process for establishing an additional location under these regulations. The commenter noted that accurate and effective communication to students is especially critical when the teach-out institution is establishing a permanent location at a closed institution. The commenter asserted that an institution establishing a permanent location at the site of a closed institution must be able to provide a teach-out option that meets appropriate quality standards even in cases when the prior institution did not meet these standards. The commenter stated that the mere submission of a teach-out plan should not be viewed as evidence that these standards were met for purposes of the closed school discharge.

Discussion: LS&T and emergency actions initiated by a guaranty agency against an institution are promptly reported to the Department, and the Department investigates those reports to determine whether to initiate a separate LS&T or emergency action against the institution. Therefore, we do not believe it is necessary to include as a trigger an LS&T or emergency action initiated by a guaranty agency that would provide the two-year requirement, liability, and default rate exemptions to an institution conducting a teach-out at a closed institution. Because of the interplay between the actions taken by a guaranty agency and the Department, there may be some instances when an institution may close prior to the Department initiating an LS&T or emergency action. In other instances, an institution may close precipitously before the Department has time to initiate an appropriate action under the circumstances. To address these instances, the final regulations have been modified so that the action taken by the Department may be initiated after the institution closes. The Department recognizes that a school closure and teach-out can be a confusing time for students, and intends to work closely with the States and accrediting agencies to make sure that students are given accurate information about their options during this transition. The opportunity for another institution to perform the teach-out, and open a permanent location under this exemption, should also ensure that the teach-out is adequately staffed and designed to serve the students that attended the closed school.

Changes: Section 600.32(d)(1)(i) is revised to clarify that an institution that conducts a teach-out at a site of a closed institution may apply to have that site approved as an additional location if the closed institution ceased operations because the Secretary has taken an LS&T or emergency action, regardless of whether the Secretary took that action before or after the institution closed.

Part 668 Student Assistance General Provisions

Readmission Requirements for Servicemembers (§ 668.18)

Comments: One commenter supported the proposed regulations, including the proposed requirement limiting the institutional charges that an institution may charge a returning servicemember. Several commenters opposed the proposed requirement limiting the institutional charges that an institution may charge a returning servicemember because they stated it would be administratively and financially burdensome for institutions. For the same reason, some of these commenters also opposed the requirement that an institution waive charges for previously purchased equipment for the first academic year in which the servicemember returns if the returning servicemember is readmitted to the same program for the same reason. Many of these commenters asserted that, because many of the affected servicemembers will receive full tuition and fee benefits under the Post-9/11 GI Bill, charging the returning servicemember the current institutional charges for a program, rather than the same charges that the returning servicemember was or would have been assessed for the academic year during which he or she left the institution, will not penalize the student for having left to serve in the uniform services. One commenter added that this argument is supplemented by the fact that at least one State waives any tuition charges not paid by the GI Bill at public universities. One of these commenters stated that limiting charges to the first year only would create an unrealistic expectation for returning servicemembers for the full cost of the program. A few of the commenters stated that limiting institutional charges for returning servicemembers would be unfair to other students at the institution who would assume higher costs, or noted that the proposed requirement could preempt State requirements.

Several commenters asserted that the forced manual billing determinations that the regulations would require of institutions would be unduly burdensome as the billing software used by most institutions, which uses pre-programmed data, including current year charges, does not accommodate special case situations, such as the proposed regulations would create. Specifically, a few commenters noted that institutions would be forced to maintain multi-faceted data tables over an undetermined number of years to recreate the prior institutional charges for servicemembers who may or may not return, as institutions do not keep student financial records for the entire period covered by the readmission requirements and billing systems are not designed to archive the data necessary to calculate institutional charges years later. The commenters contended that, even if an institution has all the information necessary, recreating the institutional charges would be complicated as institutional charges cover many types of charges involving variations by program. One commenter asserted that some Department of Defense tuition assistance systems, such as GoArmy, do not allow variations in tuition rates and could potentially delay tuition assistance processing for both impacted and nonimpacted servicemembers. A few commenters stated that determining institutional charges for returning servicemembers who may have been admitted, but were not enrolled or attending prior to leaving to serve, would be particularly difficult as they had never incurred specific charges, with one of these commenters noting that their institution has an open admission policy resulting in a large number of these students.

One commenter generally supported the requirement limiting the institutional charges that an institution may charge a returning servicemember, but stated that an institution should be permitted to charge a returning servicemember for new classes when a program has changed, requiring the servicemember to take additional

classes in the form of prerequisites or new requirements. A few commenters noted that requiring an institution to provide, if necessary, refresher courses at no extra cost seemed to preclude an institution from collecting funding from other entities to cover those expenses. One commenter stated that requiring an institution to make reasonable efforts to help the servicemember become prepared to resume the program or to enable the servicemember to complete the program at no extra cost, would impose an undue financial hardship and administrative burden on the institution. The commenter asserted that, when there is only the normal reasonable progression from one year to the next, rather than any actual change to the program in the servicemember's absence, it is the servicemember's responsibility to retain the knowledge attained in the normal course of educational progression. In addition, the commenter stated that the definition of ''reasonable efforts'' is ambiguous and would be difficult to determine.

Discussion: The Department believes that the goal of these provisions is to minimize the disruption to the lives of persons performing service in the uniformed services, allowing a servicemember to return to an institution without penalty for having left because of that service. We believe that limiting charges for the year in which the servicemember returns to the charges the servicemember was or would have been assessed for the academic year during which the servicemember left is an important part of this goal, and may necessitate additional efforts by institution as well as the absorption of some costs. However, we agree that this goal would still be achieved if any increase in charges from the amount the servicemember was or would have been assessed for the academic year during which the servicemember left the institution is covered by veterans' or servicemember education benefits. In addition, we believe that requiring institutions to maintain only past tuition and fee charges, rather than requiring them to maintain all institutional charges and waive charges for new equipment required in lieu of equipment previously paid for, will accomplish this goal, while minimizing burden to institutions that may have had difficulty determining the previous institutional charges beyond tuition and fees, as well as difficulty determining which of the current institutional charges beyond tuition and fees would be covered by veterans' and servicemember education benefits. Therefore, for a servicemember who is readmitted to the same program, an institution will be considered to have admitted the servicemember with the same academic status if, for the first academic year in which the servicemember returns, the institution does not increase the tuition and fee charges above the prior amount the servicemember was or would have been assessed for the academic year when the servicemember left the institution, unless there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. Consider, for example, a servicemember who is readmitted to the same program and was assessed tuition and fee charges of $5,000 for the academic year when the servicemember left the institution. The current tuition and fee charges for the program are $7,000, a $2,000 increase over the charges formerly assessed the student. In addition to the original $5,000 in charges, the institution may charge the readmitted servicemember for any portion of that $2,000 increase that will be covered by veterans' education benefits or other servicemember education benefits. If this student receives $1,000 in veterans' education benefits or other servicemember education benefits for tuition and fees, the institution may assess the student tuition and fee charges of up to $6,000. If the student receives $2,000 or more in veterans' education benefits or other servicemember education benefits for tuition and fees, the institution may assess up to $7,000, the tuition and fee charges for other students admitted to the program for the current academic year. This approach will significantly reduce the burden on institutions to track many of the variable charges that were included in the proposed regulation, and will simplify the determinations of what tuition or fee amounts would be subject to the one-year transition period for a returning servicemember. The portion of tuition and fees that are subject to this temporary restriction may also be reduced or eliminated by other policies set by the institution, or under State law, but the Federal requirement will provide a consistent base line for all institutions in every State and serve the purpose intended by this provision in the law.

We agree that students who are not informed of any increase in tuition and fee charges for subsequent years may have unrealistic expectations of the total cost of the program. We would expect that an institution would actively inform affected servicemembers upon readmission of any subsequent increase and the total expected charges for the program (an institution is required to make this information available at all times and include it in its annual distribution of institutional and financial information to all enrolled students in accordance with § 668.41(c) and (d)). To the extent that this temporary restriction on the amount of tuition and fees for returning servicemembers is a benefit not provided to the other students at an institution, it is provided under the law to ease the transition back to the institution for the returning servicemembers. We also believe that this provision will not create conflicts for benefits provided to other servicemembers under the GoArmy education program.

Although we appreciate that current institutional billing software may not easily accommodate affected servicemembers, we believe that any burden incurred by an institution that must manually process such a student is outweighed by the benefit to the returning servicemember. We also believe that limiting the covered costs to tuition and fees significantly simplifies this provision for institutions.

In accordance with § 668.18(a)(2)(iv), an institution may not charge a returning servicemember for additional classes offered by the institution that are prerequisites for the program. The institution does not have to readmit such a servicemember if the institution can demonstrate that providing the classes at no cost places an undue hardship on the institution. If new classes are required for the program and those classes are taken by the servicemember in the academic year in which he or she returns, the institution may not charge the additional tuition and fees for those programs unless doing so does not increase the tuition and fee charges above the prior amount the student was or would have been assessed for the academic year when he or she left the institution, or there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. In requiring an institution to provide, if necessary, refresher courses at no extra cost, we did not intend to preclude an institution from collecting funding from other assisting agencies to cover those expenses. Also, we note that any reasonable efforts an institution must make to help the student become prepared to resume the program, or to enable the student to complete the

program must be provided at no extra cost to the student. We do not agree that requiring an institution to make reasonable efforts to help a servicemember become prepared to resume the program or to enable the servicemember to complete the program at no extra cost, would automatically impose an undue financial hardship and administrative burden on the institution, nor do we agree that, in cases where there is only the normal reasonable progression from one year to the next, rather than any actual change to the program in the servicemember's absence, it is the servicemember's responsibility to retain the knowledge attained in the normal course of educational progression. Again, the goal of these provisions is to minimize the disruption to the lives of persons performing service in the uniformed services, allowing a servicemember to return to an institution without penalty for having left because of that service. Holding a servicemember responsible for retaining all knowledge attained through previous attendance of the program would be penalizing the servicemember for having left to serve. ''Reasonable efforts'' are actions that do not place an undue hardship on an institution. An action places an undue hardship on an institution if it requires significant difficulty or expense to the institution. The mere fact that the readmission of a student will create additional expenses or burden to the institution is not enough for an institution to deny a student readmission. The expenses must be significant when considered in light of the overall financial resources of the institution and the impact otherwise of such action upon the operation of the institution. An institution carries the burden to prove by a preponderance of the evidence that the expense or difficulty of readmitting a student would be significant.

Changes: Section 668.18(a)(2)(iii)(E) is revised to provide that, for a servicemember who is readmitted to the same program, an institution will be considered to have admitted the servicemember with the same academic status if, for the first academic year in which he or she returns, the institution does not increase the tuition and fee charges above the prior amount the student was or would have been assessed for the academic year when the student left the institution, unless there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. Proposed § 668.18(a)(2)(iii)(F), which would have required an institution to waive charges for previously purchased equipment, is removed. Section 668.18(a)(2)(iv)(A) has been revised: (1) To make clear that any reasonable efforts an institution must make to help the servicemember become prepared to resume the program, or to enable the servicemember to complete the program must be provided at no extra cost, and (2) to make clear that those efforts must be provided at no extra cost to the student, to permit an institution to collect from other entities for costs associated with making such reasonable efforts. The definition of *undue hardship* in § 668.18(a)(2)(iv)(C)(*2*) is amended to clarify that difficulty and expenses must be significant when considered in light of the overall financial resources of the institution and the impact otherwise of such action on the operation of the institution.

Comments: One commenter asked what would be required of an institution to ''promptly readmit'' an affected servicemember if the program to which the servicemember was previously admitted is offered infrequently, or is no longer offered. One commenter asked how long a servicemember may delay readmission to an institution by requesting to be readmitted at a later date, and at what point the institutional charges would be locked in. The commenter also questioned whether the unusual circumstances under which an institution may admit a servicemember at a date later than the next class or classes in the program pertain to the institution or just to the servicemember.

Discussion: If the program to which the servicemember was previously admitted is no longer offered, § 668.18(a)(2)(iii)(A) requires the institution to admit the servicemember to the program that is most similar to that program, unless the student requests or agrees to admission to a different program. An institution readmits a servicemember ''promptly'' if, in accordance with § 668.18(a)(2)(ii), the institution readmits the servicemember into the next class or classes in the program beginning after he or she provides notice of his or her intent to re-enroll, unless the servicemember requests a later date of readmission or unusual circumstances require the institution to admit the servicemember at a later date.

These regulations presume that a returning servicemember who provides notice of his or her intent to reenroll at an institution plans to do so soon after providing such notice. The provision that an institution must admit a returning servicemember to the next class or classes in the student's program unless the student requests a later date of admission was included to ensure that an institution could not delay a servicemember's readmission until, for example, the next semester if classes in the student's program were offered during the upcoming semester. However, the regulations do not preclude the returning servicemember from deciding that a later admission date, such as the next semester, is acceptable. No matter when the student actually resumes his or her program, if the returning servicemember is within the window of eligibility in § 668.18(c)(iii), the requirements of this section apply. Thus, for the first academic year in which the servicemember returns, the institution cannot increase the tuition and fee charges above the prior amount the servicemember was or would have been assessed for the academic year when the servicemember left the institution, unless there are sufficient veterans' education benefits or other servicemember education benefits to pay the increased amount of those tuition and fee charges. Unusual circumstances under which an institution may admit a servicemember at a date later than the next class or classes in the program may pertain to the institution or to the servicemember. There are a number of factors an institution may consider when determining whether unusual circumstances require a later date of readmission, such as the length of any necessary retraining or intervening changes in the circumstances of the institution. State laws or requirements (including any local law or ordinance) or institutional requirements that restrict enrollment, due to class size, for example, or otherwise conflict with the requirements of this section are not ''unusual circumstances'' as such laws and requirements are superseded by the requirements of this section for the initial enrollment period. Institutions should take reasonable steps to resolve such restrictions as soon as possible to come into compliance with those provisions.

Changes: None.

Non-Title IV Revenue Requirement

Compliance Audits and Audited Financial Statements (§ 668.23)

Comments: A few commenters asked the Department to clarify the proposed requirement in § 668.23(d)(4) under which a proprietary institution must disclose in a footnote to its audited financial statements the 90/10 revenue percentage and the components of that percentage. The commenters suggested

that the Department specify that the reference in the regulations to Federal revenue means Title IV, HEA revenue and confirm their understanding that an institution must disclose: (1) The dollar amount of the numerator and denominator of the 90/10 ratio; (2) the dollar amount of the temporary relief attributed to institutional loans under the Net Present Value (NPV) calculation; and (3) the amount of loan funds that exceed the loan limits in effect before ECALSA that are treated as non-Federal revenue in the denominator of the 90/10 ratio.

Discussion: Under proposed § 668.23(d)(4), a proprietary institution would have to disclose, by source, the amount of Federal and non-Federal revenue the institution included in its 90/10 calculation. We are amending the regulations to clarify that ''source'' means the individual categories of revenues identified in Appendix C to subpart B of part 668. To calculate its 90/10 percentage, an institution would have to compile the information detailed in Appendix C, particularly the aggregated and adjusted amounts in section 2. We therefore believe that it is reasonable to require the institution to disclose this information. Given the added complexities that come from these additional categories of revenue, disclosing the institution's calculation will simplify the presentation in the financial statements and facilitate the review of that information by the Department.

Changes: Section 668.23(d)(4) is amended to provide that a proprietary institution must disclose in a footnote to its audited financial statements, the dollar amount of the numerator and denominator of its 90/10 ratio as well as the individual revenue amounts identified in section 2 of Appendix C to part 668.

Revenue Generated From Programs and Activities (§ 668.28)

Comments: One commenter asked the Department to clarify whether the revenue from students taking a course offered by an institution as part of an eligible Title IV, HEA educational program counts for 90/10 purposes if the students are taking the course to prepare for an industry recognized credential or to transfer to another institution. For example, students that are not enrolled in a Title IV, HEA-eligible program take an Accounting 400 course, normally offered as part of a Title IV, HEA-eligible accounting program, as a refresher course to sit for the Certified Public Accounting exam or to transfer the credits from the course to another institution.

Discussion: An institution may count the revenue described by the commenter as long as the course or program is offered for the purpose of preparing students for taking an examination for an industry recognized credential, or for any other purpose described in § 668.28(a)(3)(iii) that would otherwise qualify the revenue from that course or program to be included in the 90/10 calculation. However, payments from a student taking the class for transfer credits would not count as revenue because the student is not taking the class for any of these purposes. An institution should make sure that it appropriately documents any revenue the institution includes from these classes in its 90/10 calculation.

Changes: None.

Revenue Generated From Institutional Aid (§ 668.28)

Comments: A few commenters asked the Department to clarify whether installment sales contracts are considered to be loans made to students under § 668.28(a)(5)(i). Other commenters noted that funds are not advanced to a student under an installment sales contract, and funds are not paid in full to a student's account. Rather, an installment sales contract is paid over time by the student to the institution. As a result, the commenters concluded that installment sales contracts should not be treated as loans under the NPV formula.

Some commenters asked for clarification of the preamble discussion (74 FR 42390) regarding the disposition of third-party loans made to students that are subsequently acquired by the institution.

Other commenters urged the Department to reconsider the provision in § 668.28(a)(5)(iv) that a tuition discount is a form of a scholarship that must be disbursed from a restricted account with funds from an outside source. The commenters stated that treating a tuition discount in this way is inconsistent with the intent of the HEOA and would encourage students to incur more debt.

A few commenters asked the Department to clarify that payments made by students on financing arrangements that do not qualify as institutional loans count as cash collected by the institution for 90/10 purposes.

Discussion: An installment sales contract was included in the proposed regulations because we believed that it could be structured to satisfy all of the conditions of an institutional loan that were set forth in proposed § 668.28(a)(5)(i). However, although we noted in the preamble to the NPRM (74 FR 42389) that, to be included in the NPV calculation, an installment sales contract that would be classified as an institutional loan would have to be credited in full to the student's account, this condition was not included in the proposed regulations. To address the confusion reflected in the comments over the qualifying conditions for institutional loans, and the general public view that a typical installment sales contract does not provide for funds to be credited to a student's account, we agree to remove installment sales contracts from this section of the regulations.

With regard to a loan made by a third party to a student at an institution, in the normal course, the proceeds of the loan would be credited to the student's account, and the amount credited that paid for tuition and fees not covered by Title IV, HEA aid would count as non-Title IV, HEA revenue in the 90/10 calculation. If the institution made the same loan itself, it would only be permitted to count the NPV of the loan in the 90/10 calculation. In both cases the institution has credited loan proceeds of the same value to the student's account but the institution would derive a greater benefit for 90/10 purposes from the loan that was made by the third party. For example, assuming the loan proceeds from a third party pay $1,000 for tuition and fees not covered by Title IV, HEA aid, the entire $1,000 is counted as non-Federal revenue for 90/10 purposes. If the institution made the same loan, the amount of funds counted as non-Federal revenue would be less because of the NPV calculation. For instance, if the institution uses the simpler alternative NPV approach, the amount of the non-Federal revenue would be $500 or 50% of the loan. This different treatment of the loan proceeds is based upon which party is making the loan to the student without transferring it afterwards to, or from, the institution. These provisions are not intended to permit an institution to arrange with a third party to transfer student loans after they are made in order to distort the way the revenue from those loans is treated under this provision. To equalize the outcome between an institution and a third party making and purchasing a loan, an institution that purchases a student loan must treat it for 90/10 purposes as if the institution made the loan itself.

Similarly, if an institution makes a loan and transfers it to a third party, the Department would not view that loan as a loan that could be included in any NPV calculation pursuant to section 487(d)(1)(d)(III) of the HEA. That section

requires a loan that is included in the NPV calculation to be subject to regular loan repayment and collection. Any institutional loan that is sold to a third party within a year of when it was made must be treated for 90/10 purposes as a loan made by a third party. The amount the institution may count as non-Federal revenue may not be more than the amount paid to the institution for that loan, less any amount the institution agrees to pay the third party if the loan goes into default or otherwise triggers a contingent payment by the institution. Consistent with the Department's current treatment of recourse loans and the requirement to use the cash basis of accounting, the institution must adjust its 90/10 revenue for any such payment on an institutional loan in the fiscal year when the payment is made.

We disagree with the commenters that the proposed regulations regarding tuition discounts are inconsistent with the intent of the law. The regulations simply reflect section 487(d)(1)(D)(iii) of the HEA by specifying that an institution may include scholarships as revenue if the scholarships are disbursed from an established restricted account and that funds in that account represent designated funds from an outside source or from income earned on those funds. That section of the HEA states that scholarships may be provided by an institution in the form of monetary aid or tuition discounts.

With regard to financing arrangements that are not loans, there is no change in the Department's policy that cash payments made under those arrangement count as non-Title IV, HEA revenue for 90/10 purposes.

Changes: Section 668.28(a)(5)(i) is revised to provide that, to be included as an institutional loan for NPV purposes, a loan made to a student must be credited in full to the student's account.

Net Present Value (NPV)

Comments: Several commenters objected to the provision in § 668.28(b)(2) that an institution may not sell a loan it made to student until the loan is in repayment for at least two years. Although this provision would apply only if an institution chose to use the alternative approach to calculating the NPV of its loans (using 50 percent of loans made as the NPV), the commenters argued that holding the loans for at least two years is contrary to both statutory intent and institutional mission. The commenters reasoned that in response to the loss of availability of private student loans, the NPV approach provided by the HEOA is intended to give an immediate benefit to an institution that had to fill a funding gap itself by making loans to its students. To the second point, the commenters stated that the primary mission of an institution is to provide education and training, not to become a lender or remain in the lending business.

Other commenters agreed with the rationale for the two-year ban on selling loans, but argued that the two-year period was too long and would unfairly impact an institution that provided loan funds to students who are not ''high risk'' and whose loans would perform within commercially acceptable norms. To mitigate this impact, the commenters recommended reducing the ban to one year.

One commenter questioned whether the proposed regulations ensure that the calculation of the NPV for institutional loans takes into account the possibility that institutions do not intend to collect the loans they make to students. The commenter asserted that this practice calls into question an institution's willingness or ability to accurately report estimates of annual payments due, as well as annual payments collected on these loans. The commenter also asked whether institutional loans that default are properly accounted for 90/10 purposes and if the Department has the authority to require, or would require, an institution to disclose information about its loan defaults.

Discussion: As stated in the NPRM (74 FR 42391), we proposed the alternative approach for calculating the NPV as an administrative convenience for an institution that either prefers a simpler method to determine the NPV or does not need the additional non-Federal revenues that might be counted if the NPV formula is used. It is solely up to the institution whether to use this alternative method or the actual NPV calculation. Each approach has costs and benefits that must be weighed by the institution. If the institution believes the alternative approach is too restrictive or somehow not in keeping with its mission, it should use the NPV calculation.

With regard to the comments about an institution's unwillingness to collect the loans it makes, we note that the institution might benefit initially from the NPV calculation, but because its collection rate would decrease significantly if it continues this practice, the institution would derive no benefit from future NPV calculations. We also note that the two-year ban on selling institutional loans, which applies to institutions that choose to use the alternate NPV approach, is necessary to ensure that the Department and other oversight entities have sufficient time to monitor whether the loans are subjected to routine collection efforts.

Changes: None.

Revenue From Loan Funds (§ 668.28)

Comments: A few commenters noted that, although the proposed regulations in § 668.28(a)(6) provide that an institution may count as non-Title IV, HEA revenue the amount of a loan disbursement for a payment period that exceeds the amount a student would have received before the enactment of ECALSA, the regulations did not address how an institution should treat the excess loan funds when a student withdraws during a payment period. The commenters suggested that the excess loan funds should be returned in proportion to the overall loan disbursement for the payment period. Another commenter requested that when a student takes sequential courses within a non-term program, and is charged on a course-by-course basis, the excess loan funds should be attributed within a payment period on a course-by-course basis. In this case, several courses make up the payment period.

Discussion: When some of a student's loan funds are classified as funds in excess of loan limits existing prior to ECASLA, those excess loan amounts are included as revenue from a source other than Title IV, HEA program funds under § 668.28(a)(6) if those excess amounts pay for institutional charges remaining on the student's account after Title IV, HEA funds are applied. The determination of which loan funds are classified as ''post-ECASLA'' funds, *i.e.,* are funds in excess of loan limits existing prior to ECASLA, is generally made on a payment period basis. That is, if a student's loan for the loan period contains a post-ECASLA amount and the post-ECASLA amount is ⅓ of the total loan amount, then each payment period's loan disbursement is generally considered to consist of ⅓ post-ECASLA loan funds and ⅔ pre-ECASLA loan funds. However, if a student takes sequential courses within a non-term program where several courses make up a payment period, and the student is charged on a course-by-course basis, then the determination of which loan funds are classified as post-ECASLA funds may be determined on a course-by-course basis. Under § 668.28(a)(7)(iv), loan funds that are returned pursuant to § 668.22 when a student withdraws from school are excluded from school revenues. The Secretary intends that, when a school determines the amount of loan funds that are excluded from revenues under

§ 668.28(a)(7)(iv), it considers the returned loan funds to be pre-ECASLA loan amounts and post-ECASLA loan amounts based on the ratio that existed for those categories of funds in the student's loan for the loan period.

Changes: Section 668.28(a)(7)(iv) is amended to provide that, in determining the amount of loan funds that are excluded from 90/10 revenues under § 668.28(a)(7)(iv) when a student withdraws pursuant to § 668.22, and the institution returns loan funds from a loan disbursement considered to consist of pre-ECASLA loan funds and loan funds that were in excess of loan limits existing prior to ECASLA, the funds that the institution returns are pre-ECASLA loan amounts and post-ECASLA loan amounts based on the proportion of those loan amounts that existed in the loan disbursement used in the Return calculation. For example, a student's loan disbursement for a payment period is $3,000, and $1,000 represents the funds in excess of loan limits existing prior to ECASLA. The proportional breakdown of the funds returned under the Return calculation is two-thirds pre-ECALSA loan funds and one-third post-ECASLA loan funds.

Application of Funds (§ 668.28)

Comments: A few commenters noted that the proposed regulations did not address how military education benefits are treated for 90/10 purposes. The commenters argued that because students have earned these benefits through employment in difficult and often dangerous conditions, and are free to use the benefits at an eligible institution, the benefits should be treated for 90/10 purposes as earned employment benefits. However, a student receiving these benefits, which are essentially restricted to pay for tuition and fees, may also be fully eligible for Title IV, HEA aid. Consequently, the commenters asked the Department to revise the regulations to provide that military education benefits overcome the presumption that Title IV, HEA funds are used first to pay for tuition and fees.

Discussion: Section 487(d)(1)(C) of the HEA contains the list of funds or sources of aid that overcome the presumption that Title IV, HEA funds are used first to pay for tuition and fees. The Department does not have the authority to expand that list.

Changes: None.

Notification to the Department (§ 668.28)

Comments: Several commenters objected to the proposal in § 668.28(c)(3) that an institution must notify the Department that it failed the 90/10 requirement no later than 45 days after the end of its fiscal year. Some of the commenters stated that there was no reason to shorten the current 90-day notification period. Other commenters argued that because the penalty for failing 90/10 (especially for a second consecutive year) is so severe, an institution should not be required to report unaudited data. According to the commenters, this may result because the small number of independent auditors who are experts in 90/10 calculations may be unavailable to the large percentage of for-profit institutions that have fiscal years ending December 31, because this is time that the auditors would normally be busy doing audit and tax work.

Discussion: We are not persuaded that an institution that knows it is close to failing the 90/10 requirement could not plan for or take the steps necessary to engage an audit firm in time to meet the 45-day reporting deadline.

Changes: None.

Institutional Plans for Improving the Academic Program (§ 668.43(a))

Comments: A few commenters stated that the requirement in the proposed regulations that an institution make readily available to enrolled and prospective students any plans by the institution for improving the academic program of the institution should include the statement in the preamble of the NPRM that an institution is allowed to determine what a ''plan'' is, including when a plan becomes a plan.

Discussion: We agree that including the concept that an institution has the discretion to determine when a plan exists would clarify the intent of the regulations.

Changes: Section 668.43(a)(5)(iv) is amended to clarify that an institution must make readily available to students any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists.

Peer-to-Peer File Sharing and Copyrighted Material (§§ 668.14(b)(30) and 668.43(a)(10))

Comments: A few commenters supported the proposed changes asserting that they represented a fair interpretation of the intent of the statute and would aid institutions in both interpreting and properly following the new statute. One commenter asked whether the requirement that an institution offer, to the extent practicable, legal alternatives to illegal downloading or otherwise acquiring copyrighted material could be satisfied by the institution simply not blocking legal alternatives. One commenter expressed concern that the requirement that, as a part of an institution's plans for combating the unauthorized distribution of copyrighted material, the institution must include the use of one or more technology-based deterrents as well as procedures for periodically reviewing the effectiveness of the plans would be unduly financially and administratively burdensome for institutions.

Discussion: We do not believe that simply not blocking legal alternatives for downloading or otherwise acquiring copyrighted material qualifies as ''offering'' legal alternatives. The requirements of § 668.14(b)(30)(ii)(A) and (B), that an institution must periodically review the legal alternatives and make available the results of the review to its students through a Web site or other means, support the notion that an institution's actions in this area must be active, rather than passive. We note, however, that an institution must offer such legal alternatives ''to the extent practicable.'' Thus, how or whether the institution offers such alternatives is controlled by the extent to which it is practicable for the institution to do so. As stated in the preamble to the NPRM (74 FR 42393), the Department anticipates that individual institutions, national associations, and commercial entities will develop and maintain up-to-date lists of legal alternatives to illegal downloading that may be referenced for compliance with this provision.

The requirement that, as a part of an institution's plans for combating the unauthorized distribution of copyrighted material, the institution must include the use of one or more technology-based deterrents is statutory (see section 485(a)(1)(P) of the HEA) and we do not have the authority to remove this requirement. Moreover, we believe that the requirement that an institution's plans include procedures for periodically reviewing the effectiveness of the institution's plans for combating the unauthorized distribution of copyrighted material is essential for institutions to comply with the requirements in section 485(a)(1)(P) and 487(a)(29) of the HEA.

