specific fuel consumption for the total test.

(22) The number of hours of operation accumulated on the engine after completing the test sequences described in Figure N84-10.

44. Section 86.1544-84 is amended by revising paragraph (b)(4), to read as follows:

§ 86.1544-84 Calculations; idle exhaust emissions.

* * * * *

(b) * * *

(4) Calculate the CVS dilution factor (DF) by:

$$DF = \frac{\text{Raw Wet } CO_2\text{—background } CO_2}{\text{Dilute wet } CO_2\text{—background } CO_2}$$

* * * * *

PART 600—[AMENDED]

45. Section 600.307-86 amended by revising paragraph (b)(ii), to read as follows:

§ 600.307-86 Fuel economy label format requirements.

* * * * *

(b) * * *

(i) * * *

(ii) The digit "one," shall measure at least 0.2 inches by 0.6 inches (5 x 15 mm) in width and height respectively.

* * * * *

[FR Doc. 85-6041 Filed 3-14-85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
March 15, 1985

Part IV

Department of Education

34 CFR Part 690

Pell Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 690

Pell Grant Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary of Education amends the regulations for the Pell Grant Program. The regulations are amended as a result of the Secretary's review of current regulations. These regulations are being amended to simplify procedures, clarify requirements, and reduce administrative burdens on institutions while maintaining program integrity.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, with the exceptions of §§ 690.72, 690.77, 690.81, 690.82, 690.92, 690.96, and 690.100. These sections will become effective following the Education Department's submission and OMB approval of reporting requirements contained in those sections under the Paperwork Reduction Act of 1980. It should be noted, however, that with the exception of § 690.66, these regulatory amendments apply to the awarding of Pell Grant assistance for award years following the 1984–1985 award year. Section 690.66, when it becomes effective, will also apply to the remainder of the 1984–1985 award year as well as to subsequent award years. As a result, correspondence schools having payment periods that begin before July 1, 1985 and end on or after July 1, 1985 may place those payment periods in either the 1984–1985 or 1985–86 award year. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Kerrigan, Mr. David Morgan or Mrs. Altia J. Jackson, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, S.W. [Regional Office Building 3, Room 4318] Washington, D.C. 20202. Telephone number (202) 472–4300.

SUPPLEMENTARY INFORMATION: These regulations are being issued in accordance with the Department's deregulation initiative. They clarify requirements and delete provisions in the existing regulations that impose unnecessary administrative burdens on participating institutions. The following is a discussion of these final regulations, including a summary of the comments received and the Department's response to those comments.

Revisions to the Notice of Proposed Rulemaking

Only a few significant changes have been made to the Notice of Proposed Rulemaking (NPRM) published on May 9, 1984.

Section 690.2 General definitions.

The Secretary is adding the definitions of the terms "Electronic Pilot Project" and "Valid Student Aid Report" to § 690.2. The Pell Grant Program Electronic Pilot Project is a project under which students attending an RDS institution participating in the project are able to correct or verify information contained on their Student Aid Reports by using computer terminals at the institution. In contrast, students attending an RDS institution that is not participating in the project must make the corrections directly on their Student Aid Reports and must mail the Reports back to the Secretary. Participation by institutions in this project is strictly voluntary, and only a limited number of institutions will be involved in this project. The goal of this pilot project is to reduce the costs of current processing and provide improved information to the user community through electronic means.

In order to receive a Pell Grant award, a student must submit a valid Student Aid Report to the institution. A valid Student Aid Report is one that contains accurate and complete information. Under the electronic pilot project, as noted above, students correct or verify information contained on their Student Aid Reports. For RDS institutions participating in the electronic pilot project, a valid Student Aid Report must be accurate and complete, and, in addition, be signed by the applicant, his or her spouse, and his or her parents if the student is a dependent student.

Section 690.4 Eligible student.