Changes: None.

Consumer Information (§§ 668.41 and 668.45)

Comment: One commenter suggested that we remove the definition of ''Retention rate'' from the regulations in § 668.41. The commenter stated that it is unnecessary because the regulations already instruct institutions to disclose

retention rates as they are reported to the Integrated Postsecondary Education Data System (IPEDS) and IPEDS provides the definition on its Web site for institutions when they report that information. Of greater importance is the fact that, if the National Center for Education Statistics decides to modify the definition in the future, it would be better for them not to be constrained by having the current definition codified in the regulations.

Discussion: We agree.

Changes: We have removed the definition of ''Retention rate'' from the regulations.

Comments: Although some commenters agreed with some or all of the proposed regulations addressing consumer information disclosures, a number of them objected to the proposed provision in § 668.41(d)(5)(iii) that would require an institution to disclose any placement rates it calculates, noting that, regarding placement, the statute only requires disclosure of information, not an actual rate. The statute addresses the requirement to report information about the ''placement in employment of, and types of employment obtained by, graduates of the institution's degree or certificate programs.'' Because the statute specifically uses the term ''rates'' when it addresses graduation, completion, and retention, but not when it addresses placement, the commenters stated that the reporting of a ''rate'' for placement information exceeds the scope of the statute.

For similar reasons, some of the commenters objected to the requirement to report the methodology that the institution uses in determining placement information, because a methodology would appear to be applicable only to an officially calculated rate. Further, some commenters noted that, although institutions may calculate various placement rates for their own purposes, those rates are not necessarily intended to be disclosed to the public. One commenter added that requiring institutions to report placement rate data that they voluntarily produce for their own purposes (such as for internal assessment of their programs) would be a disincentive to the institution to engage in that activity.

This commenter did, however, support the concept of requiring an institution to make available to students any placement data that are used in advertising, marketing, or recruitment. Noting that some rates might be calculated on individual programs or other subcategories of the institution, several commenters suggested that the requirement to report placement rates that the institution voluntarily calculates should only be applicable to institution-wide placement rates. One commenter noted that reporting placement rates for individual programs is not required by the statute, cannot reasonably be implemented, and is unnecessary. The commenter specifically noted that current regulations addressing an institution's requirement to have a program participation agreement require an institution that advertises job placement rates as a means of attracting students to provide information about its employment and graduation statistics.

A number of commenters stated that the reporting of actual placement rates would be excessively burdensome for institutions and that the burden would outweigh the value of this reporting. A couple of commenters expressed concern that the regulations would force colleges to obtain information from graduates that the graduates are not obligated to provide, resulting in biased responses that would ''taint'' the information made available to students. On the other hand, a couple of other commenters stated that ''when an institution has calculated placement rates, suggesting that it wants to know whether, when, and where its graduates are employed, then it is reasonable to think that the subject is of interest and value to students and prospective students as well, and should be shared with them.'' Finally, although these same two commenters supported removing the words ''upon request'' from the several places in the regulations where institutions are required to make certain information available to students and prospective students, another commenter stated that the Department should not delete those words when describing the institution's responsibility to make job placement information available to its consumers. The commenters who supported removing those words stated that removing them would make it clearer that the consumer information in question must be easily available. However, the commenter who opposed removing those words stated that, because the words were in the HEA, the Department did not have the authority to exclude them from the regulatory language implementing that part of the HEA.

Discussion: The Department believes that, in addressing information dissemination activities, congressional intent was that students and prospective students be provided pertinent information related to an institution's completion, graduation, transfer-out, and placement record. Only when sufficient information is available in these areas can students and prospective students make informed choices about the institution. The statute allows institutions to use placement information that the institution obtains from sources such as alumni and student satisfaction surveys, and it does not mandate that institutions calculate an actual rate for this purpose. However, when an institution has voluntarily calculated a placement rate, regardless of whether it is an institution-wide placement rate or a placement rate of only one or more programs or other subcategories of the institution, and regardless of whether the institution advertises its job placement rates, we believe that it is consistent with congressional intent to have the institution disclose this information to its consumers. Thus, although the regulations do not mandate that the institution calculate a placement rate, when the institution has voluntarily chosen to do so, the regulations require it to provide that information to its students and prospective students. To help ensure that the information is as meaningful as possible, the regulations require that the institution disclose not only the source of the information provided, but the time frames and methodology associated with the calculation or production of the information.

Finally, regarding the exclusion of ''upon request'' when describing the institution's responsibility to make job placement information available to its students and prospective students, the Department notes that institutions typically compile and make the information available on their Web sites, but possibly in paper form as well. Consequently, we view the inclusion of the phrase ''upon request'' to mean that this information is readily available to students who wish to see it. As a matter of course, students coming to an institution's Web site to learn about the institution should be able to find this information, and students inquiring directly may be referred to the Web site or provided with the information on paper.

Changes: None.

Comment: With regard to the disaggregation of completion or graduation rates by receipt or non receipt of certain types of aid, one commenter expressed concern that the wording in § 668.45(a)(6)(ii), which states that ''students shall be considered to have received the aid in question only if they received such aid in the period specified in paragraph (a)(3) of this section,'' would exclude students

who received aid for the first term (the period in question), but who had the receipt of that aid delayed beyond the period in question due to an unanticipated deferral of payment, such as for verification. The commenter stated that receipt of aid in this circumstance would have the same effect on access and enrollment as if the aid were paid in the first term. The commenter expressed hope that the Department's intent was not to have the students listed as not receiving the aid in question.

Discussion: We agree that students who receive aid in a second term that was intended for the first term should be listed in the same category as students who actually received their aid in the first term.

Changes: We have changed the word ''in'' to ''for'' in § 668.45(a)(6)(ii).

Comment: Several commenters expressed concern that recordkeeping and reporting requirements in § 668.45 could serve as a disincentive to institutions to offer a comprehensive transition and postsecondary education program (as addressed in subpart O of the regulations, Financial Assistance for Students with Intellectual Disabilities). The commenters questioned whether these students would negatively affect an institution's completion or graduation rate because students with intellectual disabilities do not typically matriculate and graduate with a regular diploma.

Discussion: Section 668.45 requires an institution to prepare a completion or graduation rate (and sometimes a transfer out rate) for its certificate- or degree-seeking, first-time, full-time undergraduate students. If an institution has a comprehensive transition and postsecondary education program, some of its students with intellectual disabilities who are enrolled in that program may factor into the institution's completion and graduation rate. It is unlikely that they would be part of an institution's transfer out rate. A comprehensive transition and postsecondary education program may be a degree or certificate program, or it may be a non-degree or non-certificate program. Certificate or degree-seeking, first-time, full-time undergraduate students with intellectual disabilities who are enrolled in a comprehensive transition and postsecondary education program will be part of an institution's completion and graduation rate calculations. As with other students, if they complete or graduate from their degree or certificate program within the time frames listed in § 668.45(b), they will be listed. The Department does not believe that first-time, full-time, undergraduate students with intellectual disabilities who are enrolled in a comprehensive transition and postsecondary education program designed to lead to a degree or certificate will necessarily have completion or graduation rates significantly different from first-time, full-time, undergraduate students without intellectual disabilities. Students with intellectual disabilities who are enrolled in a comprehensive transition and postsecondary education program that does not lead to a degree or certificate will not be a factor in an institution's graduation and completion rate.

Changes: None.

Comments: Two commenters noted that removing the reference to paragraph (d) in § 668.48(b) leaves out the exclusion of students who have left school to serve in the Armed Forces, to serve on official church missions, or to serve with a foreign aid service of the Federal Government from the completion or graduation, or transfer-out rate information required by § 668.48.

Discussion: The commenters are correct. The proposal to remove the reference to paragraph (d) and replace it with paragraph (e) was a mistake.

Changes: None.

Campus Safety Provisions

Reporting and Disclosure of Information (§ 668.41(a))

Comment: One commenter requested clarification of what would be considered an ''on-campus student housing facility.'' Specifically, the commenter questioned how this definition should be applied in cases in which there are public-private partnerships or third parties who may own or control property on areas contiguous to the campus or on university-owned property.

Discussion: The Department recognizes that there are a myriad of possible arrangements that an institution may have for housing facilities for students. Regarding whether a particular student housing facility is an ''on-campus'' facility, we refer to the current definition of the term ''campus'' in § 668.46(a). To clarify, any student housing facility that is owned or controlled by the institution, or is located on property that is owned or controlled by the institution, and is within the reasonably contiguous geographic area that makes up the campus is considered an on-campus student housing facility.

Changes: None.

Missing Student Notification Procedures (§ 668.46(h))

Comment: A number of commenters requested clarification of how the proposed requirement in § 668.46(h) relates to requirements under the Family Educational Rights and Privacy Act (FERPA). Under this section, institutions must provide students living in an on-campus student housing facility an option to register a confidential contact person to be notified in the case that the student is determined missing.

Discussion: Although missing student contact information would be considered part of a student's education records under FERPA, section 485(j) of the HEA, as amended by section 488(g) of the HEOA, requires that students be provided the option to register ''confidential'' contact information. This indicates that a student's contact information should receive greater privacy protections than FERPA provides. Under section 485(j) of the HEA, only authorized campus officials and law enforcement officers in furtherance of a missing person investigation may have access to this confidential contact information. We view a student's identification of a contact person pursuant to section 485(j) of the HEA and § 668.46(h) as providing permission for law enforcement personnel to contact the identified individual under the circumstances identified in these statutory and regulatory provisions.

Changes: None.

Comment: Some commenters expressed concern that the proposed notification procedures in § 668.46(h)(2) may lead to unnecessary alarm on the part of parents, guardians, and emergency contact persons, as well as a needless burden on campus and local law enforcement agencies. Specifically, they requested clarification that the notification procedures would only take effect if, after a brief investigation, the missing student report is found to be valid. In addition, several commenters requested clarification about the 24 hour time period requirements associated with the notification procedures, suggesting that an institution's policy statement must explicitly state that the institution must make the notification within 24 hours after an official determination has been made that the student has been missing for 24 hours.

Discussion: The proposed regulations in § 668.46(h)(2) specify that an institution's notification procedures must go into effect within 24 hours after a student has been officially determined to have been missing for 24 hours by the

campus security department or local law enforcement agency, as applicable. This does not preclude an institution from either making a determination that a student is missing before the student has been missing for a full 24 hours or initiating notification procedures as soon as it determines that the student is missing. A brief investigation as suggested by the commenter would presumably be included in this official determination, *e.g.,* authorities could check sources such as Facebook in trying to determine whether the student is missing. We agree, nevertheless, that the regulations could be clearer in delineating the 24 hour time periods.

Changes: Section 668.46(h) is revised to clarify the time frame within which notification must occur.

Comment: A commenter stated that the regulations in § 668.46 were unclear and suggested a new structure.

Discussion: We reviewed the commenter's suggested language, but we continue to believe the current structure is sufficiently clear. This language reflects the tentative agreement reached by the Team V committee during negotiated rulemaking, and the Department wishes to preserve this agreement.

Changes: None.

Annual Fire Safety Report—Definitions of Terms (§ 668.49(a))

Comment: One commenter suggested that the definition of *value of property damage* should be revised to include only the damage to property, furnishings, and equipment that is owned, leased, or otherwise controlled by the institution. The commenter argued that it could be burdensome for institutions to determine the value of property and contents that are owned by third parties and that this information could be deemed private by the other party. In addition, the commenter suggested that institutions should have the option to provide explanatory text and clarifying information for estimates of property damage. The concern was that a high dollar value may create false concern as to the safety on campus, when in reality, a high value could be from damage to a single piece of expensive equipment.

Discussion: The definition of the *value of property damage* applies to an on-campus student housing facility and includes the value of property and the contents within. The Department recognizes that many of the contents on a property may be owned by third parties. However, because the statute requires that information be provided about damage caused by fires in on-campus student housing facilities, this estimate should include the value of property that is not owned or controlled by the institution. Although an institution may not be able to determine the exact value of the contents, it must give the most accurate estimate possible in order to be in compliance with the regulation. With regard to explanatory text, institutions have the flexibility to include additional information in the annual fire safety report. In reporting statistics to the Department, the Web-based collection tool will include space for institutions to include explanatory text for each item that will be viewable on the public Web site.

Changes: None.

Comment: One commenter stated that the definition of *fire* in § 668.49(a) was ambiguous and needed to be clarified. Specifically, the commenter suggested that phrases such as ''open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner'' and ''place'' could be interpreted differently by institutions and, therefore, could undermine the consistency of the definition of ''fire'' for statistical and comparative purposes. Further, the commenter suggested an alternate definition drawn from insurance law that would include the concept of a ''hostile fire,'' or one that includes any combustion that cannot be controlled, escapes from where it was initially set and confined, and that was not intended to exist. The commenter also questioned the feasibility of gathering statistics on each instance of a fire that does not result in injury, death, or property damage, suggesting that reports of insignificant fires will obscure attention to serious fire problems or trends.

Discussion: Section 485(i)(1)(A) of the HEA requires that institutions collect and report statistics on the number of fires in each on-campus student housing facility, and section 485(i)(3) of the HEA further requires that institutions maintain a log of all fires that occur in any on-campus student housing facility. The Department and non-Federal negotiators worked diligently to define the term *fire,* understanding that it is difficult to devise a definition that will cover all of the fires that we intend to be included yet still exclude the ones that we do not. The negotiators reached a tentative agreement on the definition of *fire,* and the Department wishes to preserve this language. We continue to believe that the definition set forth in the proposed regulations can reasonably be interpreted and applied by institutions.

In addition, under the HEA all fires will be included in the institution's statistics and in the fire log. Therefore, the definition of *fire* arguably may not be limited to only fires that result in injury, death, or property damage. Further, as stated in the preamble to the NPRM, an institution's policies regarding fire safety do not affect the classification of whether a fire meets the definition of fire. As an example, one commenter suggested that a candle wick might be a ''place'' that is intended to contain burning, but that student residence hall policies might prohibit candles, rendering the candle wick no longer a ''place'' intended to contain a flame because the candle should not be there at all. However, a candle wick is still a place intended to contain burning, regardless of whether candles are prohibited under an institution's policies. The Department anticipates including additional examples in a revised version of the Handbook for Campus Crime Reporting to provide guidance to institutions in complying with these regulations.

Changes: None.

Annual Fire Safety Report—Statistics (§ 668.49(b) and (c))

Comment: One commenter suggested that an institution should not be responsible for tracking an individual with a fire-related injury who has separated from the university for the purpose of potentially including that individual in the institution's statistics on fire-related deaths. If that individual dies within one year of sustaining injuries as a result of a fire, then the institution may not know whether that individual died as a result of those injuries.

Discussion: The regulations do not require an institution to track an individual that separates from, and is no longer in contact with, the institution. However, the institution is expected to make a reasonable effort to ascertain whether an individual's death is considered a fire-related death, as defined in § 668.49(a). For example, if an individual with fire-related injuries is hospitalized a few miles from the institution, the institution may reasonably be expected to track this person for potential inclusion in the institution's statistics. By contrast, if an individual separates from the institution and travels to another country, the institution may not be expected to track them for inclusion in the institution's statistics.

Changes: None.

Annual Fire Safety Report—Description of Policies (§ 668.49(b))

Comment: One commenter suggested that we revise the language related to the reporting of fire statistics under

proposed § 668.49 to specify that these statistics include fires that are reported to a ''campus fire authority.''

Discussion: Institutions are expected to collect information about, and report on, all fires regardless of whether they were reported to a campus fire authority. Fires may be reported to a variety of authorities at an institution other than a campus fire authority (*e.g.,* to a residence life officer). The intent of the regulations is to include these fires in an institution's statistics and fire log.

Changes: None.

Comment: Two commenters suggested that the Department require that institutions have fire doors and other doors in the path of exit from a fire inspected at least annually and disclose in their annual fire safety report how often the doors are inspected. The commenters noted that proper maintenance and inspection of every fire safety system element is critical to ensure that these elements can function in the case of a fire.

Discussion: We define a *fire safety system* in § 668.49(a) as ''any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire,'' listing elements including, among others, sprinkler systems, fire detection devices, stand-alone smoke alarms, and fire doors and walls as examples of what might be included in a fire safety system. The commenter correctly states that maintenance and inspection of a fire safety system can help ensure that the elements are properly functioning. Institutions are required to describe the fire safety system in each on-campus student housing facility, and an institution may provide information about how often the elements of each fire safety system are inspected or maintained in this description. The Department expects that an institution will adequately maintain the elements of its fire safety systems. However, we do not intend to specify a maintenance or inspection schedule for each of these elements.

Changes: None.

Annual Fire Safety Report—General (§ 668.49)

Comment: One commenter suggested a number of minor changes to a variety of provisions, including:

- Replacing the phrase ''may include'' in the definition of a fire-related injury in § 668.49(a) with the word ''includes'';
- Replacing the words ''faculty, staff'' in the definition of a fire-related injury in § 668.49(a) and in the requirement that an institution include policies regarding fire safety education and training programs in its annual fire safety report in § 668.49(b)(6) with the word ''employees'';
- Replacing the words ''resulting from'' in the definition of a fire-safety system in § 668.49(a) with ''of'';
- Replacing the phrase ''smoke, water, and overhaul'' in the definition of value of property damage in § 668.49(a) with ''smoke and water''; and
- Revising the § 668.49(c)(1)(ii) to read ''The number of persons who received fire-related injuries that resulted in treatment at a medical facility, including at an on-campus health center.''

Discussion: We agree to make some of these changes. In particular, we agree with the commenter that institutions should include the number of persons who received fire-related injuries, as opposed to the actual number of injuries, as a single person may have more than one injury. We also agree that the term ''employees'' is more precise than the words ''faculty, staff'' and have revised the regulations accordingly.

Changes: We have revised the language in § 668.49(c)(1)(ii) to clarify that the number of injuries refers to the number of people with fire-related injuries. We have also replaced the words ''faculty, staff'' with the word ''employees'' in both § 668.49(a) and § 668.49(b)(6).

Comment: One commenter suggested that we revise § 668.43 to include two additional disclosures specified in the HEOA that require institutions to disclose their policies on vaccination, and information on diversity of the student body.

Discussion: The Department is not addressing all of the self-implementing provisions of the HEOA in these regulations. We intend to publish separate regulations covering these new disclosures.

Changes: None.

Subpart O—Financial Assistance for Students With Intellectual Disabilities

Scope and Purpose (§ 668.230)

Comment: One commenter expressed concern that the limit on the amount of time for which a student can receive a Pell Grant would adversely affect the completion time of a student with an intellectual disability because the student may need to spend additional time in remedial or developmental classes. The commenter suggested that the Department waive the cap on the number of Federal Pell Grant awards a student with an intellectual disability may receive.

Discussion: The Federal Pell Grant statutory cap is 18 semesters or 9 years. Because students with intellectual disabilities are not yet enrolled in comprehensive transition and postsecondary programs approved by the Department under these regulations, we do not have any data that suggests that these students will need longer to complete their comprehensive transition and postsecondary programs. For this reason, we believe it is inappropriate to waive the Federal Pell Grant cap for these students as part of these regulations.

Changes: None.

Comment: Two commenters requested that proposed § 668.230 be revised to require the Secretary to waive any rules necessary to ensure that students enrolled in eligible comprehensive transition and postsecondary programs remain eligible for Federal Pell, FSEOG, and FWS program funds.

Discussion: Section 484(s)(3) of the HEA authorizes the Secretary to waive any statutory provision applicable to the Federal Pell Grant, FSEOG, and FWS programs—other than the need analysis provisions in part F of the HEA—as well as any institutional eligibility provisions that the Secretary determines necessary to ensure that programs enrolling students with intellectual disabilities otherwise determined to be eligible may receive financial assistance. While this section of the HEA authorizes the Secretary to grant the waivers of the sort described by the commenters, it does not require the Secretary to do so. The Secretary generally does not regulate the Department's own procedures.

Changes: None.

Definitions (§ 668.231)

Comment: A few commenters expressed concern that the proposed regulations do not sufficiently convey the importance of employment as a desired outcome for students with intellectual disabilities who enroll in eligible comprehensive transition and postsecondary programs.

Discussion: We agree with the commenters that gainful employment is an important outcome for students with intellectual disabilities participating in comprehensive transition and postsecondary programs. In fact, the Department has a long history of providing national leadership for, and administration of, programs that develop and implement comprehensive and coordinated programs of vocational rehabilitation, supported employment and independent living for individuals with disabilities, through services, training and economic opportunities, in order to maximize their employability, independence and integration into the workplace and the community.

We believe that the regulations sufficiently ensure that the comprehensive transition and postsecondary programs approved by the Department will focus on ensuring that enrolled students will be prepared for gainful employment. Specifically, in the definition of the term comprehensive transition and postsecondary program in § 668.231, paragraph (a)(3) provides that the program is one that is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment. Under § 668.232(a), an institution applying to offer a comprehensive transition and postsecondary program as an eligible program under title IV of the HEA must provide to the Secretary a detailed description of that program, including a description that addresses all of the components of the program, as defined in § 668.231. Because § 668.231(a)(3) specifically references that a comprehensive transition and postsecondary program is one that is designed to prepare enrolled students for gainful employment, the detailed description required under § 668.232(a) must include a description of how the program meets this definitional requirement. We, therefore, believe that the regulations sufficiently ensure that any comprehensive transition and postsecondary program will focus on the outcome of gainful employment for students participating in these programs.

Changes: None.

Comment: Two commenters requested clarification of how half-time participation for students with intellectual disabilities should be determined, specifically, whether ''half-time'' is based on real time or credit hours, and whether it is calculated per semester or across the length of the program. In a related issue, commenters also suggested that the proposed regulations place too much emphasis on the academic portions of the program, arguing that the half-time integration criterion should not be linked exclusively to coursework and internships but should be expanded to include outside activities.

Discussion: Section 668.231(a)(5) specifies that a comprehensive transition and postsecondary program is a program that requires students with intellectual disabilities to have at least one-half of their participation in the program, as determined by the institution, focus on academic components through one or more of a variety of activities that integrate students with intellectual disabilities into academic contexts with students without disabilities. Institutions have a fair degree of flexibility in determining the meaning of ''half-time participation'' in designing a comprehensive transition and postsecondary program: It may be reasonably based on real hours, credit hours, or a combination of the two, and it may be calculated across the span of the program or by term, as long as an institution clearly explains in its application to add an eligible program how this will be determined.

With regard to the comments stating that the proposed regulations place too much emphasis on the academic portions of the program, we disagree. Section 668.231(a)(5) only requires that the program require enrolled students to have at least one half of their participation in the program focus on academic components. We fully expect that the remaining portion of the program will consist of other activities that include having enrolled students with intellectual disabilities participate with students without disabilities in such non-academic settings as clubs, organizations, service projects, or other university or community life activities.

Changes: None.

Comment: A few commenters expressed concern that the proposed definition of a *student with an intellectual disability* in § 668.231(b) does not exist in the Individuals with Disabilities Education Act (IDEA). Specifically, several commenters asked which students would be considered students with intellectual disabilities under the HEA.

Discussion: Under § 668.231(b), a *student with an intellectual disability* is defined as a student with mental retardation or a cognitive impairment characterized by significant limitations in intellectual and cognitive functioning and adaptive behavior, as expressed in conceptual, social, and practical adaptive skills, and who is currently, or was formerly eligible for special education or related services under the IDEA. The Department recognizes that disabilities other than mental retardation, such as certain forms of autism and traumatic brain injury, may be considered intellectual disabilities. Under § 668.233(c), a student with an intellectual disability is eligible to receive Federal Pell, FSEOG, and FWS program assistance under subpart O of part 668 (Financial Assistance for Students with Intellectual Disabilities) if the institution that offers the eligible comprehensive transition and postsecondary program obtains a record from a local educational agency (LEA) that the student is or was eligible for special education and related services under the IDEA. This section clarifies that if that record does not specifically identify the student as having an intellectual disability, the institution must review all documentation obtained, such as a documented comprehensive and individualized psycho-educational evaluation and diagnosis of an intellectual disability by a psychologist or other qualified professional; or a record of the disability from an LEA or State educational agency (SEA), or government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the intellectual disability. Ultimately, the institution determines whether a student meets the definition of a student with an intellectual disability for the purposes of this subpart.

Changes: None.

Comment: Many commenters disagreed with the requirement that a student with an intellectual disability must have gone through the formal IDEA eligibility process to be eligible for Title IV, HEA program assistance. They argued that the Conference report indicates that Congress intended to include students who were home-schooled or went to a private school in the definition of a student with an intellectual disability. The commenters further suggested that if the Department maintains its position that only students who have gone through the formal IDEA eligibility process are eligible for Title IV, HEA program assistance, then the Department should issue guidance and alerts to States, LEAs, students, parents, parent training centers, and advocacy organizations, reminding them that the IDEA's Child Find and Free Appropriate Public Education (FAPE) in the Least Restrictive Environment requirements apply to all individuals who are still at an age at which they could receive special education services in their State.

Discussion: As discussed in the preamble to the NPRM, we interpret the statute as providing that a student who has not gone through the formal IDEA eligibility process does not meet the definition of a student with an intellectual disability. Specifically, section 760(2) states that a student with an intellectual disability means a student who ''is currently, or was formerly, eligible for a FAPE under the IDEA.'' While the Department does not wish to exclude students who have not gone through this process, we do not believe the statutory language permits the Department to make these students eligible. We encourage students to obtain an IDEA eligibility determination

while they are still age-eligible for IDEA services. The Department will continue to remind States and LEAs of their responsibilities under the IDEA, including under the child find provision in section 612(a)(3), that they locate, identify, and evaluate all children with disabilities residing in the State, including those who are in private schools or are home-schooled.

Changes: None.

Program Eligibility (§ 668.232)

Comment: One commenter suggested that, rather than requiring an institution to apply to have a comprehensive transition and postsecondary program for students with intellectual disabilities approved by the Department for Title IV, HEA funding, the Department simply require the institution to provide assurances that it offers a program that meets the criteria of a comprehensive transition and postsecondary program for students with intellectual disabilities. The commenter argued that this would provide a more streamlined application process. The commenter also noted that the HEOA authorizes a new model demonstration program and a coordinating center that will enable the Department to gather information on best practices and to work to develop model accreditation standards for these programs.

Discussion: The process for adding a comprehensive transition and postsecondary program to the list of eligible programs at an institution should not pose a large burden on institutions, because it will be part of the same process an institution now uses to notify the Department of any new program it seeks to include as an eligible Title IV, HEA program. As far as the model demonstration program and coordination center, the Department has a current National Institute of Disability and Rehabilitation Research center evaluating promising practices in this area.

Changes: None.

Comment: One commenter requested that the Department clarify whether only currently existing comprehensive transition and postsecondary programs can be eligible for Department approval under § 668.232. The commenter asked if any comprehensive transition and postsecondary program offered by an institution is an eligible comprehensive transition and postsecondary program.

Discussion: An institution may submit to the Secretary for approval under § 668.232 a comprehensive transition and postsecondary program that it currently offers or a program that it is ready to implement. The Secretary will consider for approval any comprehensive transition and postsecondary program that meets the definitional requirements in § 668.231(a) for which an institution submits an application in accordance with § 668.232. There are currently no comprehensive transition and postsecondary programs approved by the Department.

Changes: None.

Comment: Commenters suggested that we add a new provision in § 668.232 to require an institution to include in its application for approval of a comprehensive transition and postsecondary program, a description of how students with intellectual disabilities are socially and academically integrated into the campus community to the maximum extent possible.

Discussion: We do not believe that the suggested language is necessary. Section 668.232(a) requires that institutions provide a detailed description of the comprehensive transition and postsecondary program that addresses all of the components of the program, as defined in § 668.231, in their application for approval by the Department. One of those elements, in § 668.231(a)(6), specifies that a comprehensive transition and postsecondary program must provide students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities. To comply with these regulations, an institution applying to add an eligible comprehensive transition and postsecondary program must address this element by explaining how its program will ensure that students with intellectual disabilities are integrated socially and academically with students without disabilities.

Changes: None.

Comment: One commenter asserted that the concept of a program is different in special education than it is in higher education in that, in the special education context, a program is typically an individualized set of services and supports designed for a single student. This commenter stated that a set of services and supports designed for a single individual student to participate in regular college courses, internships, and the like should constitute a comprehensive transition and postsecondary program. The commenter questioned whether the Department would approve such a comprehensive transition and postsecondary program for a single student, and, if so, whether it would be necessary for each individualized set of services and supports to be approved by the Department as a separate program. The commenter believed that, as long as a basic structure of support is in place for these programs, the services may be individualized to meet the needs of a single student or a group of students and that the institution should only be required to apply once for the ''basic'' program structure, and then be able to offer individual variations of the program as needed to individuals without having to reapply for program eligibility for each version of the program.

Discussion: In general, an institution must demonstrate in its application that its comprehensive transition and postsecondary program satisfies the definitional criteria in § 668.231(a). An institution may have one, or more than one, comprehensive transition and postsecondary program. A program may be for only one student or for a group of students, but each program must be approved by the Department. To be clear, the Department will not approve a generalized structure that can later be modified by the institution to be a different program for specific students. That said, once a program is approved, it can be modified slightly for different students. For example, a program approved under § 668.231 may require a specific number and type of courses, along with other program requirements, but that does not mean that each student in that program will take exactly the same courses. Much like the variation in any student's curriculum that results from individual choices in elective coursework and required academic areas within a program, individual students enrolled in an approved comprehensive transition and postsecondary program may end up taking some different courses. All such courses must be part of the same approved program or part of a separately approved program.

Changes: None.

Comment: One commenter suggested that if a student with an intellectual disability is dually enrolled in an LEA and in a comprehensive transition and postsecondary program, then the State Accrediting Agency, SEA, and other stakeholders should have input into the accrediting process of the comprehensive transition and postsecondary program.

Discussion: The Department is not requiring programmatic accreditation as a condition for approving a comprehensive transition and postsecondary program. Under § 668.232(e), the institution is required to inform its institutional accrediting agency of its comprehensive transition and postsecondary program if the

institution applies to have that program approved by the Department as an eligible program for Title IV, HEA program purposes. The accrediting agency determines what it does with that information.

Changes: None.

Comment: One commenter asked how accreditation status was determined when an institution and a non-profit agency share responsibility for providing and operating a comprehensive transition and postsecondary program through a formal memorandum of agreement. The commenter suggested that the accreditation status of the non-profit agency should be considered in the accreditation of the program. Further, under a situation such as this, the commenter requested clarification as to whether Title IV, HEA program assistance could be applied toward the costs for services and fees provided by both the institution and the non-profit agency.

Discussion: Only an institution participating in the Title IV, HEA programs may offer an eligible *comprehensive transition and postsecondary program,* as that term is defined in § 668.231(a). For this reason, the Department will take into account only the institution's accreditation status in approving a comprehensive transition and postsecondary program. The accreditation of the non-profit agency would not have an impact on the eligibility of the program. Under § 668.5, an eligible institution may contract out a portion of the eligible program through a written arrangement with another eligible institution, an ineligible institution, or an ineligible organization to provide the educational program. Section 668.5(c)(3) of the regulations specifies that—

(1) The ineligible institution or organization may not provide more than 25 percent of the educational program; or

(2) The ineligible institution or organization may provide more than 25 percent but not more than 50 percent of the educational program, as long as—

(a) The eligible institution and ineligible institution or organization are not owned, or controlled by the same individual, partnership, or corporation; and

(b) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the **Federal Register** in accordance with 34 CFR part 603, has specifically determined that the institution's arrangement meets the agency's standards for the contracting out of educational services.

In terms of funding, the amount of Title IV, HEA program assistance that a student may receive for enrollment in a comprehensive transition and postsecondary program is based on the student's need, which is defined in section 471 of the HEA as the cost of attendance minus the student's expected family contribution minus any estimated financial assistance received by the student. Need-based aid that a student receives may be used toward any costs in the student's cost of attendance, including those incurred through parts of the program that have been contracted out to a non-profit agency or other institution or organization through a written arrangement with the eligible institution that offers the program.

Changes: None.

Student Eligibility (§ 668.233)

Comment: One commenter questioned whether a student with an intellectual disability would be disqualified from receiving Title IV, HEA program assistance if he or she has a legal guardian.

Discussion: Having a legal guardian would not preclude a student with an intellectual disability from receiving Federal student aid funds. It may, however, affect the student's dependency status, which is taken into account in determining a student's financial need. Therefore, having a legal guardian may affect the amount of financial aid funds for which the student may be eligible.

Changes: None.

Comment: Several commenters asked for clarification on whether a high school student who receives special education and related services can also be enrolled in a comprehensive transition and postsecondary program.

Discussion: It is the Department's longstanding position that a student with a disability may be dually enrolled in secondary school and a postsecondary institution, although such dual enrollment precludes the student from being eligible for Title IV, HEA aid.

The provisions in section 612(a)(2) of the IDEA and 34 CFR 300.110 require States to ensure that public agencies take steps to ensure that children with disabilities have access to the same program options that are available to nondisabled children in the area served by the agency. This would apply to dual enrollment programs in postsecondary or community-based settings. However, we do not believe that the IDEA, or its implementing regulations, requires public agencies to provide dual enrollment programs in postsecondary or community-based settings for students with disabilities, if such programs are not available to secondary school students without disabilities. In a State that offers dual enrollment programs to secondary school students, a high school student with an intellectual disability, as defined under § 668.231(b), who is receiving special education and related services may be dually enrolled in an eligible comprehensive transition and postsecondary program under § 668.232.

Changes: None.

Comment: Several commenters expressed concern regarding the provision of special education and related services to a student with an intellectual disability who is dually enrolled in secondary school and a comprehensive transition and postsecondary program. The commenters asked whether the LEA would pay for the comprehensive transition and postsecondary program or whether the student with an intellectual disability would apply for Federal Pell, FSEOG and FWS program assistance.

Discussion: Under section 612(a)(1) of the IDEA and 34 CFR 300.101, each State and its LEAs must make FAPE available to all children with specified disabilities residing in the State, in mandatory age ranges. Under 34 CFR 300.17(c) of the regulations implementing Part B of the IDEA, FAPE includes an appropriate preschool, elementary school, or secondary school education in the State involved. Under the IDEA, LEAs are not required to provide FAPE in postsecondary education settings. In general, Part B, IDEA funds could be used for appropriate education services included in an IEP that are provided outside of a public or private elementary or secondary school though, if, under State law, the education would be considered secondary school education.

A student with an intellectual disability is eligible to receive Federal Pell Grant, FSEOG, and FWS program assistance under § 668.233 if the student satisfies the general student eligibility requirements under § 668.32, except for paragraphs (a), (e), and (f) of that section. Section 668.32(b) states that a student is not eligible to receive Federal Pell Grant, FSEOG, or FWS program assistance if he or she is enrolled in elementary or secondary school. In other words, if a student is dually enrolled in a secondary school and an eligible comprehensive transition and postsecondary program, he or she is not eligible for Federal Pell, FSEOG, and FWS program assistance. Therefore,

while an LEA could use Part B, IDEA funds to support a dually enrolled student with a disability's participation in a comprehensive transition and postsecondary program if the services the student received in that program were considered secondary school education under State law and were included in the student's IEP, the student would not be eligible to apply for Federal Pell Grant, FSEOG, and FWS program assistance. The Department will monitor the establishment of these comprehensive transition and postsecondary programs, and may consider at some point in the future using the Secretary's waiver authority under the statute to permit qualifying students who are dually enrolled in these programs to also receive Federal Pell Grant, FSEOG, and FWS program assistance. If the Department were to adopt such an approach, we would provide additional information concerning the procedures and availability of any such waivers at that time.

Changes: None.

Comment: A few commenters requested that the regulations clarify whether the LEA is responsible for monitoring the progress of a student who is dually enrolled in a secondary school and a comprehensive transition and postsecondary program.

Discussion: If a student with an intellectual disability who is dually enrolled in a comprehensive transition and postsecondary program receives services in that program that are considered secondary education in the State and are included in the student's IEP, the SEA or LEA must monitor the student's progress toward annual academic and functional goals, because those entities are responsible, under the IDEA, for ensuring that the services identified in the student's IEP are provided. Additionally, eligible comprehensive transition and postsecondary programs, which operate through institutions, must meet the program requirements in § 668.232, including establishing a policy for determining whether a student enrolled in the comprehensive transition and postsecondary program is making satisfactory academic progress. In all cases, the Department encourages the SEA or LEA and the institution offering the comprehensive transition and postsecondary program to enter into a formal agreement of understanding that identifies what the SEA or LEA will provide to the dually-enrolled student, and what the institution will provide to meet the requirements of an eligible comprehensive transition and postsecondary program, and how the student's progress will be assessed. Furthermore, section 612(a)(12) of the IDEA and its implementing regulations at 34 CFR 300.154 require States to develop and implement interagency agreements or other written mechanisms for interagency coordination to ensure that services necessary to provide FAPE to children with disabilities within the State that are provided or paid for by other public agencies are provided or paid for. These provisions mean that if public agencies of a State operate comprehensive transition and postsecondary programs that dually enroll students who are covered by the IDEA to provide services included in the students' IEPs, the State must ensure that interagency agreements or other written mechanisms meeting these requirements are in place.

Changes: None.

Comment: A few commenters requested that the Department clarify the interaction between the receipt of Title IV, HEA aid and other benefits that the student may receive, such as Medicaid or vocational rehabilitation funding. Specifically, commenters expressed concern that a student's receipt of Medicaid benefits or other benefits may be disrupted due to the student's receipt of Federal Pell Grant, FSEOG, or FWS program assistance.

Discussion: These final regulations implement provisions of the HEA only. They do not attempt to address any overlap between the protections and requirements of the State Medicaid program under Title XIX of the Social Security Act. Additional information concerning eligibility requirements for other programs may be sought from the agency responsible for implementing those programs.

With respect to financial aid available to students under the HEA, a student's financial aid assistance may be affected by aid received under other programs, such as Medicaid. While a student's Federal Pell Grant award would not be reduced based on any other aid received, the amount of FSEOG and FWS program assistance for which a student is eligible is based, in part, on the student's total estimated financial assistance (EFA), as defined in § 673.5(c). A student's FSEOG and FWS awards, when combined with the student's other EFA, may not exceed the student's financial need. Therefore, a student's FSEOG and FWS awards may be affected by other aid the student receives.

Changes: None.

Comment: Several commenters expressed concern regarding the use of a student's summary of academic and functional performance to meet the requirements under § 668.233(c). Commenters stated that a student's summary of academic and functional performance should not serve as acceptable documentation to establish that the student has an intellectual disability.

Discussion: To better prepare for the student's enrollment in a comprehensive transition and postsecondary program, the Department encourages institutions to consider using a student's summary of academic achievement and functional performance (SOP) as described in 34 CFR 300.305(e)(3). That said, the Department recommends that institutions use the SOP only as supplemental information under § 668.233(c).

Section 300.305(e)(3) of the implementing regulations of the IDEA, consistent with section 614(c)(5)(B)(ii) of the IDEA, states that the summary required when a child graduates with a regular diploma or exceeds the age eligibility under State law must include information about the child's academic achievement and functional performance, as well as recommendations on how to assist the child in meeting the child's postsecondary goals. The Department believes that this supplemental information would provide the institution with a better understanding of a student's abilities and limitations in determining an appropriate comprehensive transition and postsecondary program for the student.

Changes: None.

Comment: A few commenters expressed concern that a student's documentation from an SEA under § 668.233(c) might not include terms such as ''intellectual disability'' or ''mental retardation'' and, therefore, may not be useful in establishing eligibility as student with an intellectual disability. One commenter stated that, in its school district, a student's IEP does not include a disability category. The commenter asked how a student's eligibility in this situation would be determined and whether the school district would have to complete an evaluation that states that the student has an intellectual disability. Another commenter asked if a student would need to have a specific diagnosis of intellectual disability to be eligible.

Discussion: The issue raised by these comments is similar to the one addressed in response to comments on § 668.231(b). Section 668.233(c) requires that an institution obtain a record from an LEA that the student is or was eligible for special education and related services under the IDEA, and if

the record does not identify the student as having an intellectual disability, documentation establishing that the student has an intellectual disability. The Department recognizes that documentation from an LEA (an IEP or transition plan, for example) may not state that a student has an intellectual disability. The Department believes that § 668.233(c)(1) and (c)(2) addresses this issue, by requiring the institution to review all documentation obtained to establish that the student has an intellectual disability. Nothing in these provisions, however, requires LEAs to perform or pay for evaluations that they do not need for purposes of meeting requirements of the IDEA.

Changes: None.

Comment: A few commenters suggested that, whenever possible, existing documentation from school records or other sources, such as previous evaluations conducted by qualified professionals from public agencies, be used to determine that the student has an intellectual disability, and that the process for making this determination should be minimally burdensome for students, families, and institutions.

Discussion: During negotiated rulemaking, some negotiators expressed concern that institutions would require updated evaluations that could be costly or cost prohibitive. In the preamble to the NPRM, the Department stated that an institution, as the party responsible for determining students' eligibility for the Federal Pell, FSEOG, and FWS programs, would be allowed to accept the most recent documentation, even if it is more than a few years old. To further clarify, we do not believe it is appropriate to require in these regulations that the documentation submitted by the student have a minimum or maximum age, as long as the information used is the best available under the circumstances. Under § 668.233(c), if the record from the LEA does not state that the student has an intellectual disability, the institution also would have to obtain documentation to establish that the student has an intellectual disability, as defined under § 668.231(b).

Changes: None.

Part 690 Federal Pell Grant Program

Two Federal Pell Grants in an Award Year (§§ 690.67, 690.64, and 690.63(h))

Student Eligibility for a Second Scheduled Award (§ 690.67)

Comments: Several commenters agreed with the proposed regulations that would amend § 690.67(a)(1) to provide that a student would be eligible for a second Scheduled Award if the student has earned in an award year at a minimum the credit or clock hours of the first academic year of the student's eligible program. However, a significant number of commenters objected to the proposed regulations as they would apply to term-based programs. In general, the commenters were concerned that the regulations would unduly limit the benefits to students of two Federal Pell Grants in an award year, would be overly complex and burdensome for institutions to administer, and would create confusion for students due to uncertainty in determining the students' Federal Pell Grants and due to the different eligibility requirements for a second Scheduled Award. The commenters also believed that enabling an individual student to enroll in additional coursework during an award year should be considered acceleration without reference to the program's length. Some commenters proposed that eligibility for payments be determined based on previous eligibility used and without reference to completion of the credit hours of an academic year. Some commenters proposed, as an alternative, for the Department to require that a student successfully complete the hours for which the Federal Pell Grant was paid to qualify for the second Scheduled Award.

One commenter was concerned that the requirements would adversely affect students taking noncredit and reduced credit remedial coursework.

Several commenters questioned the Department's concern that the satisfactory academic progress standards in 34 CFR 668.16(e), as well as the new limitation under section 401(c)(5) of the HEA that a student's lifetime eligibility is limited to nine Scheduled Awards if a student receives a Federal Pell Grant for the first time on or after July 1, 2008, did not provide sufficient minimum standards for ensuring a student's advancement in his or her eligible program. Two commenters recommended revising the satisfactory academic progress requirements as an alternative to the proposed regulations.

Discussion: We agree that the proposed regulations might unduly limit a Federal Pell Grant-eligible student's ability to meet the costs of attending additional courses that would enable the student in an award year to accelerate his or her progress toward program completion and that the final regulations should not impede such acceleration. In addition, we agree that the proposed regulations could be considered complex and burdensome for some institutions to administer. We agree, in principle, with the recommendations of some commenters that payment should be tied to successful completion of the credit or clock hours for which a student has received Federal Pell Grant payments. Based on these comments, we believe it would be appropriate to require that, for a student to be eligible for payments from a second Scheduled Award in an award year, the student must be enrolled in credit or clock hours that were attributable to the student's second academic year. A student in a term-based program would cease to be eligible for a payment from the second Scheduled Award if the student ceased to be enrolled in the credit hours attributable to the second Scheduled Award prior to the date for any recalculation for changes in enrollment status required by the institution's recalculation policies established under § 690.80(b).

The eligibility requirements for a second Scheduled Award in an award year must be different from those for a first award, in that section 401(b)(5)(A)(i) of the HEA requires enrollment on at least a half-time basis to receive a second Scheduled Award. This difference may be disconcerting to some students. However, we believe that students will be able to understand these requirements.

We do not believe the regulations would adversely affect a student enrolled in noncredit or reduced-credit remedial coursework. The student's remedial coursework would be considered in accordance with the requirements for determining equivalence to full-credit coursework under 34 CFR 668.20 when determining the student's eligibility for a second Scheduled Award in an award year.

We do not agree with the commenters concerning the efficacy of the current satisfactory academic progress standards and the new lifetime limit of nine Scheduled Awards in providing a sufficient basis for encouraging a student to accelerate program completion. Some institutions have adopted reasonable standards of satisfactory academic progress that would address our concerns. Others have used the flexibilities and options in the current regulations to fashion institutional standards that may meet the letter of the requirements in 34 CFR 668.16(e) but in our view allow students who are not progressing satisfactorily to continue to receive title IV aid. Because of this variability and our belief that the new lifetime limit for Federal Pell Grants does not provide sufficient encouragement to accelerate program completion, we do not agree with the

suggestions that a payment of a second Scheduled Award may be made without reference to a student's completion of the first academic year in an award year. Further, we believe that relying on current satisfactory progress standards would not be in accord with the student achievement and accountability principles for using additional funds appropriated for Federal Pell Grants under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). We agree with the commenters who recommended that we consider revising the satisfactory academic progress standards and have included this issue as a likely topic in the negotiated rulemaking on program integrity issues that is scheduled to commence on November 2, 2009. Information on this new negotiated rulemaking was published in the **Federal Register** on May 26, 2009 (74 FR 24728) and September 9, 2009 (74 FR 46399), respectively.

Changes: We are revising § 690.67(a)(1) to provide that an institution participating in the Federal Pell Grant Program shall award a payment of a second Scheduled Award to a student in an award year if an otherwise eligible student is enrolled for credit or clock hours that are attributable to the student's second academic year in the award year. As a result of this change, we are also making conforming changes in § 690.67(c) for special circumstances in determining whether a student may qualify for a second Scheduled Award and in § 690.64 as discussed under the heading ''Payment Period in Two Award Years (§ 690.64).''

Transfer Students (§ 690.67(b))

Comments: One commenter supported § 690.67(b) as a straightforward treatment of transfer students. Another believed no provision was needed for transfer students if the Secretary ceased to require that eligibility for payment from a second Scheduled Award be based on completing the hours of the first academic year. One commenter cited examples where the provisions in § 690.67(b) would result in inequitable treatment between continuously enrolled and transfer students. Another commenter believed that we should provide an ''hours-earned'' method as an option under which an institution with the necessary information may determine the credits or clock hours earned in the award year at other institutions that would be applicable to completing the first academic year. The commenter believed that there should also be a limitation on the need to recalculate a student's eligibility based on the receipt of information subsequent to disbursements of a second Scheduled Award. Some commenters believed that the determination of a transfer student's credit or clock hours should be based on the percentage of the student's Scheduled Award used at the prior institution.

Discussion: Based on the Department's revision of § 690.67(a)(1), determining a transfer student's credit or clock hours toward completion of the first academic year in an award year is still required. During negotiated rulemaking, the non-Federal negotiators noted that determination of the actual credits or clock hours earned at other institutions would be burdensome to the institution into which a student transfers and generally would be administratively difficult. To perform a determination of the actual credit or clock hours earned at other institutions, an institution would need to have the necessary information to determine whether credit or clock hours were earned in the current award year, regardless of whether the institution accepted them on transfer. The institution would also be required to resolve ambiguities such as whether the credit or clock hours of a summer payment period were considered earned in the current award year or whether credit or clock hours in a transcript were nonapplicable hours based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

While we recognized that there will be some inequities in applying the assumption method in § 690.67(b), we continue to believe that this method is appropriate for evaluating a transfer student's eligibility when the alternative would be administratively burdensome to an institution. However, we also agree with the commenter who recommended that, if an institution chooses to do so, it may use an hours-earned method to determine the actual credit or clock hours earned at other institutions during the award year.

Under § 690.67(b)(2) an institution that chooses to use the assumption method must determine the credit or clock hours that a transfer student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution. These same proportions are used to calculate the percentage of Scheduled Award used by a student. Following the provisions of § 690.67(b)(2) would yield a more accurate determination of the credit or clock hours considered to be transferred than merely applying the percentage of Scheduled Award used.

We agree with the concern regarding the receipt of additional information regarding a student's payments at other institutions subsequent to determining the student's eligibility for a second Scheduled Award and agree that some limitation on requiring a recalculation of prior payments would be appropriate. An institution may correctly make a determination of a student's eligibility for a second Scheduled Award for a prior payment period based on the information available at that time. We do not believe it is necessary to impose the burden of requiring the institution to adjust a determination for a prior payment period that was correctly made during that prior payment period. However, we believe it is appropriate to provide that the institution may, at its option, revise the student's eligibility for a prior payment based the receipt of additional information.

Changes: We are revising § 690.67(b) to provide that an institution may, on an individual student basis, use an hours-earned method for determining a student's credit or clock hours earned at other institutions in an award year as an alternative to the assumption method. We are also clarifying that an institution may, but is not required to, recalculate a student's payment in a prior payment period in an award year if the institution receives information that would change the student's eligibility for a second Scheduled Award in the prior payment period. The institution would be required to take into consideration the new information in determining eligibility for the current payment period if that payment period is in the same award year.

Nonapplicable Credit or Clock Hours (§ 690.67(d))

Comment: One commenter did not support excluding the AP, IB, testing out, life experience, or similar competency measures in determining a student's eligibility for a second Scheduled Award. The commenter believed that the exclusion would be burdensome to administer.

Discussion: We do not agree with the commenter. A student's eligibility for a second Scheduled Award is based, in part, on the student's progress in earning the credits or clock hours of the first academic year in the award year. We continue to believe that this provision ensures that only those credits or clock hours earned in the award year are considered in determining the

student's eligibility. While the provision may create some burden, it is essential to making a valid determination of a student's eligibility for a second Scheduled Award.

Changes: None.

Payment Period in Two Award Years (§ 690.64)

Comments: Several commenters supported the concept of requiring that a payment period scheduled to occur in two award years, a ''crossover'' payment period, be assigned to the award year in which the student would receive the greater payment for the payment period. A significant number of commenters believed these requirements would be administratively difficult to administer. Several commenters believed that the financial aid administrator should continue to have the discretion to assign a ''crossover'' payment period to either award year and should not be required to assign a crossover payment period to the award year in which the student would receive the greater payment for the payment period. The commenters also believed that a financial aid administrator should not be required to reassign the crossover payment period if subsequent information is received that would lead to a higher Federal Pell Grant for a student as required in § 690.64 in the case of students enrolled on at least a three-quarter-time basis. One commenter believed that these requirements mandated that a student must file a Free Application for Federal Student Aid (FAFSA) for a crossover payment period. One commenter believed that a deadline should be established for being required to make reassignments of crossover payment periods.

Several commenters believed that the determination of the higher payment should be made only at the time the Federal Pell Grant is initially awarded or packaged. Some commenters were concerned that increasing a crossover payment would necessitate cancelling all or a portion of a student's loan. One commenter believed the increased payments would lead to overpayments in Federal Work-Study (FWS) assistance. The commenters believed these adjustments in the students' awards would confuse students. Some commenters were concerned that requiring that the crossover payment period be in the second award year would adversely affect a student's eligibility for loans since the institution would be required to place the crossover payment period in the second award year for purposes of awarding FFEL and Direct Loans. Two commenters stated that the award year placement of a student's Federal Pell Grant may adversely affect the amount of the student's State grant aid. Commenters were also concerned that institutions would delay disbursement to students eligible for a higher payment from the second award year until Federal funds were available on July 1 for that year. One of these commenters noted that State law prohibited an institution from advancing funds not yet received. The commenter proposed that, if necessary due to State law, an institution should be allowed to disburse funds at the beginning of a crossover payment period from the first award year to a student eligible for a higher payment form the second award year and then make the necessary adjustments after July 1 to provide the higher payment from the second award year. The commenter believed that this process would ensure funds are available to the student at the start of the payment period but ultimately yield the greater payment. One commenter questioned whether the results of verifying application information could lead to a reassignment of the payment period and adversely affect a student. Several commenters recommended that if a payment must be assigned to the subsequent award year, the Federal Pell Grant should be considered disbursed for purposes of the return of title IV funds under 34 CFR 668.22 even when the student withdraws prior to July 1.

Discussion: We continue to believe that a crossover payment period should be assigned in a way that maximizes a student's eligibility for that payment period even if this causes some administrative difficulties. The Department would consider an institution that delays disbursing funds from the second award year until July 1 of that year, to be in compliance with these requirements if the institution disbursed funds at the beginning of the crossover payment period from the first award year to a student eligible for a higher payment from the second award year and then made the necessary adjustments after July 1 to provide the higher payment from the second award year as soon as funds were available on July 1. There is no requirement that a student submit a FAFSA for both award years to receive payment for a crossover payment period. We believe these benefits will be understood and appreciated by students. Further, with the changes made by the Department in these final regulations to § 690.67(a)(1), assigning a crossover payment period to the subsequent award year would generally no longer adversely impact a student's ability to establish eligibility for a second Scheduled Award in that subsequent year.

Contrary to the concerns expressed by some commenters, one of the major additional benefits for students of this requirement in § 690.64 is a reduction in student borrowing. The increase in the student's Federal Pell Grant payment would increase the student's estimated financial assistance and thus reduce the student's need for loan funds for the payment period. Also, while it is unlikely that a combination of an increased Federal Pell Grant payment and FWS would result in a need to reduce the FWS award as one commenter indicated, no overaward for earnings from work would be created in the very limited cases in which a student may need to have FWS assistance canceled.

We do not agree with the commenters who were concerned that requiring that the crossover payment period in the second award year would adversely affect a student's eligibility for loans. The commenters believed that the institution would be required to place the crossover payment period in the new award year for purposes of awarding FFEL and Direct Loans. Under the requirements of the Title IV, HEA programs, the award year assignment of a student's Federal Pell Grant has no affect on the award year assignment of the student's other Federal student assistance, including loans. The amount of the Federal Pell Grant is estimated financial assistance for determining the need in the other programs. Institutions should ensure that their information technology systems provide for this necessary flexibility to ensure that students receive appropriate assistance in each award year. System requirements should not be the basis for limiting the assistance for which a student is eligible.

We agree with the commenters that, in some limited instances under the current award regulations for State grant programs, a student's State grant may be reduced because of an increase in the student's Federal Pell Grant. We do not believe that we should use these limited circumstances as the basis for denying a student a higher Federal Pell Grant crossover payment. We believe that the States can make the necessary adjustments to their programs to maximize the overall aid available to these needy students.

We do not agree that a reassignment of the payment period as a result of verification of application information would adversely affect a student. If, as a result of verification of application information, a student's EFC and Federal Pell Grant eligibility changes for

an award year, that result would be taken into consideration in assigning a student's crossover payment. If, for example, the crossover payment period were assigned to the first award year because it yielded the maximum Federal Pell Grant payment but verification of application information resulted in a lower EFC and increased Federal Pell Grant eligibility for the second award year, the crossover payment period would be reassigned to the second award year.

With regard to the return of title IV funds, a disbursement for the subsequent award year may be made prior to July 1 using institutional funds rather than waiting to disburse when the subsequent award year Federal funds become available on July 1. Also, notwithstanding whether an institution chooses to make such a disbursement, the return of title IV funds takes into consideration both funds that were disbursed as well as funds that could have been disbursed.

Based on these comments, we will establish deadlines specifically for these determinations through publication of a **Federal Register** notice. We will clarify the deadline when the receipt of information would require reassignment for a higher crossover payment and a deadline for a subsequent period when the receipt of information would support, but not require, an institution to make reassignments for a higher crossover payment. We expect to set the initial deadline based on the last date for submitting Student Aid Reports or Institutional Student Information Records for the first award year or a similar date as appropriate. During the subsequent period of time prior to the second deadline, an institution may establish such policies concerning reassignment of the crossover payment period as it determines best meet the needs of its students and the institution.

Changes: We are revising proposed § 690.64(b) to require that, regardless of a student's enrollment status, the crossover payment period must be assigned to the award year in which the student would receive the greater payment for the payment period at the time the student's Federal Pell Grant is initially calculated. We are also clarifying the deadlines by which an institution must take into account any information that changes a student's payment by providing that an institution must make a reassignment to the award year providing the greater payment based on any additional information received by a deadline that the Secretary establishes through publication in the **Federal Register** for each award year. We are further providing that an institution may make, but is not required to make, a reassignment if additional information is received after the date established for required reassignments and not later than the deadline date for the first award year for administrative relief based on unusual circumstances that the Secretary establishes through publication in the **Federal Register** for each award year.

We are also removing proposed § 690.64(a)(2) and (c). Section 690.64(a)(2) provided that a student may request a determination concerning the assignment of a crossover payment period, and § 690.64(c) required the assignment of a payment period with more than six months scheduled to occur within one award year to be assigned to that award year. These proposed provisions are no longer relevant under these revised requirements.

Part 692—Leveraging Educational Assistance Partnership Program Grants for Access and Persistence Program (Subpart C of Part 692 Consisting of §§ 692.90 Through 692.130)

Recruiting Eligible Students (§ 692.101(b)(2))

Comment: One commenter was concerned that early information and intervention, mentoring, or outreach programs (early intervention programs) are integral to the GAP Program, and the commenter believed that it would be difficult to identify students participating in early intervention programs who would be eligible for a LEAP Grant under GAP. The commenter believed that under current privacy laws identifying students who have participated in an eligible early intervention program and matching them with their FAFSA submissions and then with a GAP-participating postsecondary institution would appear to be impossible. The commenter questioned whether these requirements could be redefined to indicate that if the State partners with itself or another organization to provide early intervention programs at a particular high school that anyone who graduates with that high school cohort would be considered a ''participating student.'' The commenter believed this definition would remove the requirement of having to have personally identifiable information for each participant. The commenter also noted that additional guidelines would be needed for home-schooled students or those who participate in an early intervention program through a non-school-based program.

Discussion: To the extent that the privacy provisions of FERPA (34 CFR part 99) apply to the particular circumstances of a State agency and other GAP participants in the State, the Department will provide technical assistance on any issues raised by the applicability of FERPA on a case-by-case basis.

Changes: None.

Executive Order 12866

1. Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined this regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Therefore, the Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

As discussed in the NPRM, these regulations are needed to implement provisions of the HEA, as amended by the HEOA, related to changes to the Federal grant and work-study programs, campus safety, educational programs for students with intellectual disabilities, peer-to-peer file sharing and copyright infringement, teach-outs, readmission of servicemembers, and non-title IV revenue.

Regulatory Alternatives Considered

Regulatory alternatives were considered as part of the rulemaking process. These alternatives were reviewed in detail in the preamble to the NPRM under both the *Regulatory Impact Analysis* and the *Reasons* sections accompanying the discussion to each regulatory provision. To the extent that they were addressed in response to comments received on the NPRM, alternatives are also considered elsewhere in this preamble to the final regulations under the *Discussions* sections related to each provision. No comments were received related to the *Regulatory Impact Analysis* discussion of these alternatives.

As discussed above in the *Analysis of Comments and Changes* section, these final regulations reflect specific HEOA requirements, in many cases using language drawn directly from the statute, and minor revisions in response to public comments. In most cases, these revisions were technical in nature and intended to address drafting issues or to provide additional clarity. None of these changes result in revisions to cost estimates prepared for and discussed in the *Regulatory Impact Analysis* of the NPRM.

Benefits

As discussed in the NPRM, benefits provided in these regulations include greater transparency about consumer information and campus safety for prospective and current students at institutions participating in the Federal student financial assistance programs, copyright infringement policies, requirements for readmission of servicemembers, explanation of extenuating circumstances under which TEACH Grant service obligations may be excused, requirements for programs serving students with intellectual disabilities, and additional guidelines for Federal grant and work-study programs. It is difficult to quantify benefits related to the new institutional requirements, as there is little specific data available on consumers' use of such information and the effect of the other provisions. In the NPRM, the Department requested comments or data that would support a more rigorous analysis of the impact of these provisions. No comments or additional data were received.

Benefits under these regulations flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations, or by changes made in response to comments on the NPRM. As noted in the *Regulatory Impact Analysis* in the NPRM, these provisions result in net costs to the government $1,644 million over years 2010–2014.

Costs

As discussed extensively in the *Regulatory Impact Analysis* of the NPRM, many of the statutory provisions implemented though these regulations will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. In total, these changes are estimated to increase burden on entities or individuals participating in the Federal student assistance programs by 253,718 hours. Virtually all this increased burden is associated with institutions, with 80 percent related to two provisions: peer-to-peer file sharing and the award of two Pell Grants in a single award year. An extremely small amount—384 hours—is associated with students. The monetized cost of this additional burden, using loaded wage data developed by the Bureau of Labor Statistics, is $4.7 million.

Given the limited availability of data underlying these burden estimates, in the NPRM the Department requested comments and supporting information for use in developing more robust estimates. In particular, we asked institutions to provide detailed data on actual staffing and system costs associated with implementing these regulations, especially the provisions related to peer-to-peer file sharing and administering two Pell Grants in one year. No comments or additional data were provided.

Net Budget Impacts

HEOA provisions implemented by these regulations are estimated to have a net budget impact of $297.4 million in 2010 and $1.6 billion over FY 2011–2014. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. A cohort reflects all loans originated in a given fiscal year.

The budgetary impact of the regulations is entirely driven by statutory changes involving the provision of two Pell Grants in a single award year. The Department estimates almost no budgetary impact for other provisions included in these regulations. There is no data indicating that the extensive new requirements for disclosures for student loan program participants will have any impact on the volume or composition of Federal student loans.

Assumptions, Limitations, and Data Sources

As noted in the NPRM, because these regulations largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these regulations do not exist. Costs have been quantified for five years. In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems, including especially the Fiscal Operations Report and Application to Participate (FISAP); and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. Data from other sources, such as the U.S. Census Bureau, were also used. Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995.*

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these regulations. The estimate for the period from 2010 to 2014 uses OMB discounting methodology and discount rates of seven and three percent. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded loan discharges and teacher loan forgiveness payments).

TABLE 2—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers	$281 (7% discount rate). $277 (3% discount rate).
From Whom to Whom?	Federal Government to Student Loan Borrowers.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define institutions and lenders as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by small governmental jurisdictions, which are comprised of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

As discussed in more detail in the *Regulatory Flexibility Act* section of the NPRM, data from the Integrated Postsecondary Education Data System (IPEDS) indicate that roughly 2,660 institutions participating in the Federal student assistance programs meet the definition of ''small entities.'' More than half of these institutions are short-term, for-profit schools focusing on vocational training. Other affected small institutions include small community colleges and tribally controlled schools. The Department estimates that total burden on small institutions from these regulations will be thirty-nine hours or less. Burden on institutions associated with these regulations is largely associated with the requirements to establish systems to limit illegal peer-to-peer file sharing, readmission requirements for servicemembers, and new disclosures related to graduation rates, retention rates, fire safety, and campus safety. In each of these cases, the Department believes the new provisions do not represent a significant burden on a large number of schools. Provisions related to peer-to-peer file sharing, for example, only affect schools that provide students with school-maintained and operated internet services; many small institutions lack the resources or need to provide such services and so will not be affected by the provisions. For those that will be affected, the Department is encouraging the adoption of best practices which should reduce institutional burden.

Data from the National Center for Education Statistics indicate that roughly two percent of students at small institutions receive veteran's benefits; this figure significantly overstates the number of servicemembers likely to be readmitted under the regulations, but even using the two percent figure as a proxy for affected students, the Department believes this limited population will not represent a significant burden for small institutions. For the consumer information requirements, vocational institutions, which make up more than half of the schools meeting the definition of ''small entities,'' are already required to collect and distribute much of the required data. Even for schools that will face new requirements to collect and disseminate information about campus activities, the Department estimates additional burden at most institutions of three hours or less.

In the NPRM, the Secretary invited small institutions to submit data supporting comments related to whether they believe the changes would have a significant economic impact on them. No data was received. In the absence of this data, and based on our internal analyses, the Department believes the new requirements contained in these regulations do not impose significant new costs on a substantial number of small institutions.

Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered ''small entities'' under the Regulatory Flexibility Act. The impact of the regulations on individuals is not subject to the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

Final §§ 668.14, 668.18, 668.23, 668.28, 668.41, 668.43, 668.45, 668.46, 668.49, 668.232, 668.233, 686.41, 686.42, 690.63, 690.64, 690.67, 692.21, and 692.100, 692.101, 692.111 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 600.5(a)(5)—Definition of Baccalaureate Liberal Arts Programs Offered by Proprietary Institutions

The final change to § 600.5(a)(5) adds to the definition of *proprietary institution of higher education* an institution that provides a program leading to a baccalaureate degree in liberal arts that the institution has provided continuously since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier. This change in the definition of a proprietary institution does not impact burden.

While the current regulations point to OMB 1840–0098, we estimate that there is no change in burden associated with this section of the regulations as reported under the redesignated OMB Control Number 1845–0012.

Section 668.14(b)(31)—Institutional Requirements for Teach-Outs/Eligibility and Certification Procedures

The final regulations in § 668.14(b)(31) require an institution to submit a teach-out plan to its accrediting agency whenever (1) the Department or their accrediting agency initiates an LS&T, or an emergency action against the institution, as required by statute; (2) the institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program; (3) the institution intends to close a location that provides 100 percent of at least one program; or (4) the institution otherwise intends to cease operations.

While the current regulations in § 668.14 point to OMB 1840–0537, we estimate that the final changes in § 668.14 will increase burden by 160 hours for institutions under the redesignated OMB Control Number 1845–0022.

Section 668.18—Readmission Requirements for Servicemembers

The final § 668.18 of the regulations include the general requirements that an institution may not deny readmission to a servicemember, but must readmit the

servicemember with the same academic status as when the student was last admitted to the institution. The final regulations clarify that the requirements also apply to a student who was admitted to an institution, but did not begin attendance because of service in the uniformed services. The final regulations specify that the institution must promptly readmit a student, and define ''promptly readmit'' as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date. The final regulations require the institution to make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost. The institution would not be required to readmit the student if, after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off, or is still unable to complete the program.

The final regulations require an institution to designate one or more offices for the purpose of receiving advance notice from students of their absence from the institution necessitated by service in the uniformed services, and notice from students of intent to return to the institution. However, such notices do not need to follow any particular format, nor would a student have to indicate if the student intends to return to the institution. Also, any such notice may be provided by an appropriate officer of the U.S. Armed Forces. The notice of intent to return may be provided orally or in writing and would not need to follow any particular format. A period of absence from the institution before or after performing service in the uniformed services do not count against the period of uniformed service which is limited to the five years.

The final regulations list the documentation that supports the institution's determination for readmission that a student must submit with an application for readmission. The final regulations make clear that the types of documentation available or necessary will vary from case to case.

The final regulations list the circumstances that a student's eligibility for readmission to an institution would be terminated.

We estimate that the final changes will increase burden for students by 384 hours and for institutions by 1,129 hours for a total increase in burden of 1,513 hours in OMB Control Number 1845–NEW1.

Non-Title IV Revenue Requirement (90/10)

Section 668.28(a)—Calculating the Revenue Percentage

The final regulations in § 668.28(a) implement the statutory provisions relating to counting revenue from non-title IV eligible programs.

Regarding institutional loans for which a net present value (NPV) would be calculated, the final regulations establish that institutional loans have to be credited in-full to the students' accounts, be evidenced by standalone repayment agreements between students and the institution, and be separate from enrollment contracts signed by students.

To count revenue from loan funds in excess of the loan limits in effect prior to ECASLA in the allowable revenue category, the final regulations allow institutions to count the excess amount on a payment-period basis.

We estimate that the final regulations will increase burden for institutions; however, these final regulations only define non-title IV revenue. The burden increase is found in § 668.28(b) and (c) under OMB 1845–NEW2.

Section 668.28(b)—Net Present Value

The final regulation in § 668.28(b) defines the NPV as the sum of the discounted cash flows. Appendix C illustrates how an institution calculates its 90/10 revenue percentage.

The final regulations allow a simpler alternative to performing the NPV calculation, by allowing an institution to use 50 percent of the total amount of loans it made during the fiscal year as the NPV. However, as a condition of using the 50 percent alternative calculation, if the institution chooses to use this alternative, it may not sell any of the associated loans until they have been in repayment for at least two years.

We estimate that the final regulations will increase burden for institutions by 3,087 hours in the new OMB Control Number 1845–NEW2.

Section 668.28(c)—Non-Title IV Revenue (90/10)

The final regulations in § 668.28(c) removes all of the 90/10 provisions from 34 CFR 600.5 and relocates the amended provisions to subpart B of part 668. The final regulations amend the program participation agreement to specify that a proprietary institution must derive at least 10 percent of its revenue from sources other than Title IV, HEA program funds. If an institution does not satisfy the 90/10 requirement, the final regulations require the institution to notify the Department no later than 45 days after the end of its fiscal year that it failed to satisfy the 90/10 requirement. In keeping with provisional certification requirements the current regulations are amended by adding final language to provide that a proprietary institution's certification automatically becomes provisional if it fails the 90/10 requirement for any fiscal year.

We estimate that the final regulations in § 668.28(c) will increase burden for institutions by 1 hour in the new OMB Control Number 1845–NEW2.

Section 668.23(d)(4)—Audited Financial Statements

The final regulations in § 668.23(d)(4) require that a proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the Title IV, HEA program funds that the institution received during the fiscal year covered by that audit. The institution must also report in the footnote the non-Federal and Federal revenue by source that was included in the 90/10 calculation.

While the current regulations point to OMB Control Number 1840–0697, we estimate that the final regulations in § 668.23(d)(4) will increase burden for institutions by 165 hours for the redesignated OMB Control Number 1845–0038.

Section 668.43(a)(5)(iv)—Institutional Plans for Improving the Academic Program

The final regulations in § 668.43(a) amend the information about the academic program that the institution must make readily available to enrolled and prospective students about any plans by the institution for improving any academic program at the institution. An institution is allowed to determine what a ''plan'' is, including when a plan becomes a plan.

We estimate that the final regulations will increase burden for institutions by 968 hours in OMB Control Number 1845–0022.

Sections 668.14(b) and 668.43(a)—Peer-to-Peer File Sharing/Copyrighted Material

Section 668.14(b)(30)—Program Participation Agreement (PPA)

The final regulations require an institution, as a condition of participation in a Title IV, HEA program, to agree that it has developed and implemented plans to effectively combat the unauthorized distribution of copyrighted material by users of the

institution's network without unduly interfering with the educational and research use of the network.

An institution's plan must include:

- The use of one or more technology-based deterrents;
- Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material;
- Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and
- Procedures for periodically reviewing the effectiveness of the plans.

The final regulations make clear that no particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance will be, including those that prohibit content monitoring.

The final regulations require an institution, in consultation with the chief technology officer or other designated officer of the institution, to the extent practicable, offer legal alternatives to illegal downloading or otherwise acquiring copyrighted material, as determined by the institution. The final regulations also require that institutions (1) periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material and (2) make the results of the review available to their students through a Web site and/or other means.

While the current regulations in § 668.14 point to OMB 1840–0537, we estimate that the final changes in § 668.14(b)(30) will increase burden by 91,120 hours for institutions under the redesignated OMB Control Number 1845–0022.

Section 668.43(a)(10)—Consumer Information

The final regulations requires information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material be included in the list of institutional information provided upon request to prospective and enrolled students. This information must (1) explicitly inform enrolled and prospective students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject a student to civil and criminal liabilities; (2) include a summary of the penalties for violation of Federal copyright laws; and (3) delineate the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system.

We estimate that the final regulations in § 668.43(a)(10) will increase burden for institutions by 1,424 hours in OMB Control Number 1845–0022.

Section 668.41—Reporting and Disclosure of Information

The final regulations in § 668.41 add retention rate information, placement rate information, and information on the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, to the types of information that an institution must provide to its enrolled and prospective students. When reporting its retention rate, an institution must disclose the institution's retention rate as defined by and reported to the Integrated Postsecondary Education Data System (IPEDS). The institution may use various sources of retention rate information and information on types of graduate and professional education in which graduates of the institution's four-year degree programs enroll (such as State data systems, surveys, or other relevant sources). If an actual placement rate is calculated by the institution, it must be disclosed. The institution would have to identify the source of the information it discloses, as well as the time frames and methodology associated with that information.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has been recently discontinued, therefore, we estimate that the final regulations will increase burden for institutions 8,541 hours in OMB Control Number 1845–0004.

Section 668.45—Information on Completion or Graduation Rates

Under the final regulations in § 668.45, an institution's completion and graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup, and by whether or not the institution's students received certain types of Federal student aid. The disaggregation by receipt of aid is categorized by:

Recipients of a Federal Pell Grant;

Recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan); and

Recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford loan).

The institution reports its completion and graduation rate information in a disaggregated fashion only if the number of students in each category is sufficient to yield statistically reliable information, and doing so would not reveal personally identifiable information about an individual student.

We estimate that the final regulations will increase burden for institutions 7,488 hours in OMB Control Number 1845–0004.

Campus Safety Provisions

Section 668.46(c)(3)—Hate Crime Reporting

The final regulations add the crimes of ''larceny-theft,'' ''simple assault,'' ''intimidation,'' and ''destruction/damage/vandalism of property'' to the crimes that must be reported in hate crime statistics. Additionally, the final regulations update the definitions of the terms ''Weapons: carrying, possessing, etc.,'' ''Drug abuse violations,'' and ''Liquor law violations'' which are excerpted from the Federal Bureau of Investigation's Uniform Crime Reporting Program, to reflect changes made by the FBI to these definitions in 2004.

We estimate that the final regulations will increase burden for institutions by 5,695 hours in OMB Control Number 1845–0022.

Reporting Emergency Response and Evacuation Procedures

Section 668.46(e)—Timely Warning and Emergency Notification

The final regulations clarify the difference between the existing timely warning requirement and the new requirement for an emergency notification policy. While a timely warning must be issued in response to specific crimes, an emergency notification is required in the case of an immediate threat to the health or safety of students or employees occurring on campus. The final language clarifies that an institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

We estimate that the final regulations will increase burden for institutions by 1,424 hours in OMB Control Number 1845–0022.

Section 668.46(g)—Emergency Response and Evacuation Procedures

The final regulations outline the elements that an institution must include in its statement of policy

describing its emergency response and evacuating procedures in its annual security report to include the following:

Procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat occurring on the campus.

A description of the process that (1) confirms that there is a significant emergency or dangerous situation, (2) determines the appropriate segment or segments of the campus community to receive a notification, (3) determines the content of the notification, and (4) initiates the notification system.

A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing the notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.

A list of the titles of the persons or organizations responsible for carrying out the actions required.

Procedures for disseminating emergency information to the larger community.

Procedures for testing its emergency response and evacuation procedures on at least an annual basis with at least one test per calendar year, and be documented, including a description of the exercise, the date, time, and if it was announced or unannounced.

We estimate that the final regulations will increase burden for institutions by 11,390 hours in OMB Control Number 1845–0022.

Missing Student Procedure

Section 668.41(a)—Definition of On-Campus Student Housing Facility

The final regulations in § 668.41(a) would add a definition of the term *on-campus student housing facility* to mean a dormitory or other residential facility for students that is located on an institution's campus.

The final definition is added to clarify what is meant by *on-campus student housing facility* and to link the meaning of ''on-campus'' to the current regulatory definition of *campus* in § 668.46(a), which is used for crime reporting under § 668.46(c). The final change is to a definition and does not impact burden.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has recently been discontinued. We estimate that there is no change in burden associated with this section of the regulations as reported under OMB Control Number 1845–0004.

Section 668.46(b)—Annual Security Report

The final regulations in § 668.46(b) require an institution to include its missing student notification policy and procedures in its annual security report. This is required beginning with the annual security report distributed by October 1, 2010.

We estimate that the final regulations will increase burden for institutions by 456 hours for an increase in burden in OMB Control Number 1845–0022.

Section 668.46(h)—Missing Student Notification Policy

The final regulations in § 668.46(h) implement the new statutory requirements, specifying that a statement of policy regarding missing student notification for students residing in on-campus student housing facilities must include:

A list of the titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;

A requirement that any official missing student report be immediately referred to the institution's police or campus security department or, if not applicable, to the local law enforcement agency with jurisdiction in the area;

The option for each student to identify a contact person to be notified if the student is determined missing by the institutional police or campus security department, or the local law enforcement agency; and

A disclosure that contact information will be registered and maintained confidentially.

The final regulations further require an institution to advise students who are under 18 and not emancipated that if the student is missing, it will notify a custodial parent or guardian in addition to any contact person designated by the student. All students must also be advised that, regardless of whether they name a contact person, the institution must notify the local law enforcement agency that the student is missing, unless the local law enforcement was the entity that determined that the student is missing.

The final regulations reflect the new statutory requirements. These regulations do not preclude the institution from contacting the student's contact person or the parent immediately upon determination that the student has been missing for 24 hours.

We estimate that the final regulations will increase burden for institutions by 2,423 hours for an increase in burden in OMB Control Number 1845–0022.

Fire Safety Standards

Section 668.41(e)—Annual Fire Safety Report

The final regulations provide that institutions that maintain an on-campus student housing facility must distribute an annual fire safety report and to create publication requirements for the annual fire safety report that are similar to the long-standing rules for the annual security report.

The final regulations allow an institution to publish the annual security report and the annual fire safety report together, as long as the title of the document clearly states that it contains both the annual security report and the annual fire safety report. If an institution chooses to publish the reports separately, it would have to include information in each of the two reports about how to directly access the other report.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has recently been discontinued. The burden associated with the data collection and reporting for the annual fire safety report is reflected in § 668.49 as reported under OMB Control Number 1845–NEW3.

Section 668.49—Annual Fire Safety Report

The final regulations define the following terms relevant to the fire safety reporting requirements: Cause of fire; Fire; Fire drill; Fire-related injury; Fire-related death; Fire-safety system; and Value of property damage.

The final regulations require an institution to report to the public, the statistics that it submits to the Department in its annual fire safety report. The institution must provide data for the three most recent calendar years for which data are available. The first full report to contain the full three years of data would be the report due on October 1, 2012.

The final regulations outline the elements that an institution must disclose in its annual fire safety report, including: Fire statistics; A description of each on-campus student housing facility fire safety system; The number of regular, mandatory, supervised fire drills held during the previous calendar year; Policies or rules on portable electrical appliances, smoking, and open flames in student housing facilities; Procedures for student

housing evacuation in the case of a fire; Policies on fire safety education and training programs provided to students, faculty, and staff; A list of the titles of each person or organization to which students and employees should report that a fire has occurred; and Plans for future improvements in fire safety.

The final regulations specify that an institution that maintains an on-campus student housing facility must maintain a written and easily understood fire log that records, by the date that the fire was reported (as opposed to by the date that the fire occurred), any fire that occurred in an on-campus student housing facility. The log would have to include the nature, date, time, and general location of each fire, and require that the log be available for the public. These final regulations also implement the statutory requirement that an institution make an annual report to the campus community on the fires recorded in the fire log; however, this requirement may be satisfied by the annual fire safety report described in final § 668.49(b).

We estimate that the final regulations will increase burden for institutions by 7,283 hours in OMB Control Number 1845–NEW3.

Financial Assistance for Students With Intellectual Disabilities

Section 600.5—Proprietary Institution of Higher Education

The final regulations in § 600.5(a)(5)(i)(B)(2)(ii) define a proprietary institution of higher education as one that may have a comprehensive transition and postsecondary program as an eligible program when it is approved by the Secretary. This change in the definition of an eligible program does not impact burden.

While the current regulations in § 600.5 point to OMB 1840 -0098, this information collection has been discontinued and redesignated to 1845–0012. We estimate that there is no change in burden associated with this final change in the regulations.

Section 668.8—Eligible Program

The final regulations in § 668.8(n) define a comprehensive transition and postsecondary program as an eligible program when it is approved by the Secretary. The final change in the definition of an eligible program does not impact burden.

While the current regulations in § 668.8 point to OMB 1845–0537, this collection package has been discontinued, we estimate that there is no change in burden associated with this final change in the regulations.

Section 668.232—Program Eligibility

The final regulations require an institution that wishes to provide a comprehensive transition and postsecondary program to apply and receive approval from the Secretary. The final regulations outline the elements that an institution must include in its application, including: A detailed description of the comprehensive transition and postsecondary program; The policy for determining whether a student enrolled in the program is making satisfactory academic progress; A statement of the number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program; A description of the educational credential offered or identified outcome or outcomes established by the institution for all students enrolled in the program; A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program; and Any other information the Department may require.

We estimate that the final regulations will increase burden for institutions by 66 hours in OMB Control Number 1845–NEW4.

Section 668.233—Student Eligibility

The final regulations in § 668.233 provide that a student with intellectual disabilities enrolled in a comprehensive transition and postsecondary program may be eligible for Title IV, HEA program assistance under the Federal Pell grant, FSEOG, and FWS programs if: The student is making satisfactory academic program in accordance with the institution's published standards for students enrolled in the comprehensive transition and postsecondary program; and the institution obtains a record from a LEA that the student is or was eligible for FAPE under the IDEA. If the FAPE record does not indicate that the student has an intellectual disability, the institution must obtain documentation from another source that identifies the intellectual disability.

We estimate that the final regulations will increase burden for institutions by 768 hours in OMB Control Number 1845–NEW4.

Section 668.43(a)(7)—Institutional Information

The final regulations change the phrase ''any special facilities and services'' to ''the services and facilities,'' and replaces the phrase ''disabled students'' with ''students with disabilities.'' The final changes also clarify that a description of services and facilities for students with disabilities must also contain the services and facilities available for students with intellectual disabilities.

We estimate that the final regulations will increase burden for institutions by 44 hours in OMB Control Number 1845–0022.

Federal Work Study Programs

Section 675.16—Conforming FWS Payment Requirements to the Cash Management Regulations

The final regulations in § 675.16(b)(1)(ii) and (b)(2), amend the FWS regulations in three ways regarding the use of current award year FWS funds to pay prior award year charges. First, the amount of prior award year charges that could be paid with current award year FWS funds increases to not more than $200. Second, the FWS provision that allows an institution to pay for prior award year charges of $100 or more is removed. Finally, we clarify that the $200 limit applies to all Title IV, HEA program funds that an institution uses to pay prior-year charges. These changes to conform the FWS payment requirements to the current cash management regulations do not impact burden.

We estimate that there is no change in burden associated with this section of the regulations under OMB Control Number 1845–0019.

TEACH Grant Program

Section 686.41—Period of Suspension

The final regulations in § 686.41 provide that a TEACH Grant recipient who is called or ordered to active military duty (or his or her representative) may request a suspension of the eight-year period in increments not to exceed three years. Once the recipient has exceeded the 3-year suspension period, the recipient (or his or her representative) may request a discharge of all or a portion of his or her teaching service obligation.

We estimate that the final regulations will increase burden for institutions in OMB Control Number 1845–0083. The Department will submit an 83–C incorporating the changes after the final regulations have published.

Section 686.42—Discharge of Agreement To Serve

The final regulations in § 686.42 provide that the recipient may qualify for a proportional discharge of his or her service obligation based on the number of years the recipient has been called or ordered to active military duty.

To obtain the discharge, the recipient (or his or her representative) is required to provide the Department:

A written statement from his or her commanding or personnel officer certifying that the recipient is on active duty status in the U.S. Armed Forces, the date on which that service began, and the date the service is expected to end; and a copy of his or her official military orders and military identification.

The Department would notify a TEACH Grant recipient of the decision reached on his or her request for a partial or full discharge of the teaching service obligation. The grant recipient is responsible for fulfilling any teaching service obligation that is not discharged.

We estimate that the final regulations will increase burden for institutions in OMB Control Number 1845–0083. The Department will submit an 83–C incorporating the changes after the final regulations have published.

Federal Pell Grant Program

Two Federal Pell Grants in an Award Year

Section 690.67(a)—Student Eligibility for a Second Scheduled Award

The final regulations amend § 690.67(a) to provide that a student is eligible for a second Scheduled Award if the student is enrolled for credit or clock hours attributable to the student's second academic year in the award year, and is enrolled as at least a half-time student in a program leading to a bachelor's or associate degree or other recognized educational credential (such as a postsecondary certificate or diploma), except as provided for students with intellectual disabilities. To the extent that the institution will be reporting these second Scheduled Award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the regulations will increase burden for institutions by 47,432 hours in OMB Control Number 1845–NEW5.

Section 690.67(b)—Transfer Students

The final regulations in § 690.67(b) provide that an institution determine the credit or clock hours that a transfer student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution. The credit or clock hours that the student would be considered to have earned would be in the same proportion to credit or clock hours in the current institution's academic year as the disbursements that the student has received at the prior institution in the award year are in proportion to the student's Scheduled Award at the prior institution.

To the extent that the institution will be reviewing the transfer records of these students and subsequently reporting second Scheduled Award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the final regulations will increase burden for institutions by 14,400 hours in OMB Control Number 1845–NEW5.

Section 690.67(c)—Special Circumstances

The final regulations in § 690.67(c) provide that in a payment period where there is insufficient remaining eligibility from the first Scheduled Award to make full payment for the payment period, a financial aid administrator may waive the requirement that a student complete the credit or clock hours in the student's first academic year in the award year due to circumstances beyond the student's control. The financial aid administrator is required to make and document the determination on an individual basis.

To the extent that the institution will be documenting these special circumstances and subsequently awarding second Pell grants, the institutions will be reporting the second Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

Section 690.67(d)—Nonapplicable Credit or Clock Hours

The final regulation in § 690.97(d) states that, in determining a student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

To the extent that institutions will be making determinations about the applicability of AP, IB, or other non-applicable courses, institutions will subsequently award second Pell grants and thereafter report Pell disbursements via the Common Origination and Delivery (COD) system, thus there will be some additional reporting burden for institutions.

We estimate that the final regulations will increase burden for institutions by 2,032 hours in OMB Control Number 1845–NEW5.

Section 690.64—Payment Period in Two Award Years

The final regulation in § 690.64 states that, if a student is enrolled in a crossover payment period as a half-time or less-than-half-time student, the current requirements generally apply.

If a student is enrolled as a three-quarter-time or full-time student, an institution must consider the payment period to be in the award year in which the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution is required to reassign the payment to the award year providing the greater payment within specified time frames.

A student may request that the institution place the payment period in the award year that can be expected to result in the student receiving a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur. If the student makes that request, the institution must assign the payment period to that award year.

To the extent that the institution will be reviewing enrollment status in each of the two award years and making determinations about which award year must be used and subsequently reporting these second Scheduled Award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the final regulations will increase burden for institutions by 33,881 hours in OMB Control Number 1845–NEW5.

Section 690.63(h)—Payment From Two Scheduled Awards

Under the final regulations in § 690.63(h), if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the second Scheduled Award, the student's payment would be calculated using the annual award for his or her enrollment status for the payment period. The student's payment would be the remaining amount of the first Scheduled Award being completed plus an amount from the second Scheduled Award in

the award year up to the total amount of the payment for the payment period.

We estimate that the final regulations will increase burden for institutions by 8,471 hours in OMB Control Number 1845–NEW5.

Part 692 Leveraging Educational Assistance Partnership Program

Section 692.21(k)—Notification to Students of LEAP Grant Funding Sources

The final regulations require that the State program notify eligible students that grants under the LEAP Grant Program are (1) LEAP Grants and (2) funded by the Federal Government, the State, and, where applicable, other contributing partners.

The implementation of the final regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these final regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to ensure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Section 692.100—Requirements a State Must Meet To Receive GAP Funds

The final regulations in § 692.100 describe the requirements that a State must meet to receive an allotment under this program including submitting an application on behalf of a partnership and serving as the primary administrative unit of the partnership. Under § 692.100(a)(6), a State must include in its application the steps it plans to take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP would persist to degree completion.

Under § 692.100(a)(8) a State GAP Program is required to notify eligible students that the grants they receive under GAP are LEAP Grants and that the grants are funded by the Federal Government, the State and where applicable, other contributing partners.

The implementation of the final regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these final regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to ensure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Section 692.101—Requirements That Must Be Met by a State Partnership

The final regulations in § 692.101(b)(2) provide that a degree-granting institution of higher education that is in a partnership under the GAP Program must recruit, admit, and provide institutional grant aid to participating eligible students as agreed to with the State agency.

The implementation of the final regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these final regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to ensure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Section 692.111—Purposes for Which a State May Use Its GAP Grant

The final regulations in § 692.111 provide that each State receiving an allotment shall annually notify potentially eligible students in grades 7 through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend a LEAP-participating institution of higher education.

The notice shall include information about early information and intervention, mentoring, or outreach programs available to the student. The notice shall provide a nonbinding estimate of the total amount of financial aid that an eligible student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs. The final notice will also include any additional requirements that the State may require for receipt of a LEAP Grant under GAP.

The implementation of the final regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these final regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to ensure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

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

Regulatory section	Information section	Collection
668.14(b)(31)	Providing that an institution that conducts a teach-out at a site of a closed institution may, under certain conditions, establish that site as an additional location (see sections 487(f) and 498 of the HEA).	OMB 1845–0022. There will be an increase in burden of 160 hours.
668.18	Establishing requirements under which an institution must readmit servicemembers to the same academic status they had when they last attended the institution (see section 484C of the HEA).	OMB 1845–NEW1. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 1,513 hours.
668.23(d)(4)	Adds new requirements to include in the audited financial statement footnote the non-Federal and Federal revenue that was included in the 90/10 calculation.	OMB 1845–0038. There will be an increase in burden of 165 hours.
668.28	Establishing new requirements for determining how proprietary institutions calculate the amount and percent of revenue derived from sources other than Title IV, HEA program funds (see section 487(d) of the HEA).	OMB 1845–NEW2. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 3,088 hours.

Regulatory section	Information section	Collection
668.43(a)(5)(iv)	Expanding the information that an institution must make available to prospective and enrolled students to include a description of any plans the institution has to improve its academic program (see section 485(a) of the HEA).	OMB 1845–0022. There will be an increase in burden of 968 hours.
668.14(b)(30), 668.43(a)(10)	Providing that an institution must certify that it has plans to effectively combat unauthorized distribution of copyrighted material and will offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property (see sections 485(a)(1) and 487(a) of the HEA).	OMB 1845–0022. There will be an increase in burden of 92,544 hours.
668.41	Expanding the information that institutions must make available to prospective and enrolled students to include information on: the employment and placement of students, and the retention rates of first-time, full-time undergraduate students.	OMB 1845–0004. There will be an increase in burden of 8,541 hours.
668.45	Expanding the information that institutions must make available to prospective students to include completion and graduation rate data that is disaggregated by gender, race, and grant or loan assistance (see section 485(a) of the HEA).	OMB 1845–0004. There will be an increase in burden of 7,488 hours.
668.46(c)(3), (e), (g)	Expanding the list of crimes that institutions must include in the hate crimes statistics reported to the Department. Requiring institutions to include in the annual security report a statement of emergency response and evacuation procedures (see section 485(f) of the HEA).	OMB 1845–0022. There will be an increase in burden of 18,509 hours.
668.41(a)	Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).	OMB 1845–0004. There is no change in burden associated with this section of the final regulations.
668.46(b), (h)	Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).	OMB 1845–0022. There will be an increase in burden of 2,879 hours.
668.41(e)	Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).	OMB 1845–0004. There is no change in burden associated with this section of the final regulations.
668.49	Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).	OMB 1845–NEW3. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 7,283 hours.
668.232	Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).	OMB 1845–NEW4. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 66 hours.
668.233	Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).	OMB 1845–NEW4. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 768 hours.
688.43(a)(7)	Requires that institutions report a description of services and facilities for student with intellectual disabilities.	OMB 1845–0022. There will be an increase in burden of 44 hours.
686.41, 686.42	Establishing extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation (see section 420N(d)(2) of the HEA).	OMB 1845–0083. Changes will be incorporated into the Agreement to Serve form.
690.67, 690.64, 690.63(h)	Establishing requirements under which students may receive up to two Federal Pell Grant Scheduled Awards during a single award year (see section 401(b)(5)(A) of the HEA).	OMB 1845–NEW5. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments. There will be an increase in burden of 109,645 hours.

Regulatory section	Information section	Collection
692.21, 692.100, 692.101, 692.111.	Requiring the State program to notify students that grants are LEAP Grants that are funded by the Federal Government, the State, and for LEAP Grants to students under the new Grants for Access and Persistence (GAP) Program, other contributing partners (see section 415C(b) of the HEA). Establishing the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program (see sections 415B and 415E of the HEA).	OMB 1845–NEW6. There will be a new collection. A separate 60-day **Federal Register** notice will be published to solicit comments.

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(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grant Program; 84.033 Federal Work-Study Program; 84.379 TEACH Grant Program; 84.069 LEAP)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

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

34 CFR Part 675

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

34 CFR Part 686

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

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 692

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

Dated: October 16, 2009.

Arne Duncan,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 600, 668, 675, 686, 690, and 692 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 continues to read as follows:

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

■ 2. Section 600.2 is amended by:
■ A. Revising paragraph (1)(i) of the definition of *educational program.*
■ B. Adding, in alphabetical order, a definition for *teach-out plan.*
■ C. Revising the authority citation at the end of the section.

The revisions and addition read as follows:

§ 600.2 Definitions.

* * * * *

Educational program: (1) * * *

(i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

* * * * *

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

* * * * *

(Authority: 20 U.S.C. 1071, *et seq.*, 1078–2, 1088, 1091, 1094, 1099b, 1099c, 1141; 26 U.S.C. 501(c))

■ 3. Section 600.4 is amended by:
■ A. Revising paragraph (a)(4).
■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.4 Institution of higher education.

(a) * * *

(4)(i) Provides an educational program—

(A) For which it awards an associate, baccalaureate, graduate, or professional degree;

(B) That is at least a two-academic-year program acceptable for full credit toward a baccalaureate degree; or

(C) That is at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and prepares students for gainful employment in a recognized occupation; and

(ii) May provide a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

* * * * *

(Authority: 20 U.S.C. 1091, 1094, 1099b, 1141(a))

■ 4. Section 600.5 is amended by:
■ A. Revising paragraph (a)(5).
■ B. In paragraph (a)(6), adding the word ''and'' after the punctuation '';''.

■ C. In paragraph (a)(7), removing the word ''; and'' and adding, in its place, the punctuation ''.''.
■ D. Removing paragraph (a)(8).
■ E. Removing paragraphs (d) through (g).
■ F. Redesignating paragraph (h) as paragraph (d).
■ G. Adding a new paragraph (e).
■ H. Revising the OMB control number and authority citation at the end of the section.

The revisions and addition read as follows:

§ 600.5 Proprietary institution of higher education.

(a) * * *

(5)(i)(A) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; or

(B)(*1*) Has provided a program leading to a baccalaureate degree in liberal arts, as defined in paragraph (e) of this section, continuously since January 1, 2009; and

(*2*) Is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

* * * * *

(e) For purposes of this section, a ''program leading to a baccalaureate degree in liberal arts'' is a program that the institution's recognized regional accreditation agency or organization determines, is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more of the following generally-accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently-designed programs, individualized programs, and unstructured studies:

(1) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(2) An undifferentiated program that includes instruction in the general arts or general science.

(3) A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy, and religion.

(4) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraph (e)(1) through (e)(3) of this section.

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

(Authority: 20 U.S.C. 1088, 1091)

■ 5. Section 600.6 is amended by:
■ A. Revising paragraph (a)(4).
■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.6 Postsecondary vocational institution.

(a) * * *

(4)(i) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

* * * * *

(Authority: 20 U.S.C. 1088, 1091, 1094(c)(3))

■ 6. Section 600.32 is amended by:
■ A. In paragraph (a), removing the words ''(b) and (c)'' and adding, in their place, the words ''(b), (c), and (d)''.
■ B. Redesignating paragraph (d) as paragraph (e).
■ C. Adding a new paragraph (d).
■ D. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 600.32 Eligibility of additional locations.

* * * * *

(d)(1) An institution that conducts a teach-out at a site of a closed institution may apply to have that site approved as an additional location if—

(i) The closed institution ceased operations and the Secretary has taken an action to limit, suspend, or terminate the institution's participation under § 600.41 or subpart G of this part, or has taken an emergency action under 34 CFR 668.83; and

(ii) The teach-out plan required under 34 CFR 668.14(b)(31) is approved by the closed institution's accrediting agency.

(2)(i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d)(1) of this section—

(A) Does not have to meet the two-year in existence requirement of § 600.5(a)(7) or § 600.6(a)(6) for the additional location described in paragraph (d)(1) of this section;

(B) Is not responsible for any liabilities of the closed institution as provided under paragraph (c)(1) and (c)(2) of this section if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b); and

(C) Will not have the default rate of the closed institution included in the calculation of its default rate, as would otherwise be required under 34 CFR 668.184 and 34 CFR 668.203, if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b).

(ii) As a condition for approving an additional location under paragraph (d)(1) of this section, the Secretary may require that payments from the institution conducting the teach-out to the owners or related parties of the closed institution, are used to satisfy any liabilities owed by the closed institution.

* * * * *

(Authority: 20 U.S.C. 1088, 1099c, 1141)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

Authority: : 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

■ 8. Section 668.8 is amended by:
■ A. In paragraph (d)(2)(iv)(B), removing the word ''or'' that appears after the punctuation '';''.
■ B. In paragraph (d)(3)(v), removing the punctuation ''.'' and adding, in its place, the word ''; or''.
■ C. Adding paragraph (d)(4).
■ D. Revising paragraph (n).
■ E. Removing the OMB control number at the end of the section.

The addition and revision read as follows:

§ 668.8 Eligible program.

(d) * * *

(4) For purposes of a proprietary institution of higher education only, is a program leading to a baccalaureate degree in liberal arts, as defined in 34 CFR 600.5(e), that—

(i) Is provided by an institution that is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) The institution has provided continuously since January 1, 2009.

* * * * *

(n) For Title IV, HEA program purposes, *eligible program* includes a

direct assessment program approved by the Secretary under § 668.10 and a comprehensive transition and postsecondary program approved by the Secretary under § 668.232.

* * * * *

■ 9. Section 668.13(c)(1) is revised to read as follows:

§ 668.13 Certification procedures.

* * * * *

(c) *Provisional certification.* (1)(i) The Secretary may provisionally certify an institution if—

(A) The institution seeks initial participation in a Title IV, HEA program;

(B) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(C) The institution is a participating institution—

(*1*) That is applying for a certification that the institution meets the standards of this subpart;

(*2*) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 and subpart L of this part or the standards of administrative capability under § 668.16; and

(*3*) Whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification;

(D) The institution seeks a renewal of participation in a Title IV, HEA program after the expiration of a prior period of participation in that program; or

(E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603.

(ii) A proprietary institution's certification automatically becomes provisional at the start of a fiscal year after it did not derive at least 10 percent of its revenue for its preceding fiscal year from sources other than Title IV, HEA program funds, as required under § 668.14(b)(16).

* * * * *

■ 10. Section 668.14 is amended by:

■ A. Adding paragraph (b)(16).

■ B. In paragraph (b)(25)(ii), removing the word ''and'' that appears after the punctuation '';''.

■ C. Adding paragraph (b)(30).

■ D. Adding paragraph (b)(31).

■ E. Revising the OMB control number at the end of the section.

The additions and revision read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(16) For a proprietary institution, the institution will derive at least 10 percent of its revenues for each fiscal year from sources other than Title IV, HEA program funds, as provided in § 668.28(a) and (b), or be subject to sanctions described in § 668.28(c);

* * * * *

(30) The institution—

(i) Has developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network, without unduly interfering with educational and research use of the network, that include—

(A) The use of one or more technology-based deterrents;

(B) Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material, including that described in § 668.43(a)(10);

(C) Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and

(D) Procedures for periodically reviewing the effectiveness of the plans to combat the unauthorized distribution of copyrighted materials by users of the institution's network using relevant assessment criteria. No particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance with paragraph (b)(30) of this section will be, including those that prohibit content monitoring; and

(ii) Will, in consultation with the chief technology officer or other designated officer of the institution—

(A) Periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material;

(B) Make available the results of the review in paragraph (b)(30)(ii)(A) of this section to its students through a Web site or other means; and

(C) To the extent practicable, offer legal alternatives for downloading or otherwise acquiring copyrighted material, as determined by the institution; and

(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution's accrediting agency upon the occurrence of any of the following events:

(i) The Secretary initiates the limitation, suspension, or termination of the participation of an institution in any Title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under § 668.83.

(ii) The institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program.

(iv) The institution intends to close a location that provides 100 percent of at least one program.

(v) The institution otherwise intends to cease operations.

* * * * *

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

* * * * *

■ 11. Section 668.18 is added to subpart B of part 668 to read as follows:

§ 668.18 Readmission requirements for servicemembers.

(a) *General.* (1) An institution may not deny readmission to a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(2)(i) An institution must promptly readmit to the institution a person described in paragraph (a)(1) of this section with the same academic status as the student had when the student last attended the institution or was last admitted to the institution, but did not begin attendance because of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(ii) ''Promptly readmit'' means that the institution must readmit the student into the next class or classes in the student's program beginning after the student provides notice of his or her intent to reenroll, unless the student requests a later date of readmission or unusual circumstances require the institution to admit the student at a later date.

(iii) To readmit a person with the ''same academic status'' means that the institution admits the student—

(A) To the same program to which he or she was last admitted by the

institution or, if that exact program is no longer offered, the program that is most similar to that program, unless the student requests or agrees to admission to a different program;

(B) At the same enrollment status that the student last held at the institution, unless the student requests or agrees to admission at a different enrollment status;

(C) With the same number of credit hours or clock hours completed previously by the student, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable;

(D) With the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had; and

(E)(*1*) If the student is readmitted to the same program, for the first academic year in which the student returns, assessing—

(*i*) The tuition and fee charges that the student was or would have been assessed for the academic year during which the student left the institution; or

(*ii*) Up to the amount of tuition and fee charges that other students in the program are assessed for that academic year, if veterans' education benefits, as defined in section 480(c) of the HEA, or other servicemember education benefits, will pay the amount in excess of the tuition and fee charges assessed for the academic year in which the student left the institution; or

(*2*) If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, assessing no more than the tuition and fee charges that other students in the program are assessed for that academic year.

(iv)(A) If the institution determines that the student is not prepared to resume the program with the same academic status at the point where the student left off, or will not be able to complete the program, the institution must make reasonable efforts at no extra cost to the student to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost to the student and allowing the student to retake a pretest at no extra cost to the student.

(B) The institution is not required to readmit the student on his or her return if—

(*1*) After reasonable efforts by the institution, the institution determines that the student is not prepared to resume the program at the point where he or she left off;

(*2*) After reasonable efforts by the institution, the institution determines that the student is unable to complete the program; or

(*3*) The institution determines that there are no reasonable efforts the institution can take to prepare the student to resume the program at the point where he or she left off or to enable the student to complete the program.

(C)(*1*) ''Reasonable efforts'' means actions that do not place an undue hardship on the institution.

(*2*) ''Undue hardship'' means an action requiring significant difficulty or expense when considered in light of the overall financial resources of the institution and the impact otherwise of such action on the operation of the institution.

(D) The institution carries the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

(3) This section applies to an institution that has continued in operation since the student ceased attending or was last admitted to the institution but did not begin attendance, notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section for the period of enrollment during which the student resumes attendance, and continuing so long as the institution is unable to comply with such requirements through other means.

(b) *Service in the uniformed services.* For purposes of this section, service in the uniformed services means service, whether voluntary or involuntary, in the Armed Forces, including service by a member of the National Guard or Reserve, on active duty, active duty for training, or full-time National Guard duty under Federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days.

(c) *Readmission procedures.* (1) Any student whose absence from an institution is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution if—

(i) Except as provided in paragraph (d) of this section, the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance oral or written notice of such service to an office designated by the institution, and provides such notice as far in advance as is reasonable under the circumstances;

(ii) The cumulative length of the absence and of all previous absences from that institution by reason of service in the uniformed services, including only the time the student spends actually performing service in the uniformed services, does not exceed five years; and

(iii) Except as provided in paragraph (f) of this section, the student gives oral or written notice of his or her intent to return to an office designated by the institution—

(A) For a student who completes a period of service in the uniformed services, not later than three years after the completion of the period of service; or

(B) For a student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services, not later than two years after the end of the period that is necessary for recovery from such illness or injury.

(2)(i) An institution must designate one or more offices at the institution that a student may contact to provide notification of service required by paragraph (c)(1)(i) of this section and notification of intent to return required by paragraph (c)(1)(iii) of this section.

(ii) An institution may not require that the notice provided by the student under paragraph (c)(1)(i) or (c)(1)(iii) of this section follow any particular format.

(iii) The notice provided by the student under paragraph (c)(1)(i) of this section—

(A) May not be subject to any rule for timeliness; timeliness must be determined by the facts in any particular case; and

(B) Does not need to indicate whether the student intends to return to the institution.

(iv) For purposes of paragraph (c)(1)(i) of this section, an ''appropriate officer'' is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(d) *Exceptions to advance notice.* (1) No notice is required under paragraph (c)(1)(i) of this section if the giving of such notice is precluded by military necessity, such as—

(i) A mission, operation, exercise, or requirement that is classified; or

(ii) A pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

(2) Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or oral notice of service to the appropriate official at the institution in accordance with paragraph (c)(1) of this section may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the institution that the student performed service in the uniformed services that necessitated the student's absence from the institution.

(e) *Cumulative length of absence.* For purposes of paragraph (c)(1)(ii) of this section, a student's cumulative length of absence from an institution does not include any service—

(1) That is required, beyond five years, to complete an initial period of obligated service;

(2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and such inability was through no fault of the student; or

(3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) Ordered to or retained on active duty under—

(A) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(B) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(D) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(E) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(F) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(G) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(H) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(I) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(J) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(K) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); or

(L) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters);

(ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code (i.e., called to respond to an invasion, danger of invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).

(f) *Notification of intent to reenroll.* A student who fails to apply for readmission within the periods described in paragraph (c)(1)(iii) of this section does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

(g) *Documentation.* (1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that—

(i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and

(ii) The student's eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.

(2)(i) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:

(A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty.

(B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.

(C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.

(D) Certificate of completion from military training school.

(E) Discharge certificate showing character of service.

(F) Copy of extracts from payroll documents showing periods of service.

(G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(ii) The types of documents that are necessary to establish eligibility for readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.

(3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(h) *Termination of readmission eligibility.* A student's eligibility for readmission to an institution under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(2) A dismissal of a commissioned officer permitted under section 1161(a) of title 10, United States Code by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President.

(3) A dropping of a commissioned officer from the rolls pursuant to section 1161(b) of title 10, United States Code due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

(Approved by the Office of Management and Budget under control number 1845–NEW1)

(Authority: 20 U.S.C. 1088, *et seq.*)

■ 12. Section 668.23 is amended by revising paragraph (d)(4) to read as follows:

§ 668.23 Compliance audits and audited financial statements.

* * * * *

(d) * * *

(4) *Disclosure of Title IV, HEA program revenue.* A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the Title IV, HEA program funds that the institution received during the fiscal year covered by that audit. The revenue percentage must be calculated in

accordance with § 668.28. The institution must also report in the footnote the dollar amount of the numerator and denominator of its 90/10 ratio as well as the individual revenue amounts identified in section 2 of appendix C to subpart B of part 668.

* * * * *

■ 13. Section 668.28 is added to subpart B of part 668 to read as follows:

§ 668.28 Non-title IV revenue (90/10).

(a) *General.* (1) *Calculating the revenue percentage.* A proprietary institution meets the requirement in § 668.14(b)(16) that at least 10 percent of its revenue is derived from sources other than Title IV, HEA program funds by using the formula in appendix C of this subpart to calculate its revenue percentage for its latest complete fiscal year.

(2) *Cash basis accounting.* Except for institutional loans made to students under paragraph (a)(5)(i) of this section, the institution must use the cash basis of accounting in calculating its revenue percentage.

(3) *Revenue generated from programs and activities.* The institution must consider as revenue only those funds it generates from—

(i) Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in § 668.8;

(ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are—

(A) Conducted on campus or at a facility under the institution's control;

(B) Performed under the supervision of a member of the institution's faculty; and

(C) Required to be performed by all students in a specific educational program at the institution; and

(iii) Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible under § 668.8 if the program—

(A) Is approved or licensed by the appropriate State agency;

(B) Is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602;

(C) Provides an industry-recognized credential or certification, or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;

(D) Provides training needed for students to maintain State licensing requirements; or

(E) Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

(4) *Application of funds.* The institution must presume that any Title IV, HEA program funds it disburses, or delivers, to or on behalf of a student will be used to pay the student's tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition, fees, or other charges are satisfied by—

(i) Grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who need that training;

(iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the saving plan qualifies for special tax treatment under the Internal Revenue Code of 1986; or

(iv) Institutional scholarships that meet the requirements in paragraph (a)(5)(iv) of this section.

(5) *Revenue generated from institutional aid.* The institution must include the following institutional aid as revenue:

(i) For loans made to students and credited in full to the students' accounts at the institution on or after July 1, 2008 and prior to July 1, 2012, include as revenue the net present value of the loans made to students during the fiscal year, as calculated under paragraph (b) of this section, if the loans—

(A) Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;

(B) Are issued at intervals related to the institution's enrollment periods;

(C) Are subject to regular loan repayments and collections by the institution; and

(D) Are separate from the enrollment contracts signed by the students.

(ii) For loans made to students before July 1, 2008, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iii) For loans made to students on or after July 1, 2012, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iv) For scholarships provided by the institution in the form of monetary aid or tuition discount and based on the academic achievement or financial need of its students, include as revenue the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(6) *Revenue generated from loan funds in excess of loan limits prior to the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA).* For each student who receives an unsubsidized loan under the FFEL or Direct Loan programs on or after July 1, 2008 and prior to July 1, 2011, the amount of the loan disbursement for a payment period that exceeds the disbursement for which the student would have been eligible for that payment period under the loan limit in effect on the day prior to enactment of the ECASLA is included and deemed to be revenue from a source other than Title IV, HEA program funds but only to the extent that the excess amount pays for tuition, fees, or institutional charges remaining on the student's account after other Title IV, HEA program funds are applied.

(7) *Funds excluded from revenues.* For the fiscal year, the institution does not include—

(i) The amount of Federal Work Study (FWS) wages paid directly to the student. However, if the institution credits the student's account with FWS funds, those funds are included as revenue;

(ii) The amount of funds received by the institution from a State under the LEAP, SLEAP, or GAP programs;

(iii) The amount of institutional funds used to match Title IV, HEA program funds;

(iv) The amount of Title IV, HEA program funds refunded or returned under § 668.22. If any funds from the loan disbursement used in the return calculation under § 668.22 were counted as non-title IV revenue under paragraph (a)(6) of this section, the amount of Title IV, HEA program funds refunded or returned under § 668.22 is considered to consist of pre-ECASLA loan amounts and loan amounts in excess of the loan limits prior to ECASLA in the same proportion to the loan disbursement; or

(v) The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(b) *Net present value (NPV).* (1) As illustrated in appendix C of this subpart, an institution calculates the NPV of the loans it made under paragraph (a)(5)(i) of this section by—

(i) Using the formula, NPV = sum of the discounted cash flows $R^t/(1+i)^t$, where—

(A) The variable ''*i*'' is the discount rate. For purposes of this section, an institution must use the most recent annual inflation rate as the discount rate;

(B) The variable ''*t*'' is time or period of the cash flow, in years, from the time the loan entered repayment; and

(C) The variable ''R^t'' is the net cash flow at time or period *t*; and

(ii) Applying the NPV formula to the loans made during the fiscal year by—

(A) If the loans have substantially the same repayment period, using that repayment period for the range of values of variable ''*t*''; or

(B) Grouping the loans by repayment period and using the repayment period for each group for the range of values of variable ''t''; and

(C) For each group of loans, as applicable, multiplying the total annual payments due on the loans by the institution's loan collection rate (*e.g.*, the total amount of payments collected divided by the total amount of payments due). The resulting amount is used for variable ''R'' in each period ''t'', for each group of loans that a NPV is calculated.

(2) Instead of performing the calculations in paragraph (b)(1) of this section, using 50 percent of the total amount of loans that the institution made during the fiscal year as the NPV. However, if the institution chooses to use this 50 percent calculation, the institution may not sell any of these loans until they have been in repayment for at least two years.

(c) *Sanctions.* If an institution does not derive at least 10 percent of its revenue from sources other than Title IV, HEA program funds—

(1) For two consecutive fiscal years, it loses its eligibility to participate in the Title IV, HEA programs for at least two fiscal years. To regain eligibility, the institution must demonstrate that it complied with the State licensure and accreditation requirements under 34 CFR 600.5(a)(4) and (a)(6), and the financial responsibility requirements under subpart L of this part, for a minimum of two fiscal years after the fiscal year it became ineligible; or

(2) For any fiscal year, it becomes provisionally certified under § 668.13(c)(1)(ii) for the two fiscal years after the fiscal year it failed to satisfy the revenue requirement. However, the institution's provisional certification terminates on—

(i) The expiration date of the institution's program participation agreement that was in effect on the date the Secretary determined the institution failed this requirement; or

(ii) The date the institution loses its eligibility to participate under paragraph (c)(1) of this section; and

(3) It must notify the Secretary no later than 45 days after the end of its fiscal year that it failed to meet this requirement.

(Approved by Office of Management and Budget under control number 1845–NEW2)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a–3, 1099c, 1141)

■ 14. Appendix C is added to subpart B of part 668 to read as follows:

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APPENDIX C TO SUBPART B OF PART 668 - 90/10 REVENUE CALCULATION

Section 1: Sample Student Account at the Institution / Funds Applied in Priority Order

Item		Debit	Credit	Balance
1	**Tuition and Fees**	$7,000.00		
	Funds Applied First			
2	Grant funds for the student from non-Federal public agencies or private sources independent of the institution		$2,200.00	$4,800.00
3	Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals			$4,800.00
4	Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code			$4,800.00
5	Institutional scholarships disbursed to the student		$500.00	$4,300.00
6	**Total Funds Applied First**		$2,700.00	
	Title IV Aid			
7	Subsidized Loan		$1,000.00	$300.00
8	Unsubsidized Loan up to pre-ECASLA Loan Limits		$1,500.00	$1,800.00
9	Federal Pell Grant		$1,700.00	$100.00
10	FSEOG (subject to matching reduction)		$500.00	($400.00)
11	Federal Work Study Applied to Tuition and Fees (subject to matching reduction)		-	($400.00)
12	**Total Title IV Aid**		$4,700.00	
	Cash and Other Non-Title IV Aid			
13	Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits		$250.00	($650.00)
14	Student payments		-	($650.00)
15	Institutional loan disbursed		$300.00	($950.00)
16	**Total Cash and Other Non-Title IV Aid**		$550.00	
	Refund to Student	$950.00		-

Section 2: Revenue by Source

Item		Amount Disbursed	Adjusted Amount
	Adjusted Student Title IV Revenue		
7	Subsidized Loan	$1,000.00	$1,000.00
8	Unsubsidized Loan up to pre-ECASLA Loan Limits	$1,500.00	$1,500.00
9	Federal Pell Grant	$1,700.00	$1,700.00
10	FSEOG (subject to matching reduction, see Section 3, Adjustments to Student Title IV Revenue, item 1)	$500.00	$375.00
11	Federal Work Study Applied to Tuition and Fees (subject to matching reduction)	-	-
17	**Student Title IV Revenue**		$4,575.00
18	**Revenue Adjustment** (see Section 3, Adjustments to Student Title IV Revenue, item 2)		($275.00)
19	**Adjusted Student Title IV Revenue**		$4,300.00
	Student Non-Title IV Revenue		
2	Grant funds for the student from non-Federal public agencies or private sources independent of the institution	$2,200.00	
3	Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals	-	
4	Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code	-	
5	Institutional scholarships disbursed to the student	$500.00	
13	Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits	-	
14	Student payments	-	
20	**Student Non-Title IV Revenue**	$2,700.00	
	Revenue From Other Sources (Totals for the Fiscal Year)		
21	Activities conducted by the institution that are necessary for education and training	$25,000.00	
22	Funds paid to the institution by, or on behalf of, students for education and training in qualified non-Title IV eligible programs	$43,000.00	
23	The Net Present Value (NPV) of institutional loans disbursed to students	$129,818.68	
24	**Revenue from Other Sources**	$197,818.68	

Section 3: Calculating the Revenue Percentage

$$\frac{\sum \text{Adjusted Student Title IV Revenue}}{\sum \text{Adjusted Student Title IV Revenue} + \sum \text{Student Non-Title IV Revenue} + \text{Total Revenue from Other Sources}} = \text{90/10 Revenue Percentage}$$

Adjustments to Student Title IV Revenue

1. The amount of FSEOG funds disbursed to a student (Item 10) and the amount of FWS funds credited to the student's account (Item 11) are reduced by the amount of the institutional matching funds (see Item 10 in Section 2 of the example).

2. If the amount of Funds Applied First (Item 6) + Student Title IV Revenue (Item 17) is more than Tuition and Fees (Item 1), then Student Title IV Revenue (Item 17) is reduced by the amount over Tuition and Fees (Item 1) (see Item 18 in Section 2 of the example).

3. If Title IV funds are returned for a student under 34 CFR 668.22, then Student Title IV Revenue is reduced by the amount returned.

∑ Adjusted Student Title IV Revenue = The sum of the amounts of Item 17, as adjusted, for each student at the institution during the fiscal year to whom the institution disbursed Title IV Aid

Adjustments to Student Non-Title IV Revenue

An Unsubsidized loan over the pre-ECSALA loan limit (Item 13) and any Student Payments (Item 14) count as Student Non-Title IV Revenue only for the amount needed to cover Tuition and Fees (Item 1) that are not paid by Funds Applied First (Item 6) and funds under Student Title IV Revenue (Item 19) (see Items 13 and 14 in Section 2 of the example).

∑ Student Non-Title IV Revenue = The sum of the amounts of Item 20, as adjusted, for each student at the institution during the fiscal year whose Non-Title IV funds were used to pay all or some of those student's Tuition and Fee charges

Total Revenue from Other Sources

Activities conducted by the institution that are necessary for education and training (Item 21) = Total revenue generated by the institution from these activities during the fiscal year

Funds paid to the institution by, or on behalf of, students for education and training in qualified non-Title IV eligible programs (Item 22) = Total revenue generated by the institution from these programs during the fiscal year

The Net Present Value (NPV) of institutional loans disbursed to students (Item 23)

Total Revenue from Other Sources = The sum of the amounts for Items 21, 22, and 23 for the fiscal year

Section 4: Calculating the Net present Value

$$NPV = \sum R^t / (1+i)^t$$

An institution makes a total of $125,000 in 3-year loans at 8.5% and a total of $75,000 in 4-year loans at 8.5%. The Discount rate is 3%.

	Year	Expected Cash Flow*	Actual Cash Flow (R) using 60% Collection Rate	Discounted Cash Flow
3-year Loans	1	47340.00	28404.00	$28404 / (1+.03)^1 = 27576.70$
	2	47340.00	28404.00	$28404 / (1+.03)^2 = 26773.49$
	3	47340.00	28404.00	$28404 / (1+.03)^3 = 25993.68$
			NPV or Sum of the discounted cash flows for 3-year loans = 80343.87	

	Year	Expected Cash Flow*	Actual Cash Flow (R) using 60% Collection Rate	Discounted Cash Flow
4-year Loans	1	22183.44	13310.06	$13310.06 / (1+.03)^1 = 12922.39$
	2	22183.44	13310.06	$13310.06 / (1+.03)^2 = 12546.01$
	3	22183.44	13310.06	$13310.06 / (1+.03)^3 = 12180.59$
	4	22183.44	13310.06	$13310.06 / (1+.03)^4 = 11825.82$
			NPV or Sum of the discounted cash flows for 4-year loans = 49474.81	
				Total NPV for all loans = 129818.68

*** Expected cash flow represents the total amount of payments due on the loans for the fiscal year.**

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■ 15. Section 668.32 is amended by:

■ A. Revising the introductory text.

■ B. In paragraph (a)(1)(iii), adding the word ''and'' after the punctuation '';''.

■ C. In paragraph (a)(2), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ D. In paragraph (b), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ E. In paragraph (c)(4)(ii), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ F. In paragraph (d), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ G. In paragraph (e)(4)(ii), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ H. In paragraph (f), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ I. In paragraph (g)(4), removing the punctuation '';'' at the end of the paragraph and adding, in its place, the punctuation ''.''.

■ J. In paragraph (h), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ K. In paragraph (i), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ L. In paragraph (j), removing the punctuation '';'' and adding, in its place, the punctuation ''.''.

■ M. In paragraph (k)(9), removing the word ''; and'' and adding, in its place, the punctuation ''.''.

■ N. In paragraph (l), removing the word ''; and'' and adding, in its place, the punctuation ''.''.

■ O. Adding paragraph (n).

The revision and addition read as follows:

§ 668.32 Student eligibility—general.

A student is eligible to receive Title IV, HEA program assistance if the student either meets all of the requirements in paragraphs (a) through (m) of this section or meets the requirement in paragraph (n) of this section as follows:

* * * * *

(n) Is enrolled in a comprehensive transition and postsecondary program under subpart O of this part and meets the student eligibility criteria in that subpart.

* * * * *

■ 16. Section 668.41 is amended by:

■ A. In paragraph (a), adding, in alphabetical order, the definition of *on-campus student housing facility.*

■ B. Revising paragraph (d).

■ C. Revising paragraph (e).

■ D. In paragraph (g)(1)(i), removing the words ''on request''.

■ E. In the OMB control number parenthetical at the end of the section, removing the words, ''and 1845–0010''.

The addition and revisions read as follows:

§ 668.41 Reporting and disclosure of information.

(a) * * *

On-campus student housing facility: A dormitory or other residential facility for students that is located on an institution's campus, as defined in § 668.46(a).

* * * * *

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42).

(2) The institution (pursuant to § 668.43).

(3) The institution's retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(4) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(5) The placement of, and types of employment obtained by, graduates of the institution's degree or certificate programs.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) The institution's placement rate for any program, if it calculates such a rate;

(B) State data systems;

(C) Alumni or student satisfaction surveys; or

(D) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(iii) The institution must disclose any placement rates it calculates.

(6) The types of graduate and professional education in which graduates of the institution's four-year degree programs enroll.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) State data systems;

(B) Alumni or student satisfaction surveys; or

(C) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(e) *Annual security report and annual fire safety report.* (1) *Enrolled students and current employees—annual security report and annual fire safety report.* By October 1 of each year, an institution must distribute to all enrolled students and current employees its annual security report described in § 668.46(b), and, if the institution maintains an on-campus student housing facility, its annual fire safety report described in § 668.49(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet Web site or an Intranet Web site, subject to paragraph (e)(2) and (3) of this section.

(2) *Enrolled students—annual security report and annual fire safety report.* If an institution chooses to distribute either its annual security report or annual fire safety report to enrolled students by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) *Current employees—annual security report and annual fire safety report.* If an institution chooses to distribute either its annual security report or annual fire safety report to current employees by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report and annual fire safety report.* For each of the reports, the institution must provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report and annual fire safety report, upon request, to a prospective student or prospective employee. If the institution chooses to provide either its annual security report or annual fire safety report to prospective students and prospective employees by posting the disclosure on an Internet Web site, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(5) *Submission to the Secretary—annual security report and annual fire safety report.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by §§ 668.46(c) and 668.49(c) to the Secretary.

(6) *Publication of the annual fire safety report.* An institution may publish its annual fire safety report concurrently with its annual security report only if the title of the report clearly states that the report contains both the annual security report and the annual fire safety report. If an institution chooses to publish the annual fire safety report separately from the annual security report, it must include information in each of the two reports about how to directly access the other report.

* * * * *

■ 17. Section 668.43 is amended by:

■ A. In the introductory text of paragraph (a), removing the words ''upon request''.

■ B. In paragraph (a)(5)(ii), removing the word ''and'' that appears after the punctuation '';''.

■ C. In paragraph (a)(5)(iii), adding the word ''and'' after the punctuation '';''.

■ D. Adding paragraph (a)(5)(iv).

■ E. Revising paragraph (a)(7).

■ F. In paragraph (a)(8), removing the word ''and'' that appears after the punctuation '';''.

■ G. In paragraph (a)(9), removing the punctuation ''.'' and adding, in its place, the punctuation '';''.

■ H. Adding paragraph (a)(10).

■ I. Adding paragraph (a)(11).

■ J. In paragraph (b), removing the words '', upon request,''.

The additions and revision read as follows:

§ 668.43 Institutional information.

(a) * * *

(5) * * *

(iv) Any plans by the institution for improving the academic program of the institution, upon a determination by the institution that such a plan exists;

* * * * *

(7) A description of the services and facilities available to students with

disabilities, including students with intellectual disabilities as defined in subpart O of this part;

* * * * *

(10) Institutional policies and sanctions related to copyright infringement, including—

(i) A statement that explicitly informs its students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

(ii) A summary of the penalties for violation of Federal copyright laws; and

(iii) A description of the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system; and

(11) A description of the transfer of credit policies established by the institution which must include a statement of the institution's current transfer of credit policies that includes, at a minimum—

(i) Any established criteria the institution uses regarding the transfer of credit earned at another institution; and

(ii) A list of institutions with which the institution has established an articulation agreement.

* * * * *

■ 18. Section 668.45 is revised to read as follows:

§ 668.45 Information on completion or graduation rates.

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, first-time, full-time undergraduate students, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, first-time, full-time undergraduate students, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of its programs based on semesters, trimesters, or quarters must base its completion or graduation rate, retention rate, and, if applicable, transfer-out rate calculations, on the cohort of certificate- or degree-seeking, first-time, full-time undergraduate students who enter the institution during the fall term of each year.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate, retention rate, and, if applicable, transfer-out rate calculations, on the cohort of certificate- or degree-seeking, first-time, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time undergraduate student who is enrolled as of October 15, the end of the institution's drop-add period, or another official reporting date as defined in § 668.41(a).

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time undergraduate student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) An institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(6)(i) Completion or graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup (as defined in IPEDS), by recipients of a Federal Pell Grant, by recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Stafford Loan) who did not receive a Federal Pell Grant, and by recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Loan) if the number of students in such group or with such status is sufficient to yield statistically reliable information and reporting will not reveal personally identifiable information about an individual student. If such number is not sufficient for such purpose, *i.e.,* is too small to be meaningful, then the institution shall note that the institution enrolled too few of such students to so disclose or report with confidence and confidentiality.

(ii) With respect to the requirement in paragraph (a)(6)(i) of this section to disaggregate the completion or graduation rate information by the receipt or nonreceipt of Federal student aid, students shall be considered to have received the aid in question only if they received such aid for the period specified in paragraph (a)(3) of this section.

(iii) The requirement in paragraph (a)(6)(i) of this section shall not apply to two-year, degree-granting institutions of higher education until academic year 2011–2012.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from their program has lapsed; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, by the end of the 12-month period ending August 31 during which 150 percent of normal time for completion from that program has lapsed.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from the program in which they were enrolled has lapsed, have not completed or graduated but have subsequently enrolled in any program of an eligible institution for which its program provided substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may—

(1) Exclude students who—

(i) Have left school to serve in the Armed Forces;

(ii) Have left school to serve on official church missions;

(iii) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(iv) Are totally and permanently disabled; or

(v) Are deceased.

(2) In cases where the students described in paragraphs (d)(1)(i) through (iii) of this section represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, recalculate the completion or graduation rates of those students by adding to the 150

percent time-frame they normally have to complete or graduate, as described in paragraph (b) of this section, the time period the students were not enrolled due to their service in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(e)(1) The Secretary grants a waiver of the requirements of this section dealing with completion and graduation rate data to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate for students described in paragraphs (d)(1)(i) through (iv) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Approved by the Office of Management and Budget under control number 1845–0004)

(Authority: 20 U.S.C. 1092)

■ 19. Section 668.46 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, a definition of *test.*
■ B. Adding paragraphs (b)(13) and (b)(14).
■ C. Revising paragraph (c)(3).
■ D. Revising the heading for paragraph (e).
■ E. Adding paragraph (e)(3).
■ F. Adding paragraph (g).
■ G. Adding paragraph (h).

The additions and revisions read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) * * *

Test: Regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.

* * * * *

(b) * * *

(13) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding emergency response and evacuation procedures, as described in paragraph (g) of this section.

(14) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding missing student notification procedures, as described in paragraph (h) of this section.

(c) * * *

(3) *Reported crimes if a hate crime.* An institution must report, by category of prejudice, the following crimes reported to local police agencies or to a campus security authority that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability:

(i) Any crime it reports pursuant to paragraph (c)(1)(i) through (vii) of this section.

(ii) The crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property.

(iii) Any other crime involving bodily injury.

* * * * *

(e) *Timely warning and emergency notification.* * * *

(3) If there is an immediate threat to the health or safety of students or employees occurring on campus, as described in paragraph (g)(1) of this section, an institution must follow its emergency notification procedures. An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

* * * * *

(g) *Emergency response and evacuation procedures.* An institution must include a statement of policy regarding its emergency response and evacuation procedures in the annual security report. This statement must include—

(1) The procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus;

(2) A description of the process the institution will use to—

(i) Confirm that there is a significant emergency or dangerous situation as described in paragraph (g)(1) of this section;

(ii) Determine the appropriate segment or segments of the campus community to receive a notification;

(iii) Determine the content of the notification; and

(iv) Initiate the notification system.

(3) A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency;

(4) A list of the titles of the person or persons or organization or organizations responsible for carrying out the actions described in paragraph (g)(2) of this section;

(5) The institution's procedures for disseminating emergency information to the larger community; and

(6) The institution's procedures to test the emergency response and evacuation procedures on at least an annual basis, including—

(i) Tests that may be announced or unannounced;

(ii) Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and

(iii) Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.

(h) *Missing student notification policies and procedures.* (1) An institution that provides any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities in its annual security report. This statement must—

(i) Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;

(ii) Require that any missing student report must be referred immediately to the institution's police or campus security department, or, in the absence of an institutional police or campus security department, to the local law

enforcement agency that has jurisdiction in the area;

(iii) Contain an option for each student to identify a contact person or persons whom the institution shall notify within 24 hours of the determination that the student is missing, if the student has been determined missing by the institutional police or campus security department, or the local law enforcement agency;

(iv) Advise students that their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;

(v) Advise students that if they are under 18 years of age and not emancipated, the institution must notify a custodial parent or guardian within 24 hours of the determination that the student is missing, in addition to notifying any additional contact person designated by the student; and

(vi) Advise students that, the institution will notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing.

(2) The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include—

(i) If the student has designated a contact person, notifying that contact person within 24 hours that the student is missing;

(ii) If the student is under 18 years of age and is not emancipated, notifying the student's custodial parent or guardian and any other designated contact person within 24 hours that the student is missing; and

(iii) Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area within 24 hours that the student is missing.

* * * * *

■ 20. Section 668.49 is added to subpart D of part 668 to read as follows:

§ 668.49 Institutional fire safety policies and fire statistics.

(a) *Additional definitions that apply to this section.*

Cause of fire: The factor or factors that give rise to a fire. The causal factor may be, but is not limited to, the result of an intentional or unintentional action, mechanical failure, or act of nature.

Fire: Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.

Fire drill: A supervised practice of a mandatory evacuation of a building for a fire.

Fire-related injury: Any instance in which a person is injured as a result of a fire, including an injury sustained from a natural or accidental cause, while involved in fire control, attempting rescue, or escaping from the dangers of the fire. The term ''person'' may include students, employees, visitors, firefighters, or any other individuals.

Fire-related death: Any instance in which a person—

(1) Is killed as a result of a fire, including death resulting from a natural or accidental cause while involved in fire control, attempting rescue, or escaping from the dangers of a fire; or

(2) Dies within one year of injuries sustained as a result of the fire.

Fire safety system: Any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. This may include sprinkler systems or other fire extinguishing systems, fire detection devices, stand-alone smoke alarms, devices that alert one to the presence of a fire, such as horns, bells, or strobe lights; smoke-control and reduction mechanisms; and fire doors and walls that reduce the spread of a fire.

Value of property damage: The estimated value of the loss of the structure and contents, in terms of the cost of replacement in like kind and quantity. This estimate should include contents damaged by fire, and related damages caused by smoke, water, and overhaul; however, it does not include indirect loss, such as business interruption.

(b) *Annual fire safety report.* Beginning by October 1, 2010, an institution that maintains any on-campus student housing facility must prepare an annual fire safety report that contains, at a minimum, the following information:

(1) The fire statistics described in paragraph (c) of this section.

(2) A description of each on-campus student housing facility fire safety system.

(3) The number of fire drills held during the previous calendar year.

(4) The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility.

(5) The institution's procedures for student housing evacuation in the case of a fire.

(6) The policies regarding fire safety education and training programs provided to the students and employees. In these policies, the institution must describe the procedures that students and employees should follow in the case of a fire.

(7) For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.

(8) Plans for future improvements in fire safety, if determined necessary by the institution.

(c) *Fire statistics.* (1) An institution must report statistics for each on-campus student housing facility, for the three most recent calendar years for which data are available, concerning—

(i) The number of fires and the cause of each fire;

(ii) The number of persons who received fire-related injuries that resulted in treatment at a medical facility, including at an on-campus health center;

(iii) The number of deaths related to a fire; and

(iv) The value of property damage caused by a fire.

(2) An institution is required to submit a copy of the fire statistics in paragraph (c)(1) of this section to the Secretary on an annual basis.

(d) *Fire log.* (1) An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. This log must include the nature, date, time, and general location of each fire.

(2) An institution must make an entry or an addition to an entry to the log within two business days, as defined under § 668.46(a), of the receipt of the information.

(3) An institution must make the fire log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(4) An institution must make an annual report to the campus community on the fires recorded in the fire log. This requirement may be satisfied by the annual fire safety report described in paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1845–NEW3)

(Authority: 20 U.S.C. 1092)

■ 21. Appendix A to subpart D of part 668 is amended by:

■ A. Revising the introductory text.

■ B. Under the heading, ''Crime Definitions From the Uniform Crime Reporting Handbook,'' by:

■ i. Removing the definition of *Weapon Law Violations;*

■ ii. Adding a new definition of *Weapons: Carrying, Possessing, Etc.;* and

■ iii. Revising the definitions of *Drug Abuse Violations* and *Liquor Law Violations.*

■ C. Adding a heading at the end of the appendix, ''Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook'' followed by definitions for *larceny-theft (except motor vehicle theft), simple assault, intimidation,* and *destruction/damage/vandalism of property.*

The revisions and additions read as follows: Appendix A to Subpart D of Part 668—Crime Definitions in Accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program

The following definitions are to be used for reporting the crimes listed in § 668.46, in accordance with the Federal Bureau of Investigation's Uniform Crime Reporting Program. The definitions for *murder; robbery; aggravated assault; burglary; motor vehicle theft; weapons: carrying, possessing, etc.; law violations; drug abuse violations;* and *liquor law violations* are excerpted from the Uniform Crime Reporting Handbook. The definitions of *forcible rape* and *nonforcible sex offenses* are excerpted from the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Handbook. The definitions of *larceny-theft (except motor vehicle theft), simple assault, intimidation,* and *destruction/damage/vandalism of property* are excerpted from the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook.

* * * * *

Crime Definitions From the Uniform Crime Reporting Handbook

* * * * *

Weapons: Carrying, Possessing, Etc.

The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

Drug Abuse Violations

The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of state and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

Liquor Law Violations

The violation of state or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.

* * * * *

Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook

Larceny-Theft (Except Motor Vehicle Theft)

The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

Simple Assault

An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

Intimidation

To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Destruction/Damage/Vandalism of Property

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

■ 22. Section 668.161 is amended by revising the section heading and paragraph (a)(4) to read as follows:

§ 668.161 Scope and purpose (cash management rules).

(a) * * *

(4) An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures in §§ 668.164(a), (b), and (d) through (g), and 668.165.

* * * * *

§ 668.184 [Amended]

■ 23. Section 668.184(a)(1) is amended by removing the word ''If'' and adding, in its place, the words ''Except as provided under 34 CFR 600.32(d), if''.

■ 24. Subpart O, consisting of §§ 668.230 through 668.233, is added to part 668 to read as follows:

Subpart O—Financial Assistance for Students With Intellectual Disabilities

Sec.

668.230 Scope and purpose.
668.231 Definitions.
668.232 Program eligibility.
668.233 Student eligibility.

Subpart O—Financial Assistance for Students With Intellectual Disabilities

§ 668.230 Scope and purpose.

This subpart establishes regulations that apply to an institution that offers comprehensive transition and postsecondary programs to students with intellectual disabilities. Students enrolled in these programs are eligible for Federal financial assistance under the Federal Pell Grant, FSEOG, and FWS programs. Except for provisions related to needs analysis, the Secretary may waive any Title IV, HEA program requirement related to the Federal Pell Grant, FSEOG, and FWS programs or institutional eligibility, to ensure that students with intellectual disabilities remain eligible for funds under these assistance programs. However, unless provided in this subpart or subsequently waived by the Secretary, students with intellectual disabilities and institutions that offer comprehensive transition and postsecondary programs are subject to the same regulations and procedures that otherwise apply to Title IV, HEA program participants.

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

§ 668.231 Definitions.

The following definitions apply to this subpart:

(a) *Comprehensive transition and postsecondary program* means a degree, certificate, nondegree, or noncertificate program that—

(1) Is offered by a participating institution;

(2) Is delivered to students physically attending the institution;

(3) Is designed to support students with intellectual disabilities who are seeking to continue academic, career

and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment;

(4) Includes an advising and curriculum structure;

(5) Requires students with intellectual disabilities to have at least one-half of their participation in the program, as determined by the institution, focus on academic components through one or more of the following activities:

(i) Taking credit-bearing courses with students without disabilities.

(ii) Auditing or otherwise participating in courses with students without disabilities for which the student does not receive regular academic credit.

(iii) Taking non-credit-bearing, nondegree courses with students without disabilities.

(iv) Participating in internships or work-based training in settings with individuals without disabilities; and

(6) Provides students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities.

(b) *Student with an intellectual disability* means a student—

(1) With mental retardation or a cognitive impairment characterized by significant limitations in—

(i) Intellectual and cognitive functioning; and

(ii) Adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and

(2) Who is currently, or was formerly, eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401), including a student who was determined eligible for special education or related services under the IDEA but was home-schooled or attended private school.

(Authority: 20 U.S.C. 1091, 1140)

§ 668.232 Program eligibility.

An institution that offers a comprehensive transition and postsecondary program must apply to the Secretary to have the program determined to be an eligible program. The institution applies under the provisions in 34 CFR 600.20 for adding an educational program, and must include in its application—

(a) A detailed description of the comprehensive transition and postsecondary program that addresses all of the components of the program, as defined in § 668.231;

(b) The institution's policy for determining whether a student enrolled in the program is making satisfactory academic progress;

(c) The number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program, including the equivalent credit or clock hours associated with noncredit or reduced credit courses or activities;

(d) A description of the educational credential offered (*e.g.,* degree or certificate) or identified outcome or outcomes established by the institution for all students enrolled in the program;

(e) A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program. The letter or notice must include a description of the items in paragraphs (a) through (d) of this section; and

(f) Any other information the Secretary may require.

(Approved by the Office of Management and Budget under control number 1845–NEW4)

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

§ 668.233 Student eligibility.

A student with an intellectual disability is eligible to receive Federal Pell, FSEOG, and FWS program assistance under this subpart if—

(a) The student satisfies the general student eligibility requirements under § 668.32, except for the requirements in paragraphs (a), (e), and (f) of that section. With regard to these exceptions, a student—

(1) Does not have to be enrolled for the purpose of obtaining a degree or certificate;

(2) Is not required to have a high school diploma, a recognized equivalent of a high school diploma, or have passed an ability to benefit test; and

(3) Is making satisfactory progress according to the institution's published standards for students enrolled in its comprehensive transition and postsecondary programs;

(b) The student is enrolled in a comprehensive transition and postsecondary program approved by the Secretary; and

(c) The institution obtains a record from a local educational agency that the student is or was eligible for special education and related services under the IDEA. If that record does not identify the student as having an intellectual disability, as described in paragraph (1) of the definition of a student with an intellectual disability in § 668.231, the institution must also obtain documentation establishing that the student has an intellectual disability, such as—

(1) A documented comprehensive and individualized psycho-educational evaluation and diagnosis of an intellectual disability by a psychologist or other qualified professional; or

(2) A record of the disability from a local or State educational agency, or government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the intellectual disability.

(Approved by the Office of Management and Budget under control number 1845–NEW4)

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

PART 675—FEDERAL WORK-STUDY PROGRAMS

■ 25. The authority citation for part 675 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1094; 42 U.S.C. 2751–2756b; unless otherwise noted.

§ 675.2 [Amended]

■ 26. In § 675.2(b), paragraph (1) of the definition of *community services* is amended by adding the words ''emergency preparedness and response,'' after the words ''public safety,''.

■ 27. Section 675.16 is revised to read as follow:

§ 675.16 Payments to students.

(a) *General.* (1) An institution must follow the disbursement procedures in this section for paying a student his or her wages under the FWS Program instead of the disbursement procedures in 34 CFR 668.164(a), (b), and (d) through (g), and 34 CFR 668.165. The institution must follow 34 CFR 668.164(c) on making direct FWS payments to students and 34 CFR 668.164(h) on handling the return of FWS funds that are not received or negotiated by a student.

(2) An institution must pay a student FWS compensation at least once a month.

(3) Before an institution makes an initial disbursement of FWS compensation to a student for an award period, the institution must notify the student of the amount of funds the student is authorized to earn, and how and when the FWS compensation will be paid.

(4) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(5) A student's FWS compensation is earned when the student performs the work.

(6) An institution may pay a student after the student's last day of attendance for FWS compensation earned while he or she was in attendance at the institution.

(7) A correspondence student must submit his or her first completed lesson before receiving a payment.

(8) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(9) An institution makes a disbursement of FWS program funds on the date that the institution credits a student's account at the institution or pays a student directly with—

(i) Funds received from the Secretary; or

(ii) Institutional funds used in advance of receiving FWS program funds.

(b) *Crediting a student's account at the institution.* (1) If the institution obtains the student's authorization described in paragraph (d) of this section, the institution may use the FWS funds to credit a student's account at the institution to satisfy—

(i) Current year charges for—

(A) Tuition and fees;

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

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

(D) Other educationally related charges incurred by the student at the institution; and

(ii) Prior award year charges with the restriction provided in paragraph (b)(2) of this section for a total of not more than $200 for—

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

(B) Other institutionally related charges incurred by the student at the institution.

(2) If the institution is using FWS funds in combination with other Title IV, HEA program funds to credit a student's account at the institution to satisfy prior award year charges, a single $200 total prior award year charge limit applies to the use of all the Title IV, HEA program funds for that purpose.

(c) *Credit balances.* Whenever an institution disburses FWS funds by crediting a student's account and the result is a credit balance, the institution must pay the credit balance directly to the student as soon as possible, but no later than 14 days after the credit balance occurred on the account.

(d) *Student authorizations.* (1) Except for the noncash contributions allowed under paragraph (e)(2) and (3) of this section, if an institution obtains written authorization from a student, the institution may—

(i) Use the student's FWS compensation to pay for charges described in paragraph (b) of this section that are included in that authorization; and

(ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment method, hold on behalf of the student any FWS compensation that would otherwise be paid directly to the student under paragraph (c) of this section.

(2) In obtaining the student's authorization to perform an activity described in paragraph (d)(1) of this section, an institution—

(i) May not require or coerce the student to provide that authorization;

(ii) Must allow the student to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student may authorize an institution to carry out the activities described in paragraph (d)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student cancels an authorization to use his or her FWS compensation to pay for authorized charges under paragraph (b) of this section, the institution may use those funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student cancels an authorization to hold his or her FWS compensation under paragraph (d)(1)(ii) of this section, the institution must pay those funds directly to the student as soon as possible, but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess FWS compensation under paragraph (d)(1)(ii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of FWS compensation the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balances by the end of the institution's final FWS payroll period for an award year.

(e)(1) *Timing of institutional share and noncash contributions.* Except for the noncash contributions allowed under paragraph (e)(2) or (3) of this section, an institution must pay the student its share of his or her FWS compensation at the same time it pays the Federal share.

(2) If an institution pays a student its FWS share for an award period in the form of tuition, fees, services, or equipment, it must pay that share before the student's final payroll period.

(3) If an institution pays its FWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it must give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(Authority: 20 U.S.C. 1091, 1094; 42 U.S.C. 2753)

■ 28. Section 675.18 is amended by:

■ A. Adding paragraph (g)(4).

■ B. Adding paragraph (i).

■ C. Revising the authority citation at the end of the section.

The additions and revisions read as follows:

§ 675.18 Use of funds.

* * * * *

(g) * * *

(4)(i) In meeting the seven percent community service expenditure requirement in paragraph (g)(1) of this section, students may be employed to perform civic education and participation activities in projects that—

(A) Teach civics in schools;

(B) Raise awareness of government functions or resources; or

(C) Increase civic participation.

(ii) To the extent practicable, in providing civic education and participation activities under paragraph (g)(4)(i) of this section, an institution must—

(A) Give priority to the employment of students in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations; and

(B) Ensure that the students receive appropriate training to carry out the educational services required.

* * * * *

(i) *Flexibility in the event of a major disaster.* (1) An institution located in any area affected by a major disaster may make FWS payments to disaster-affected students for the period of time (not to exceed the award period) in which the students were prevented from fulfilling their FWS obligations. The FWS payments—

(i) May be made to disaster-affected students for an amount equal to or less than the amount of FWS wages the students would have been paid had the students been able to complete the work obligation necessary to receive the funds;

(ii) May not be made to any student who was not eligible for FWS or was not completing the work obligation necessary to receive the funds, or had already separated from their employment prior to the occurrence of the major disaster; and

(iii) Must meet the matching requirements of § 675.26, unless those requirements are waived by the Secretary.

(2) The following definitions apply to this section:

(i) *Disaster-affected student* means a student enrolled at an institution who—

(A) Received an FWS award for the award period during which a major disaster occurred;

(B) Earned FWS wages from an institution for that award period;

(C) Was prevented from fulfilling his or her FWS obligation for all or part of the FWS award period because of the major disaster; and

(D) Was unable to be reassigned to another FWS job.

(ii) *Major disaster* is defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2755, 2756, 2756b)

■ 29. Section 675.26 is amended by:

■ A. In paragraph (d)(2)(iii), removing the word ''or'' that appears after the punctuation ''\;''.

■ B. In paragraph (d)(2)(iv), removing the punctuation ''.'' and adding, in its place, the word ''; or''.

■ C. Adding paragraph (d)(2)(v).

The addition reads as follows:

§ 675.26 FWS Federal share limitations.

* * * * *

(d) * * *

(2) * * *

(v) The student is employed in community service activities and is performing civic education and participation activities in a project as defined in § 675.18(g)(4).

* * * * *

■ 30. Section 675.41 is amended by:

■ A. Revising paragraph (a).

■ B. Revising the paragraph heading and introductory text in paragraph (b).

■ C. In paragraph (b)(2), removing the word '', participation,''.

■ D. In paragraph (b)(5), removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

■ E. In paragraph (b)(6), removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

The revisions read as follows:

§ 675.41 Special definitions.

* * * * *

(a) *Work-college:* An eligible institution that—

(1) Is a public or private nonprofit, four-year, degree-granting institution with a commitment to community service;

(2) Has operated a comprehensive work-learning-service program for at least two years;

(3) Requires resident students, including at least one-half of all students who are enrolled on a full-time basis, to participate in a comprehensive work-learning-service program for at least five hours each week, or at least 80 hours during each period of enrollment, except summer school, unless the student is engaged in an institutionally organized or approved study abroad or externship program; and

(4) Provides students participating in the comprehensive work-learning-service program with the opportunity to contribute to their education and to the welfare of the community as a whole.

(b) *Comprehensive student work-learning-service program:* A student work-learning-service program that—

* * * * *

§ 675.43 [Amended]

■ 31. Section 675.43 is amended by removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

§ 675.44 [Amended]

■ 32. Section 675.44(b) is amended by removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

§ 675.45 [Amended]

33. Section 675.45 is amended by:

■ A. In paragraph (a)(1), in the introductory text of paragraph (a)(4), and in paragraph (a)(4)(i) removing the words ''work-learning'' and adding, in their place, the words ''work-learning-service''.

■ B. In paragraph (a)(5), removing the words ''work service learning'' and adding, in their place, the words ''work-learning-service''.

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

■ 34. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.,* unless otherwise noted.

§ 686.12 [Amended]

■ 35. Section 686.12(c)(1) is amended by adding the words '', a suspension approved under § 686.41(a)(2), or a military discharge granted under § 686.42(c)(2)'' after the words ''teaching service''.

■ 36. Section 686.41 is amended by:

■ A. In the introductory text of paragraph (a)(2), removing the words ''and (ii)'' and adding, in their place, the words '', (ii), and (iii)''.

■ B. Revising paragraphs (a)(2)(ii), (b), and (c).

■ C. Adding an OMB control number at the end of the section.

The revisions and addition read as follows:

§ 686.41 Periods of suspension.

(a) * * *

(2) * * *

(ii) Does not exceed a total of three years under paragraph (a)(1)(iii) of this section.

(b) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) of this section, must apply for a suspension in writing on a form approved by the Secretary prior to being subject to any of the conditions under § 686.43(a)(1) through (a)(5) that would cause the TEACH Grant to convert to a Federal Direct Unsubsidized Loan.

(c) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) of this section, must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

(Approved by the Office of Management and Budget under control number 1845–0083)

* * * * *

■ 37. Section 686.42 is amended by:

■ A. Adding paragraph (c).

■ B. Adding an OMB control number at the end of the section.

The additions read as follows:

§ 686.42 Discharge of agreement to serve.

* * * * *

(c) *Military discharge.* (1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds and has exceeded the period of time allowed under § 686.41(a)(2)(ii), may qualify for a proportional discharge of his or her service obligation due to an extended call or order to active duty status. To apply for a military discharge, a grant recipient or his or her representative must submit a written request to the Secretary.

(2) A grant recipient described in paragraph (c)(1) of this section may receive a—

(i) One-year discharge of his or her service obligation if a call or order to active duty status is for more than three years;

(ii) Two-year discharge of his or her service obligation if a call or order to active duty status is for more than four years;

(iii) Three-year discharge of his or her service obligation if a call or order to active duty status is for more than five years; or

(iv) Full discharge of his or her service obligation if a call or order to active duty status is for more than six years.

(3) A grant recipient or his or her representative must provide the Secretary with—

(i) A written statement from the grant recipient's commanding or personnel officer certifying—

(A) That the grant recipient is on active duty in the Armed Forces of the United States;

(B) The date on which the grant recipient's service began; and

(C) The date on which the grant recipient's service is expected to end; or

(ii)(A) A copy of the grant recipient's official military orders; and

(B) A copy of the grant recipient's military identification.

(4) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(5) Based on a request for a military discharge from the grant recipient or his or her representative, the Secretary will notify the grant recipient or his or her representative of the outcome of the discharge request. For the portion on the service obligation that remains, the grant recipient remains responsible for fulfilling his or her service obligation in accordance with § 686.12.

(Approved by the Office of Management and Budget under control number 1845–0083)

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

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

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

■ 39. Section 690.6 is amended by:

■ A. Revising the section heading.

■ B. Adding paragraph (e).

The revision and addition read as follows:

§ 690.6 Duration of student eligibility.

* * * * *

(e) If a student receives a Federal Pell Grant for the first time on or after July 1, 2008, the student may receive no more than nine Scheduled Awards.

* * * * *

■ 40. Section 690.63 is amended by:

■ A. Adding paragraph (h).

■ B. Adding an OMB control number and authority citation at the end of the section.

The additions read as follows:

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

* * * * *

(h) *Payment from two Scheduled Awards.* (1) In a payment period, a student may receive a payment from the student's first Scheduled Award in the award year and the student's second Scheduled Award in the award year if—

(i) The student is an eligible student who meets the provisions of § 690.67; and

(ii) The student's payment for the payment period is greater than the remaining balance of the first Scheduled Award.

(2) The student's payment for the payment period—

(i) Is calculated based on the total credit or clock hours and weeks of instructional time in the payment period; and

(ii) Is the remaining amount of the first Scheduled Award plus an amount from the second Scheduled Award for the balance of the payment for the payment period.

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

■ 41. Section 690.64 is revised to read as follows:

§ 690.64 Calculation of a Federal Pell Grant for a payment period which occurs in two award years.

If a student enrolls in a payment period that is scheduled to occur in two award years—

(a) The entire payment period must be considered to occur within one award year;

(b)(1) An institution must assign the payment period to the award year in which the student receives the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated;

(2) The institution must reassign the payment to the award year providing the greater payment if the institution receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year—

(i) Subsequent to the initial calculation of the student's payment for the payment period; and

(ii) Not later than the deadline date for the first award year that the Secretary establishes through publication in the **Federal Register** for each award year; and

(3) The institution may reassign the payment to the award year providing the greater payment if the institution receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year—

(i) Subsequent to the deadline date established in paragraph (b)(2) of this section; and

(ii) Not later than the deadline date for the first award year for administrative relief based on unusual circumstances that the Secretary establishes through publication in the **Federal Register** for each award year;

(c) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year; and

(d) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

■ 42. Section 690.67 is revised to read as follows:

§ 690.67 Receiving up to two Scheduled Awards during a single award year.

(a) *Eligibility.* An institution shall award up to the full amount of a second Scheduled Award to a student in an award year if the student—

(1) Is enrolled for credit or clock hours that are attributable to the student's second academic year in the award year;

(2) Is enrolled in an eligible program leading to a bachelor's or associate degree or other recognized educational credential except as provided in 34 CFR part 668, subpart O for students with intellectual disabilities; and

(3) Is enrolled at least as a half-time student.

(b) *Transfer student.* (1) *Options.* If a student transfers to an institution during an award year, the institution must determine the credit or clock hours earned in the award year at the other institutions in accordance with paragraph (b)(2) or (3) of this section.

(2) *Assumption method.* (i) The institution may assume that a student has completed the credit or clock hours in the first academic year of the award year if the first Scheduled Award was disbursed at other institutions during the award year; or

(ii) If less than the first Scheduled Award has been disbursed at a prior

institution that the student attended during the award year, the institution must determine the credit or clock hours the student is considered to have previously earned in the award year by—

(A) Multiplying the amount of the student's Scheduled Award disbursed at a prior institution during the award year by the number of credit or clock hours in the institution's academic year and dividing the product of the multiplication by the amount of the Scheduled Award at the prior institution; and

(B) If the student previously attended more than one institution in the award year, adding the results of paragraph (b)(2)(i) of this section for each prior institution.

(3) *Hours-earned method.* (i) If the institution has information concerning the credit or clock hours earned by a student while attending other institutions, the institution may determine the credit or clock hours actually earned at other institutions.

(ii) To make a determination under paragraph (b)(3)(i) of this section, the institution must have information that—

(A) Includes the time periods when the credit or clock hours were earned; and

(B) Does not include nonapplicable credit or clock hours described in paragraph (d) of this section.

(iii) An institution must attribute to the current award year any credit or clock hours earned at other institutions that were earned in a payment period that it determines was scheduled to occur in the prior award year and the current award year.

(4) *Receipt of additional information.* (i) If an institution receives additional information concerning, for paragraph (b)(2) of this section, Federal Pell Grant disbursements or, for paragraph (b)(3) of this section, credit or clock hours earned at other institutions and related information, subsequent to a prior payment period in which the institution disbursed a payment of a second Scheduled Award in the award year based on the application of paragraph (b)(2) or (3) of this section, the institution is not required to apply the information to the prior payment period.

(c) *Special circumstances.* (1) In a payment period in which there is insufficient remaining eligibility from a student's first Scheduled Award to provide a full payment for the payment period, the financial aid administrator at the institution may waive the requirement in paragraph (a)(1) of this section, if the financial aid administrator—

(i) Determines that the student due to circumstances beyond the student's control was unable to complete the credit or clock hours of the first academic year that are necessary to be enrolling for credit or clock hours that are attributable to the second academic year; and

(ii) The determination is made and documented on an individual basis.

(2) For purposes of paragraph (c)(1) of this section, circumstances beyond a student's control—

(i) May include, but are not limited to, the student withdrawing from classes due to illness or being unable to register for classes necessary to complete his or her eligible program because those classes were not offered during that period; and

(ii) Do not include, for example, withdrawing to avoid a particular grade or failing to register for a necessary class that was offered during the period to avoid a particular instructor.

(d) *Nonapplicable credit or clock hours.* To determine the student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

(Approved by the Office of Management and Budget under control number 1845–NEW5)

(Authority: 20 U.S.C. 1070a)

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

■ 43. The authority citation for part 692 is revised to read as follows:

Authority: 20 U.S.C. 1070c–1070c–4, unless otherwise noted.

§ 692.10 [Amended]

■ 44. Section 692.10 is amended by:

■ A. In paragraph (a)(1), adding the words ''for the programs under this part'' after the number ''1979''.

■ B. In paragraph (a)(2), removing the word ''If'' and adding, in its place, the words ''For the programs under this part, if''.

■ C. In paragraph (a)(2), removing the word ''LEAP'' each time it appears.

■ D. In paragraph (b), removing the word ''-appropriated'' after the word ''State'', both times it appears.

■ E. In the authority citation at the end of the section, adding '', 1070c–2'' after the number ''1070c''

■ 45. Section 692.21 is amended by:

■ A. In paragraph (c), removing the figure ''$5,000'' and adding, in its place, the words ''the lesser of $12,500 or the student's cost of attendance under section 472 of the HEA''.

■ B. In paragraph (j), removing the word ''and'' that appears after the punctuation '';''.

■ C. Redesignating paragraph (k) as paragraph (l).

■ D. Adding a new paragraph (k).

■ E. Adding an OMB control number at the end of the section.

The additions read as follows:

§ 692.21 What requirements must be met by a State program?

* * * * *

(k) Notifies eligible students that the grants are—

(1) Leveraging Educational Assistance Partnership Grants; and

(2) Funded by the Federal Government, the State, and, where applicable, other contributing partners; and

* * * * *

(Approved by the Office of Management and Budget under control number 1845–NEW7)

* * * * *

■ 46. Section 692.70 is revised to read as follows:

§ 692.70 How does the Secretary allot funds to the States?

For fiscal year 2010–2011, the Secretary allots to each eligible State that applies for SLEAP funds an amount in accordance with the provisions in § 692.10 prior to calculating allotments for States applying for GAP funds under subpart C of this part.

(Authority: 20 U.S.C. 1070c–3a)

■ 47. Subpart C, consisting of §§ 692.90 through 692.130 and Appendix A, is added to part 692 to read as follows:

Subpart C—Grants for Access and Persistence Program

General

Sec.
692.90 What is the Grants for Access and Persistence Program?
692.91 What other regulations apply to the GAP Program?
692.92 What definitions apply to the GAP Program?
692.93 Who is eligible to participate in the GAP Program?
692.94 What requirements must a State satisfy, as the administrator of a partnership, to receive GAP Program funds?

How Does a State Apply to Participate in GAP?

692.100 What requirements must a State meet to receive an allotment under this program?
692.101 What requirements must be met by a State partnership?

What Is the Amount of Assistance and How May It Be Used?

692.110 How does the Secretary allot funds to the States?
692.111 For what purposes may a State use its payment under the GAP Program?
692.112 May a State use the funds it receives from the GAP Program to pay administrative costs?
692.113 What are the matching requirements for the GAP Program?

How Does the Partnership Select Students Under the GAP Program?

692.120 What are the requirements for student eligibility?

How Does the Secretary Approve a Waiver of Program Requirements?

692.130 How does a participating institution request a waiver of program requirements?
Appendix A to Subpart C of Part 692—Grants for Access and Persistence Program (GAP) State Grant Allotment Case Study

Subpart C—Grants for Access and Persistence Program

General

§ 692.90 What is the Grants for Access and Persistence Program?

The Grants for Access and Persistence (GAP) Program assists States in establishing partnerships to provide eligible students with LEAP Grants under GAP to attend institutions of higher education and to encourage increased participation in early information and intervention, mentoring, or outreach programs.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.91 What other regulations apply to the GAP Program?

The regulations listed in § 692.3 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.92 What definitions apply to the GAP Program?

The definitions listed in § 692.4 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.93 Who is eligible to participate in the GAP Program?

(a) *States.* States that meet the requirements in §§ 692.94 and 692.100 are eligible to receive payments under the GAP Program.

(b) *Degree-granting institutions of higher education.* Degree-granting institutions of higher education that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(c) *Early information and intervention, mentoring, or outreach programs.* Early information and intervention, mentoring, or outreach programs that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(d) *Philanthropic organizations or private corporations.* Philanthropic organizations or private corporations that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(e) *Students.* Students who meet the requirements of § 692.120 are eligible to receive assistance or services from a partnership under the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.94 What requirements must a State satisfy, as the administrator of a partnership, to receive GAP Program funds?

To receive GAP Program funds for any fiscal year—

(a) A State must—

(1) Participate in the LEAP Program;

(2) Establish a State partnership with—

(i) At least—

(A) One public degree-granting institution of higher education that is located in the State; and

(B) One private degree-granting institution of higher education, if at least one exists in the State that may be eligible to participate in the State's LEAP Program under subpart A of this part;

(ii) New or existing early information and intervention, mentoring, or outreach programs located in the State; and

(iii) At least one philanthropic organization located in, or that provides funding in, the State, or private corporation located in, or that does business in, the State;

(3) Meet the requirements in § 692.100; and

(4) Have a program under this subpart that satisfies the requirements in § 692.21(a), (e), (f), (g), and (j).

(b) A State may provide an early information and intervention, mentoring, or outreach program under paragraph (a)(2)(ii) of this section.

(Authority: 20 U.S.C. 1070c–3a)

How Does a State Apply to Participate in GAP?

§ 692.100 What requirements must a State meet to receive an allotment under this program?

For a State to receive an allotment under the GAP Program, the State agency that administers the State's LEAP Program under subpart A of this part must—

(a) Submit an application on behalf of a partnership in accordance with the provisions in § 692.20 at such time, in such manner, and containing such information as the Secretary may require including—

(1) A description of—

(i) The State's plan for using the Federal funds allotted under this subpart and the non-Federal matching funds; and

(ii) The methods by which matching funds will be paid;

(2) An assurance that the State will provide matching funds in accordance with § 692.113;

(3) An assurance that the State will use Federal GAP funds to supplement, and not supplant, Federal and State funds available for carrying out the activities under Title IV of the HEA;

(4) An assurance that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make these programs widely available;

(5) A description of the organizational structure that the State has in place to administer the program, including a description of how the State will compile information on degree completion of students receiving grants under this subpart;

(6) A description of the steps the State will take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP persist to degree completion;

(7) An assurance that the State has a method in place, such as acceptance of the automatic zero expected family contribution under section 479(c) of the HEA, to identify eligible students and award LEAP Grants under GAP to such students;

(8) An assurance that the State will provide notification to eligible students that grants under this subpart are LEAP Grants and are funded by the Federal Government and the State, and, where applicable, other contributing partners.

(b) Serve as the primary administrative unit for the partnership;

(c) Provide or coordinate non-Federal share funds, and coordinate activities among partners;

(d) Encourage each institution of higher education in the State that participates in the State's LEAP Program under subpart A of this part to participate in the partnership;

(e) Make determinations and early notifications of assistance;

(f) Ensure that the non-Federal funds used as matching funds represent dollars that are in excess of the total dollars that a State spent for need-based grants, scholarships, and work-study assistance for fiscal year 1999, including the State funds reported for the programs under this part;

(g) Provide an assurance that, for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.111 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

(h) Provide for reports to the Secretary that are necessary to carry out the Secretary's functions under the GAP Program.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

§ 692.101 What requirements must be met by a State partnership?

(a) *State.* A State that is receiving an allotment under this subpart must meet the requirements under §§ 692.94 and 692.100.

(b) *Degree-granting institution of higher education.* A degree-granting institution of higher education that is in a partnership under this subpart—

(1) Must participate in the State's LEAP Program under subpart A of this part;

(2) Must recruit and admit participating eligible students and provide additional institutional grant aid to participating students as agreed to with the State agency;

(3) Must provide support services to students who receive LEAP Grants under GAP and are enrolled at the institution;

(4) Must assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and

(5) May provide funding or services for early information and intervention, mentoring, or outreach programs.

(c) *Early information and intervention, mentoring, or outreach program.* An early information and intervention, mentoring, or outreach program that is in a partnership under this subpart shall provide direct services, support, and information to participating students.

(d) *Philanthropic organization or private corporation.* A philanthropic organization or private corporation in a partnership under this subpart shall provide non-Federal funds for LEAP Grants under GAP for participating students or provide funds or support for early information and intervention, mentoring, or outreach programs.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

What Is the Amount of Assistance and How May It Be Used?

§ 692.110 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the GAP Program an amount of the funds available for the GAP Program based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a).

(2) If a State meets the requirements of § 692.113(b) for a fiscal year, the number of students under § 692.10(a) for the State is increased to 125 percent in determining the ratio in paragraph (a) of this section for that fiscal year.

(3) Notwithstanding paragraph (a)(1) and (2) of this section—

(i) If the Federal GAP funds available from the appropriation for a fiscal year are sufficient to allot to each State that participated in the prior year the same amount of Federal GAP funds allotted in the prior fiscal year, but are not sufficient both to allot the same amount of Federal GAP funds allotted in the prior fiscal year to these States and also to allot additional funds to additional States in accordance with the ratio used to allot the States' Federal LEAP funds under § 692.10(a), the Secretary allots—

(A) To each State that participated in the prior year, the amount the State received in the prior year; and

(B) To each State that did not participate in the prior year, an amount of Federal GAP funds available to States based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a); and

(ii) If the Federal GAP funds available from the appropriation for a fiscal year are not sufficient to allot to each State that participated in the prior year at least the amount of Federal GAP funds allotted in the prior fiscal year, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal GAP funds available as the amount of Federal GAP funds allotted to each State in the prior fiscal year bears to the amount of Federal GAP funds allotted to all States in the prior fiscal year.

(4) For fiscal year 2011, the prior fiscal year allotment to a State for purposes of paragraph (a)(3) of this section shall include any fiscal year 2010 allotment made to that State under subpart B of this part.

(b) The Secretary allots funds available for reallotment in a fiscal year in accordance with the provisions of paragraph (a) of this section used to calculate initial allotments for the fiscal year.

(c) Any funds made available for the program under this subpart but not expended may be allotted or reallotted for the program under subpart A of this part.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.111 For what purposes may a State use its payment under the GAP Program?

(a) *Establishment of a partnership.* Each State receiving an allotment under this subpart shall use the funds to establish a partnership to award grants to eligible students in order to increase the amount of financial assistance students receive under this subpart for undergraduate education expenses.

(b) *Amount of LEAP Grants under GAP.* (1) The amount of a LEAP Grant under GAP by a State to an eligible student shall be not less than—

(i) The average undergraduate in-State tuition and mandatory fees for full-time students at the public institutions of higher education in the State where the student resides that are the same type of institution that the student attends (four-year degree-granting, two-year degree-granting, or non-degree-granting); minus

(ii) Other Federal and State aid the student receives.

(2) The Secretary determines the average undergraduate in-State tuition and mandatory fees for full-time students at public institutions in a State weighted by enrollment using the most recent data reported by institutions in the State to the Integrated Postsecondary Education Data System (IPEDS) administered by the National Center for Educational Statistics.

(c) *Institutional participation.* (1) A State receiving an allotment under this subpart may restrict the use of LEAP Grants under GAP only to students attending institutions of higher education that are participating in the partnership.

(2) If a State provides LEAP Grants under subpart A of this part to students attending institutions of higher education located in another State, LEAP Grants under GAP may be used at institutions of higher education located in another State.

(d) *Early notification to potentially eligible students.* (1) Each State receiving an allotment under this subpart shall annually notify potentially eligible students in grades 7 through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend a LEAP-participating institution of higher education.

(2) The notice shall include—

(i) Information about early information and intervention, mentoring, or outreach programs available to the student;

(ii) Information that a student's eligibility for a LEAP Grant under GAP is enhanced through participation in an early information and intervention, mentoring, or outreach program;

(iii) An explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a LEAP Grant under GAP and other student aid programs;

(iv) A nonbinding estimate of the total amount of financial aid that an eligible student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs;

(v) An explanation that in order to be eligible for a LEAP Grant under GAP, at a minimum, a student shall—

(A) Meet the eligibility requirements under § 692.120; and

(B) Enroll at a LEAP-participating institution of higher education in the State of the student's residence or an out-of-state institution if the State elects to make LEAP Grants under GAP for attendance at out-of-State institutions in accordance with paragraph (c)(2) of this section;

(vi) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP in accordance with § 692.120(a)(4); and

(vii) An explanation that a student is required to file a Free Application for Federal Student Aid to determine his or her eligibility for Federal and State financial assistance and may include a provision that eligibility for an award is subject to change based on—

(A) A determination of the student's financial eligibility at the time of the student's enrollment at a LEAP-participating institution of higher education or an out-of-State institution in accordance with paragraph (c)(2) of this section;

(B) Annual Federal and State spending for higher education; and

(C) Other aid received by the student at the time of the student's enrollment at the institution of higher education.

(e) *Award notification.* (1) Once a student, including a student who has received early notification under paragraph (d) of this section, applies for admission to an institution that is a partner in the partnership of the State of the student's residence, files a Free Application for Federal Student Aid and any related State form, and is determined eligible by the State, the State shall—

(i) Issue the student a preliminary award certificate for a LEAP Grant under GAP with estimated award amounts; and

(ii) Inform the student that the payment of the grant is subject to certification of enrollment and eligibility by the institution.

(2) If a student enrolls in an institution that is not a partner in the partnership of the student's State of residence but the State has not restricted eligibility to students enrolling in partner institutions, including, if applicable, out-of-State institutions, the State shall, to the extent practicable, follow the procedures of paragraph (e)(1) of this section.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

§ 692.112 May a State use the funds it receives from the GAP Program to pay administrative costs?

(a) A State that receives an allotment under this subpart may reserve not more than two percent of the funds made available annually for State administrative functions required for administering the partnership and other program activities.

(b) A State must use not less than ninety-eight (98) percent of an allotment under this subpart to make LEAP Grants under GAP.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.113 What are the matching requirements for the GAP Program?

(a) The matching funds of a partnership—

(1) Shall be funds used for making LEAP Grants to eligible students under this subpart;

(2) May be—

(i) Cash; or

(ii) A noncash, in-kind contribution that—

(A) Is fairly evaluated;

(B) Has monetary value, such as a tuition waiver or provision of room and board, or transportation;

(C) Helps a student meet the cost of attendance at an institution of higher education; and

(D) Is considered to be estimated financial assistance under 34 CFR 673.5(c); and

(3) May be funds from the State, institutions of higher education, or philanthropic organizations or private corporations that are used to make LEAP Grants under GAP.

(b) The non-Federal match of the Federal allotment shall be—

(1) Forty-three percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State; and

(2) Thirty-three and thirty-four one-hundredths percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State.

(c) Nothing in this part shall be interpreted as limiting a State or other member of a partnership from expending funds to support the activities of a partnership under this subpart that are in addition to the funds matching the Federal allotment.

(Authority: 20 U.S.C. 1070c–3a)

How Does the Partnership Select Students Under the GAP Program?

§ 692.120 What are the requirements for student eligibility?

(a) *Eligibility.* A student is eligible to receive a LEAP Grant under GAP if the student—

(1) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(2) Has graduated from secondary school or, for a home-schooled student, has completed a secondary education;

(3)(i) Has received, or is receiving, a LEAP Grant under GAP for each year the student remains eligible for assistance under this subpart; or

(ii) Meets at least two of the following criteria—

(A) As designated by the State, either has an EFC equal to zero, as determined

under part F of the HEA, or a comparable alternative based on the State's approved criteria for the LEAP Program under subpart A of this part;

(B) Qualifies for the State's maximum undergraduate award for LEAP Grants under subpart A of this part in the award year in which the student is receiving an additional LEAP Grant under GAP; or

(C) Is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as determined by the State agency administering the programs under this part; and

(4) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP.

(b) *Priority.* In awarding LEAP Grants under GAP, a State shall give priority to students meeting all the criteria in paragraph (a)(3)(i) of this section.

(c) *Duration of eligibility.* (1) A student may receive a LEAP Grant under GAP if the student continues to demonstrate that he or she is financially eligible by meeting the provisions of paragraph (a)(3)(ii)(A) or (B) of this section.

(2) A State may impose reasonable time limits to degree completion.

(Authority: 20 U.S.C. 1070c–3a)

How Does the Secretary Approve a Waiver of Program Requirements?

§ 692.130 How does a participating institution request a waiver of program requirements?

(a) The Secretary may grant, upon the request of an institution participating in a partnership that meets the requirements of § 692.113(b)(2), a waiver for the institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

(b) An institution must submit a request for a waiver through the State agency administering the partnership.

(c) The State agency must forward to the Secretary, in a timely manner, the request made by the institution and may include any additional information or recommendations that it deems appropriate for the Secretary's consideration.

(Authority: 20 U.S.C. 1070c–3a)

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Appendix A to Subpart C of part 692 – Grants for Access and Persistence Program (GAP)

State Grant Allotment Case Study

Basic Allotment Formula for LEAP, SLEAP, and GAP

1979 State Enrollment Data

State	Enrollment
Alabama	174,170
Alaska	18,594
Arizona	199,274
Arkansas	74,057
California	1,798,400
Colorado	159,836
Connecticut	152,431
Delaware	31,228
District of Columbia	85,259
Florida	366,344
Georgia	203,269
Hawaii	48,097
Idaho	39,198
Illinois	632,654
Indiana	234,086
Iowa	125,845
Kansas	129,705
Kentucky	142,958
Louisiana	166,660
Maine	41,954
Maryland	213,490
Massachusetts	376,361
Michigan	483,833
Minnesota	226,365
Mississippi	99,078
Missouri	231,327
Montana	32,270
Nebraska	83,922
Nevada	31,926
New Hampshire	40,803
New Jersey	306,983
New Mexico	59,420
New York	989,409
North Carolina	254,199
North Dakota	31,357
Ohio	464,069
Oklahoma	157,622
Oregon	150,353
Pennsylvania	514,421
Rhode Island	61,773
South Carolina	126,628
South Dakota	33,227
Tennessee	189,530
Texas	638,504
Utah	86,966
Vermont	29,398
Virginia	249,297
Washington	265,593
West Virginia	85,012
Wisconsin	244,111
Wyoming	19,633
American Samoa	836
Guam	3,710
Northern Marianas Island	143
Puerto Rico	104,640
Virgin Islands	2,122
Total	**11,712,350**

Basic Allotment Formula

1) Derive a percentage of total enrollment of all states:

$$\frac{\text{State Enrollment Data*}}{\text{Total State Enrollment (for all states/territories)}} = \text{\% of Total Enrollment}$$

2) Determine what portion of the Federal Appropriation a State/territory receives:

$$\text{\% of Total Enrollment} \times \text{Federal Appropriation Amount} = \text{Amount of the Allocation per State}$$

*Use FY 1979 enrollment data unless the appropriation exceeds $76,452,287 (the FY 1979 appropriation); 1976-1977 award year enrollment data used for FY 1979. Use most recent enrollment data if appropriation exceeds $76,452,287.

NOTE: This case study illustrates the requirements for allotting funds under the GAP Program under §692.110 and SLEAP Program funding during fiscal year 2010 (the 2010-2011 award year) under §692.70. Apart from State enrollments for fiscal year 1979 used in the allotment formula, nothing in the case study should be considered to reflect any State's actual circumstances or the expected funding for any State.

First Year of GAP Implementation (2010-11)

Conditions:

Appropriation for FY 2010:	$63,852,000
LEAP funds for FY 2010:	$30,000,000
SLEAP/GAP funds for FY 2010:	$33,852,000

Illustrates:

First, must allot to SLEAP applicants (Table A)

Then, use remaining funds for GAP applicants (Table B)

First Year of GAP Implementation (2010-11): SLEAP Allotment (Table A)

Must calculate SLEAP first

Federal Appropriation Available after LEAP Allotment: $33,852,000

State	State Enrollment	Formula Amount	Formula Amount	State SLEAP Allotment
§ Alabama		$0.00	$0	
‡ Alaska	18,594	$59,494.79	$59,495	**$59,495**
Arizona	199,274	$637,612.43	$637,612	
§ Arkansas		$0.00	$0	
California	1,798,400	$5,754,299.06	$5,754,299	
Colorado	159,836	$511,423.57	$511,424	
Connecticut	152,431	$487,729.96	$487,730	
Delaware	31,228	$99,919.51	$99,920	
District of Columbia	85,259	$272,801.26	$272,801	
Florida	366,344	$1,172,182.46	$1,172,182	
§ Georgia		$0.00	$0	
§ Hawaii		$0.00	$0	
‡ Idaho	39,198	$125,420.94	$125,421	**$125,421**
Illinois	632,654	$2,024,288.43	$2,024,288	
Indiana	234,086	$748,999.58	$749,000	
Iowa	125,845	$402,663.35	$402,663	
Kansas	129,705	$415,014.10	$415,014	
Kentucky	142,958	$457,419.42	$457,419	
Louisiana	166,660	$533,258.16	$533,258	
‡ Maine	41,954	$134,239.25	$134,239	**$134,239**
Maryland	213,490	$683,099.04	$683,099	
§ Massachusetts		$0.00	$0	
‡ Michigan	483,833	$1,548,109.31	$1,548,109	**$1,548,109**
Minnesota	226,365	$724,294.88	$724,295	
§ Mississippi		$0.00	$0	
Missouri	231,327	$740,171.67	$740,172	
‡ Montana	32,270	$103,253.58	$103,254	**$103,254**
Nebraska	83,922	$268,523.29	$268,523	
Nevada	31,926	$102,152.89	$102,153	
New Hampshire	40,803	$130,556.42	$130,556	
New Jersey	306,983	$982,246.44	$982,246	
‡ New Mexico	59,420	$190,124.81	$190,125	**$190,125**
New York	989,409	$3,165,789.19	$3,165,789	
North Carolina	254,199	$813,354.69	$813,355	
North Dakota	31,357	$100,332.27	$100,332	
‡ Ohio	464,069	$1,484,870.89	$1,484,871	**$1,484,871**
Oklahoma	157,622	$504,339.48	$504,339	
Oregon	150,353	$481,081.03	$481,081	
Pennsylvania	514,421	$1,645,981.03	$1,645,981	
Rhode Island	61,773	$197,653.65	$197,654	
South Carolina	126,628	$405,168.70	$405,169	
§ South Dakota		$0.00	$0	
Tennessee	189,530	$606,434.78	$606,435	
Texas	638,504	$2,043,006.54	$2,043,007	
Utah	86,966	$278,263.11	$278,263	
Vermont	29,398	$94,064.10	$94,064	
Virginia	249,297	$797,669.87	$797,670	
Washington	265,593	$849,811.81	$849,812	
‡ West Virginia	85,012	$272,010.94	$272,011	**$272,011**
Wisconsin	244,111	$781,076.34	$781,076	
§ Wyoming		$0.00	$0	
‡ American Samoa	836	$2,674.93	$2,675	**$2,675**
‡ Guam	3,710	$11,870.80	$11,871	**$11,871**
‡ No. Marianas Island	143	$457.55	$458	**$458**
§ Puerto Rico		$0.00	$0	
‡ Virgin Islands	2,122	$6,789.71	$6,790	**$6,790**
Total	10,579,818	$33,852,000.00	$33,852,000	**$3,939,317** **Total SLEAP Allotments**
				$29,912,683 **Remaining balance for GAP allotment**

Key: ‡ Applies for SLEAP
§ Does not apply or qualify

First Year of GAP Implementation (2010-11): GAP Allotment-with Priority (Table B)

Demonstrate GAP actual allotment with required priority

Federal Appropriation Available for GAP Allotment: $29,912,683

State	State Enrollment with Priority Applied	Formula Amount with Priority Applied	State GAP Allotment with Priority Applied
§ Alabama		$0.00	**$0**
‡ Alaska		$0.00	**$0**
Arizona	199,274	$547,813.66	**$547,814**
§ Arkansas		$0.00	**$0**
# California	2,248,000	$6,179,858.41	**$6,179,858**
Colorado	159,836	$439,396.73	**$439,397**
# Connecticut	190,539	$523,800.04	**$523,800**
# Delaware	39,035	$107,309.06	**$107,309**
District of Columbia	85,259	$234,381.03	**$234,381**
# Florida	457,930	$1,258,871.25	**$1,258,871**
§ Georgia		$0.00	**$0**
§ Hawaii		$0.00	**$0**
‡ Idaho		$0.00	**$0**
# Illinois	790,818	$2,173,994.74	**$2,173,995**
Indiana	234,086	$643,513.49	**$643,513**
Iowa	125,845	$345,953.86	**$345,954**
Kansas	129,705	$356,565.18	**$356,565**
Kentucky	142,958	$392,998.31	**$392,998**
Louisiana	166,660	$458,156.23	**$458,156**
‡ Maine		$0.00	**$0**
Maryland	213,490	$586,894.12	**$586,894**
§ Massachusetts		$0.00	**$0**
‡ Michigan		$0.00	**$0**
Minnesota	226,365	$622,288.10	**$622,288**
§ Mississippi		$0.00	**$0**
Missouri	231,327	$635,928.87	**$635,929**
‡ Montana		$0.00	**$0**
Nebraska	83,922	$230,705.55	**$230,706**
Nevada	31,926	$87,766.09	**$87,766**
New Hampshire	40,803	$112,169.38	**$112,169**
# New Jersey	383,729	$1,054,888.50	**$1,054,888**
‡ New Mexico		$0.00	**$0**
New York	989,409	$2,719,932.17	**$2,719,932**
# North Carolina	317,749	$873,506.35	**$873,506**
North Dakota	31,357	$86,201.88	**$86,202**
‡ Ohio		$0.00	**$0**
# Oklahoma	197,028	$541,637.92	**$541,638**
# Oregon	187,941	$516,659.39	**$516,659**
# Pennsylvania	643,026	$1,767,709.60	**$1,767,710**
# Rhode Island	77,216	$212,271.13	**$212,271**
South Carolina	126,628	$348,106.37	**$348,106**
§ South Dakota		$0.00	**$0**
# Tennessee	236,913	$651,283.68	**$651,284**
# Texas	798,130	$2,194,097.15	**$2,194,097**
# Utah	108,708	$298,842.06	**$298,842**
# Vermont	36,748	$101,020.62	**$101,021**
# Virginia	311,621	$856,661.57	**$856,662**
# Washington	331,991	$912,659.66	**$912,660**
‡ West Virginia		$0.00	**$0**
# Wisconsin	305,139	$838,840.87	**$838,841**
§ Wyoming		$0.00	**$0**
‡ American Samoa		$0.00	**$0**
‡ Guam		$0.00	**$0**
‡ No. Marianas Islands		$0.00	**$0**
§ Puerto Rico		$0.00	**$0**
‡ Virgin Islands		$0.00	**$0**
Total	10,881,109	$29,912,683.00	**$29,912,683**

Key: # Priority States, 125% applied
‡ Applies for SLEAP
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12)

Conditions:

Appropriation for FY 2011: $65,852,000
LEAP funds for FY 2011: $30,000,000
GAP funds for FY 2011: $35,852,000
12 States initially apply for GAP funding (WV with priority)
9 initial applicants received SLEAP in FY 2010
AR, MA, and MS initial applicants with no FY 2010 SLEAP
AK, NM, No Marianas with FY 2010 SLEAP; do not apply or qualify for GAP
Priority States in FY 2010 continue as priority States
IN and IA, continuing States, convert to priority States

Illustrates:

Insufficient funds are available to fund all applicants and meet continuing award requirement (Table C)
Continuing awards are based on prior year SLEAP and GAP allotments (Table D)
New applicants receive remaining available fund: $2,250,076 (Table E)

Second Year of GAP Implementation (2011-12): GAP Allotment-Initial Calculation
Perform initial calculation to determine if negative changes from prior year awards (Table C)
Federal Appropriation Available for GAP Allotment: $35,852,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Calculation	Prior Year Allotment	Change from Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$562,777.39	$562,777	$547,814	14,964
Δ Arkansas	74,057	$209,147.23	$209,147	$0	209,147
# California	2,248,000	$6,348,663.51	$6,348,664	$6,179,858	168,805
Colorado	159,836	$451,399.01	$451,399	$439,397	12,002
# Connecticut	190,539	$538,107.83	$538,108	$523,800	14,308
# Delaware	39,035	$110,240.25	$110,240	$107,309	2,931
District of Columbia	85,259	$240,783.23	$240,783	$234,381	6,402
# Florida	457,930	$1,293,257.78	$1,293,258	$1,258,871	34,387
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
□ Idaho	39,198	$110,700.58	$110,701	$125,421	-14,720
# Illinois	790,818	$2,233,378.20	$2,233,378	$2,173,995	59,383
+ Indiana	292,608	$826,364.13	$826,364	$643,513	182,851
+ Iowa	157,306	$444,254.65	$444,255	$345,954	98,301
Kansas	129,705	$366,304.89	$366,305	$356,565	9,740
Kentucky	142,958	$403,733.20	$403,733	$392,998	10,735
Louisiana	166,660	$470,670.93	$470,671	$458,156	12,515
□ Maine	41,954	$118,483.91	$118,484	$134,239	-15,755
Maryland	213,490	$602,925.34	$602,925	$586,894	16,031
Δ Massachusetts	376,361	$1,062,895.62	$1,062,896	$0	1,062,896
□ Michigan	483,833	$1,366,411.44	$1,366,411	$1,548,109	-181,698
Minnesota	226,365	$639,286.13	$639,286	$622,288	16,998
Δ Mississippi	99,078	$279,810.00	$279,810	$0	279,810
Missouri	231,327	$653,299.50	$653,300	$635,929	17,371
□ Montana	32,270	$91,134.95	$91,135	$103,254	-12,119
Nebraska	83,922	$237,007.36	$237,007	$230,706	6,302
Nevada	31,926	$90,163.45	$90,163	$87,766	2,397
New Hampshire	40,803	$115,233.33	$115,233	$112,169	3,064
# New Jersey	383,729	$1,083,703.16	$1,083,703	$1,054,888	28,815
§ New Mexico		$0.00	$0	$0	0
New York	989,409	$2,794,228.12	$2,794,228	$2,719,932	74,296
# North Carolina	317,749	$897,366.50	$897,367	$873,506	23,860
North Dakota	31,357	$88,556.51	$88,557	$86,202	2,355
□ Ohio	464,069	$1,310,595.16	$1,310,595	$1,484,871	-174,276
# Oklahoma	197,028	$556,432.96	$556,433	$541,638	14,795
# Oregon	187,941	$530,772.13	$530,772	$516,659	14,113
# Pennsylvania	643,026	$1,815,995.23	$1,815,995	$1,767,710	48,286
# Rhode Island	77,216	$218,069.39	$218,069	$212,271	5,798
South Carolina	126,628	$357,615.02	$357,615	$348,106	9,509
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$669,073.73	$669,074	$651,284	17,790
# Texas	798,130	$2,254,029.72	$2,254,030	$2,194,097	59,933
# Utah	108,708	$307,005.04	$307,005	$298,842	8,163
# Vermont	36,748	$103,780.03	$103,780	$101,021	2,759
# Virginia	311,621	$880,061.59	$880,062	$856,662	23,400
# Washington	331,991	$937,589.29	$937,589	$912,660	24,930
□ + West Virginia	106,265	$300,107.09	$300,107	$272,011	28,096
# Wisconsin	305,139	$861,754.11	$861,754	$838,841	22,913
§ Wyoming		$0.00	$0	$0	0
□ American Samoa	836	$2,360.98	$2,361	$2,675	-314
□ Guam	3,710	$10,477.55	$10,478	$11,871	-1,393
§ No. Marianas Island		$0.00	$0	$0	0
§ Puerto Rico		$0.00	$0	$0	0
□ Virgin Islands	2,122	$5,992.82	$5,993	$6,790	-797
Total	12,694,845	$35,852,000.00	$35,852,000		

Key: > New applicant with FY 2010 SLEAP
Δ New applicant, no FY 2010 SLEAP
Priority States, 125% applied
+ New Priority States, 125% applied
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12): GAP Allotment-Continuing Awards (Table D)

No calculation: carry over GAP and SLEAP allotment amounts from prior year

Federal Appropriation Available for GAP Allotment: $35,852,000

State	Prior Year Allotment	No Formula Amount	State Allotment Continuing Awards
§ Alabama	$0		$0
§ Alaska			
Arizona	$547,814		$547,814
Δ Arkansas	$0		$0
# California	$6,179,858		$6,179,858
Colorado	$439,397		$439,397
# Connecticut	$523,800		$523,800
# Delaware	$107,309		$107,309
District of Columbia	$234,381		$234,381
# Florida	$1,258,871		$1,258,871
§ Georgia	$0		$0
§ Hawaii	$0		$0
□ Idaho	$125,421		$125,421
# Illinois	$2,173,995		$2,173,995
+ Indiana	$643,513		$643,513
+ Iowa	$345,954		$345,954
Kansas	$356,565		$356,565
Kentucky	$392,998		$392,998
Louisiana	$458,156		$458,156
□ Maine	$134,239		$134,239
Maryland	$586,894		$586,894
Δ Massachusetts	$0		$0
□ Michigan	$1,548,109		$1,548,109
Minnesota	$622,288		$622,288
Δ Mississippi	$0		$0
Missouri	$635,929		$635,929
□ Montana	$103,254		$103,254
Nebraska	$230,706		$230,706
Nevada	$87,766		$87,766
New Hampshire	$112,169		$112,169
# New Jersey	$1,054,888		$1,054,888
§ New Mexico	$0		$0
New York	$2,719,932		$2,719,932
# North Carolina	$873,506		$873,506
North Dakota	$86,202		$86,202
□ Ohio	$1,484,871		$1,484,871
# Oklahoma	$541,638		$541,638
# Oregon	$516,659		$516,659
# Pennsylvania	$1,767,710		$1,767,710
# Rhode Island	$212,271		$212,271
South Carolina	$348,106		$348,106
§ South Dakota	$0		$0
# Tennessee	$651,284		$651,284
# Texas	$2,194,097		$2,194,097
# Utah	$298,842		$298,842
# Vermont	$101,021		$101,021
# Virginia	$856,662		$856,662
# Washington	$912,660		$912,660
□+ West Virginia	$272,011		$272,011
# Wisconsin	$838,841		$838,841
§ Wyoming	$0		$0
□ American Samoa	$2,675		$2,675
□ Guam	$11,871		$11,871
§ No. Marianas Island	$0		$0
§ Puerto Rico	$0		$0
□ Virgin Islands	$6,790		$6,790
Total	$33,601,924		$33,601,924

Key: **> New applicant with FY 2010 SLEAP**
Δ New applicant, no FY 2010 SLEAP
 # Priority States
+ New Priority
Priority not applied
§ Does not apply or qualify

Second Year of GAP Implementation (2011-12): GAP Allotment - New Applicants (Table E)
Calculate allotments using basic allotment formula for new applicants with no FY 2010 GAP or SLEAP
Federal Appropriation Available for New Applicant Allotment: $2,250,076

State	State Enrollment with Priority Applied	Formula Amount	State Allotment
§ Alabama		$0.00	$0
§ Alaska		$0.00	$0
Arizona		$0.00	$0
Δ Arkansas	74,057	$303,248.57	$303,249
# California		$0.00	$0
Colorado		$0.00	$0
# Connecticut		$0.00	$0
# Delaware		$0.00	$0
District of Columbia		$0.00	$0
# Florida		$0.00	$0
§ Georgia		$0.00	$0
§ Hawaii		$0.00	$0
□ Idaho		$0.00	$0
# Illinois		$0.00	$0
+ Indiana		$0.00	$0
+ Iowa		$0.00	$0
Kansas		$0.00	$0
Kentucky		$0.00	$0
Louisiana		$0.00	$0
□ Maine		$0.00	$0
Maryland		$0.00	$0
Δ Massachusetts	376,361	$1,541,122.87	$1,541,123
⊔ Michigan		$0.00	$0
Minnesota		$0.00	$0
Δ Mississippi	99,078	$405,704.55	$405,705
Missouri		$0.00	$0
⊔ Montana		$0.00	$0
Nebraska		$0.00	$0
Nevada		$0.00	$0
New Hampshire		$0.00	$0
# New Jersey		$0.00	$0
§ New Mexico		$0.00	$0
New York		$0.00	$0
# North Carolina		$0.00	$0
North Dakota		$0.00	$0
□ Ohio		$0.00	$0
# Oklahoma		$0.00	$0
# Oregon		$0.00	$0
# Pennsylvania		$0.00	$0
# Rhode Island		$0.00	$0
South Carolina		$0.00	$0
§ South Dakota		$0.00	$0
# Tennessee		$0.00	$0
# Texas		$0.00	$0
# Utah		$0.00	$0
# Vermont		$0.00	$0
# Virginia		$0.00	$0
# Washington		$0.00	$0
□+ West Virginia		$0.00	$0
# Wisconsin		$0.00	$0
§ Wyoming		$0.00	$0
□ American Samoa		$0.00	$0
□ Guam		$0.00	$0
§ No. Marianas Island		$0.00	$0
§ Puerto Rico		$0.00	$0
□ Virgin Islands		$0.00	$0
Total	549,496	$250,076.00	$250,076

Key: > New applicant with FY 2010 SLEAP
Δ New applicant, no FY 2010 SLEAP
Priority States } Priority not applied
+ New priority } Priority not applied
§ Does not apply or qualify

Third Year of GAP Implementation (2012-13)

Conditions:
Appropriation for FY 2012: $61,000,000 (reduction from prior year)
LEAP funds for FY 2012: $30,000,000
GAP funds for FY 2012: $31,000,000
One new applicant, NM, with priority
Priority States in FY 2010 and 2011 continue as priority States

Illustrates:
Funds are insufficient to fund continuing awards (Table F)
Continuing awards are ratably reduced based on prior year allotment (Table G)
IN, IA, and WV are subject to ratable reduction based on prior year allotment; no priority applied (Table G)
New applicant, NM, is also subject to ratable reduction; reduced to zero (Table G)

Third Year of GAP Implementation (2012-13): GAP Allotment-Initial Calculation (Table F)
Perform initial calculation to determine if there are negative changes from prior year awards
Federal Appropriation Available for GAP Allotment: $31,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Initial Calculation	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$483,783.87	$483,784	$547,814	-64,030
Arkansas	74,057	$179,790.55	$179,791	$303,249	-123,458
# California	2,248,000	$5,457,541.53	$5,457,542	$6,179,858	-722,317
Colorado	159,836	$388,038.97	$388,039	$439,397	-51,358
# Connecticut	190,539	$462,577.02	$462,577	$523,800	-61,223
# Delaware	39,035	$94,766.52	$94,767	$107,309	-12,543
District of Columbia	85,259	$206,986.00	$206,986	$234,381	-27,395
# Florida	457,930	$1,111,731.31	$1,111,731	$1,258,871	-147,140
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
Idaho	39,198	$95,162.24	$95,162	$125,421	-30,259
# Illinois	790,818	$1,919,892.95	$1,919,893	$2,173,995	-254,102
+ Indiana	292,608	$710,372.59	$710,373	$643,513	66,859
+ Iowa	157,306	$381,897.42	$381,897	$345,954	35,944
Kansas	129,705	$314,888.98	$314,889	$356,565	-41,676
Kentucky	142,958	$347,063.71	$347,064	$392,998	-45,935
Louisiana	166,660	$404,605.81	$404,606	$458,156	-53,550
Maine	41,954	$101,853.07	$101,853	$134,239	-32,386
Maryland	213,490	$518,296.50	$518,297	$586,894	-68,598
Massachusetts	376,361	$913,703.64	$913,704	$1,541,123	-627,419
Michigan	483,833	$1,174,616.86	$1,174,617	$1,548,109	-373,492
Minnesota	226,365	$549,553.55	$549,554	$622,288	-72,735
Mississippi	99,078	$240,534.83	$240,535	$405,705	-165,170
Missouri	231,327	$561,599.96	$561,600	$635,929	-74,329
Montana	32,270	$78,342.91	$78,343	$103,254	-24,911
Nebraska	83,922	$203,740.12	$203,740	$230,706	-26,965
Nevada	31,926	$77,507.77	$77,508	$87,766	-10,258
New Hampshire	40,803	$99,058.75	$99,059	$112,169	-13,111
# New Jersey	383,729	$931,590.57	$931,591	$1,054,888	-123,298
□ + New Mexico	74,275	$180,319.79	$180,320	$0	180,320
New York	989,409	$2,402,019.89	$2,402,020	$2,719,932	-317,912
# North Carolina	317,749	$771,408.81	$771,409	$873,506	-102,098
North Dakota	31,357	$76,126.39	$76,126	$86,202	-10,076
Ohio	464,069	$1,126,635.16	$1,126,635	$1,484,871	-358,236
# Oklahoma	197,028	$478,329.97	$478,330	$541,638	-63,308
# Oregon	187,941	$456,270.99	$456,271	$516,659	-60,388
# Pennsylvania	643,026	$1,561,095.40	$1,561,095	$1,767,710	-206,614
# Rhode Island	77,216	$187,460.36	$187,460	$212,271	-24,811
South Carolina	126,628	$307,418.85	$307,419	$348,106	-40,688
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$575,160.06	$575,160	$651,284	-76,124
# Texas	798,130	$1,937,645.74	$1,937,646	$2,194,097	-256,451
# Utah	108,708	$263,912.68	$263,913	$298,842	-34,929
# Vermont	36,748	$89,213.08	$89,213	$101,021	-11,808
# Virginia	311,621	$756,532.88	$756,533	$856,662	-100,129
# Washington	331,991	$805,985.78	$805,986	$912,660	-106,674
+ West Virginia	106,265	$257,982.94	$257,983	$272,011	-14,028
# Wisconsin	305,139	$740,795.11	$740,795	$838,841	-98,046
§ Wyoming		$0.00	$0	$0	0
American Samoa	836	$2,029.58	$2,030	$2,675	-645
Guam	3,710	$9,006.89	$9,007	$11,871	-2,864
§ No. Marianas Island		$0.00	$0.00	$0	$0
§ Puerto Rico		$0.00	$0	$0	0
Virgin Islands	2,122	$5,151.65	$5,152	$6,790	-1,638
Total	**12,769,120**	**$31,000,000.00**	**$31,000,000**		

Key: # Priority States, 125% applied
+ Priority not previously funded
> + New applicant, 125% priority
§ Does not apply or qualify

Third Year of GAP Implementation (2012-13): Ratable Reduction (Table G)

Calculate ratable reduction based on proportions of prior year allotment

Federal Appropriation Available for GAP Allotment: $31,000,000

State	Prior Year Allotment	Formula Amount	State Allotment	Change from Prior Year Allotment
§ Alabama	$0	$0.00	$0	0
§ Alaska	$0	$0.00	$0	0
Arizona	$547,814	$473,675.75	$473,676	-74,138
Arkansas	$303,249	$262,209.05	$262,209	-41,040
# California	$6,179,858	$5,343,512.35	$5,343,512	-836,346
Colorado	$439,397	$379,931.33	$379,931	-59,465
# Connecticut	$523,800	$452,911.99	$452,912	-70,888
# Delaware	$107,309	$92,786.48	$92,786	-14,523
District of Columbia	$234,381	$202,661.26	$202,661	-31,720
# Florida	$1,258,871	$1,088,502.94	$1,088,503	-170,368
§ Georgia	$0	$0.00	$0	0
§ Hawaii	$0	$0.00	$0	0
Idaho	$125,421	$108,447.25	$108,447	-16,974
# Illinois	$2,173,995	$1,879,778.95	$1,879,779	-294,216
+ Indiana	$643,513	$556,424.12	$556,424	-87,089
+ Iowa	$345,954	$299,134.48	$299,134	-46,819
Kansas	$356,565	$308,309.73	$308,310	-48,255
Kentucky	$392,998	$339,812.21	$339,812	-53,186
Louisiana	$458,156	$396,152.03	$396,152	-62,004
Maine	$134,239	$116,071.88	$116,072	-18,167
Maryland	$586,894	$507,467.28	$507,467	-79,427
Massachusetts	$1,541,123	$1,332,556.38	$1,332,556	-208,567
Michigan	$1,548,109	$1,338,596.94	$1,338,597	-209,512
Minnesota	$622,288	$538,071.25	$538,071	-84,217
Mississippi	$405,705	$350,799.25	$350,799	-54,906
Missouri	$635,929	$549,865.96	$549,866	-86,063
Montana	$103,254	$89,280.20	$89,280	-13,974
Nebraska	$230,706	$199,483.20	$199,483	-31,222
Nevada	$87,766	$75,888.33	$75,888	-11,878
New Hampshire	$112,169	$96,989.03	$96,989	-15,180
# New Jersey	$1,054,888	$912,126.03	$912,126	-142,762
□ + New Mexico	$0	$0.00	$0	0
New York	$2,719,932	$2,351,832.39	$2,351,832	-368,100
# North Carolina	$873,506	$755,291.09	$755,291	-118,215
North Dakota	$86,202	$74,535.92	$74,536	-11,666
Ohio	$1,484,871	$1,283,917.20	$1,283,917	-200,954
# Oklahoma	$541,638	$468,335.80	$468,336	-73,302
# Oregon	$516,659	$446,737.72	$446,738	-69,922
# Pennsylvania	$1,767,710	$1,528,478.07	$1,528,478	-239,232
# Rhode Island	$212,271	$183,543.59	$183,544	-28,728
South Carolina	$348,106	$300,995.68	$300,996	-47,111
§ South Dakota	$0	$0.00	$0	0
# Tennessee	$651,284	$563,142.74	$563,143	-88,141
# Texas	$2,194,097	$1,897,160.81	$1,897,161	-296,936
# Utah	$298,842	$258,398.52	$258,399	-40,444
# Vermont	$101,021	$87,349.07	$87,349	-13,672
# Virginia	$856,662	$740,725.98	$740,726	-115,936
# Washington	$912,660	$789,145.62	$789,146	-123,514
+ West Virginia	$272,011	$235,198.61	$235,199	-36,812
# Wisconsin	$838,841	$725,317.03	$725,317	-113,524
§ Wyoming	$0	$0.00	$0	0
American Samoa	$2,675	$2,312.98	$2,313	-362
Guam	$11,871	$10,264.45	$10,264	-1,607
§ No. Marianas Island	$0	$0.00	$0	0
§ Puerto Rico	$0	$0.00	$0	0
Virgin Islands	$6,790	$5,871.08	$5,871	-919
Total	$35,852,000	$31,000,000.00	**$31,000,000**	

Key: # Ratable reduction; priority previously applied, now superseded

+ Ratable reduction; priority superseded

> + New applicant receives $0

§ Does not apply or qualify

Fourth Year of GAP Implementation (2013-14)

Conditions:
Appropriation for FY 2013: $79,000,000 (increase in funding from prior year)
LEAP funds for FY 2013: $30,000,000
GAP funds for FY 2013: $49,000,000
Priority States in FY 2010, 2011, and 2012 continue as priority States

Illustrates:
Sufficient funds are available, no ratable reduction necessary (Table H)
IN and IA priority is applied (Table H)
NM initially funded with priority (Table H)

Fourth Year of GAP Implementation (2013-14) (Table H)

Calculate using basic formula with all priorities applied

Federal Appropriation Available for GAP Allotment: $49,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		$0.00	$0	$0	0
§ Alaska		$0.00	$0	$0	0
Arizona	199,274	$764,690.63	$764,691	$473,676	291,015
Arkansas	74,057	$284,185.06	$284,185	$262,209	21,976
# California	2,248,000	$8,626,436.62	$8,626,437	$5,343,512	3,282,924
Colorado	159,836	$613,351.92	$613,352	$379,931	233,421
# Connecticut	190,539	$731,170.13	$731,170	$452,912	278,258
# Delaware	39,035	$149,792.24	$149,792	$92,786	57,006
District of Columbia	85,259	$327,171.42	$327,171	$202,661	124,510
# Florida	457,930	$1,757,252.72	$1,757,253	$1,088,503	668,750
§ Georgia		$0.00	$0	$0	0
§ Hawaii		$0.00	$0	$0	0
Idaho	39,198	$150,417.73	$150,418	$108,447	41,970
# Illinois	790,818	$3,034,669.50	$3,034,670	$1,879,779	1,154,891
+ Indiana	292,608	$1,122,847.00	$1,122,847	$556,424	566,423
+ Iowa	157,306	$603,644.30	$603,644	$299,134	304,510
Kansas	129,705	$497,727.74	$497,728	$308,310	189,418
Kentucky	142,958	$548,584.58	$548,585	$339,812	208,772
Louisiana	166,660	$639,538.22	$639,538	$396,152	243,386
Maine	41,954	$160,993.56	$160,994	$116,072	44,922
Maryland	213,490	$819,242.86	$819,243	$507,467	311,776
Massachusetts	376,361	$1,444,241.24	$1,444,241	$1,332,556	111,685
Michigan	483,833	$1,856,652.45	$1,856,652	$1,338,597	518,056
Minnesota	226,365	$868,649.17	$868,649	$538,071	330,578
Mississippi	99,078	$380,200.22	$380,200	$350,799	29,401
Missouri	231,327	$887,690.26	$887,690	$549,866	337,824
Montana	32,270	$123,832.34	$123,832	$89,280	34,552
Nebraska	83,922	$322,040.84	$322,041	$199,483	122,558
Nevada	31,926	$122,512.28	$122,512	$75,888	46,624
New Hampshire	40,803	$156,576.73	$156,577	$96,989	59,588
# New Jersey	383,729	$1,472,514.12	$1,472,514	$912,126	560,388
> + New Mexico	74,275	$285,021.61	$285,022	$0	285,022
New York	989,409	$3,796,741.11	$3,796,741	$2,351,832	1,444,909
# North Carolina	317,749	$1,219,323.60	$1,219,324	$755,291	464,033
North Dakota	31,357	$120,328.81	$120,329	$74,536	45,793
Ohio	464,069	$1,780,810.42	$1,780,810	$1,283,917	496,893
# Oklahoma	197,028	$756,069.95	$756,070	$468,336	287,734
# Oregon	187,941	$721,202.53	$721,203	$446,738	274,465
# Pennsylvania	643,026	$2,467,537.89	$2,467,538	$1,528,478	939,060
# Rhode Island	77,216	$296,308.31	$296,308	$183,544	112,765
South Carolina	126,628	$485,920.11	$485,920	$300,996	184,924
§ South Dakota		$0.00	$0	$0	0
# Tennessee	236,913	$909,123.96	$909,124	$563,143	345,981
# Texas	798,130	$3,062,730.36	$3,062,730	$1,897,161	1,165,570
# Utah	108,708	$417,152.29	$417,152	$258,399	158,754
# Vermont	36,748	$141,014.23	$141,014	$87,349	53,665
# Virginia	311,621	$1,195,810.04	$1,195,810	$740,726	455,084
# Washington	331,991	$1,273,977.52	$1,273,978	$789,146	484,832
+ West Virginia	106,265	$407,779.49	$407,779	$235,199	172,581
# Wisconsin	305,139	$1,170,934.20	$1,170,934	$725,317	445,617
§ Wyoming		$0.00	$0	$0	0
American Samoa	836	$3,208.05	$3,208	$2,313	895
Guam	3,710	$14,236.69	$14,237	$10,264	3,972
§ No. Marianas Island		$0.00	$0.00	$0	$0
§ Puerto Rico		$0.00	$0	$0	0
Virgin Islands	2,122	$8,142.93	$8,143	$5,871	2,272
Total	12,769,120	$49,000,000.00	$49,000,000		

Key: # Priority States, 125% applied
> New applicant
+ Priority initially applied
§ Does not apply or qualify

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