The Secretary is revising § 690.4 to require a permanent resident to provide evidence from the Immigration and Naturalization Service that he or she is a permanent resident of the United States. This requirement has been added in response to a recommendation from the General Accounting Office and to ensure that Pell Grant funds are awarded to eligible students. The regulations for the Guaranteed Student Loan and the campus-based programs will also include this requirement.

Section 690.8 Enrollment status for students taking non-credit or reduced credit remedial courses or regular and correspondence courses.

Students will be limited to one academic year of non-credit or reduced credit remedial work except for courses relating to English as a Second Language. A number of commenters have questioned this restriction by referring to the statutory language in section 411(a)(3) of the Higher Education Act. That portion of the Act provides that "Nothing in this section shall exclude from eligibility courses of study which are non-credit or remedial in nature which are determined by the institution as necessary to help the student be prepared for the pursuit of a first undergraduate baccalaureate degree."

In strictly literal sense, every program offered by an institution of higher education, no matter now basic, elementary or far removed from the education level of an eligible postsecondary course of study, can be viewed as a remedial program which is "designed to increase the ability of the student to pursue an undergraduate course of study leading to that certificate or degree." Theoretically, a student enrolled in any type of "remedial" program of whatever length could be viewed as eligible to receive assistance under the Pell Grant Program. However, the Secretary does not believe that the statutory scheme of the Pell Grant Program premits such an interpretation.

The Pell Grant Program was designed to provide financial assistance to students pursuing postsecondary education. Thus, to receive such aid, a student must attend an eligible institution of higher education. One of the criteria defining such an institution is the type of student it admits as a regular student. Such a student must be a high school graduate, a GED recipient or recipient of a similar degree, or must be above the age of compulsory school attendance with the ability to benefit from the education or training offered by the institution in its degree or certificate programs. A remedial program that becomes part of an eligible program must be viewed in this context.

A remedial program, by design, offers instruction on less than a postsecondary level. However, the purpose of the program is to prepare a student, who is a high school graduate or who has the ability to benefit from the postsecondary education program provided by the institution, with the background and skills necessary to successfully complete that postsecondary program. Presumably because the student is a high school graduate or has the ability to benefit from the postsecondary program, the remedial program, if it is to be considered part of an eligible postsecondary program, must have a reasonable relationship to the eligible postsecondary program both in terms of the level of instruction provided and the length of the program. Therefore, the Secretary has decided to limit eligibility for remedial work to one academic year.

Exception for English as a Second Language

An exception to the one year limitation has been made for English as a Second Language (ESL) courses because ESL students often have complete mastery of logical thinking, communication, and reading, as well as math skills in their own language. However, these students do not have the ability to express this knowledge in English. The difficulty of ESL courses is often comparable to the courses taken by students who enroll in French or German language courses. ESL courses are not designed to develop or improve elementary and secondary education skills, but instead are designed to permit a student who already has those skills to pursue a postsecondary education through a second language.

Section 690.77 Verification of information on the SAR—withholding of payments.

The Secretary initiated the verification of application information for the Pell Grant Program in the 1979–80 award year. In the succeeding years, the Secretary developed procedures to select students for verification based in part on the probability that a student's application contained errors. Recent studies by the Education Department on the Pell Grant application process have indicated that a substantial number of errors are still being made on Pell Grant applications. Accordingly, the Secretary anticipates a significant increase in the number of applicants who will be selected to verify their application information.

In response to a comment requesting a list of the items that must be verified under § 690.77 and the identification of the documents that must be collected by institutions to verify those items, and to clarify the Secretary's intent in the proposed rules, the Secretary has amended § 690.77. The procedures in § 690.77 are to be used to verify application information starting with applicants for the 1985–1986 award year. Most of the items set forth in § 690.77 and the documents needed to verify those items are similar to the items and documents currently being used by institutions for verifying application information in the 1984–1985 award year. However, as a result of the errors discovered in the above noted studies, the Secretary determined that additional items needed to be verified and that certain items needed to be verified with additional documents to reduce the application error rates. To assist institutions in carrying out these verification requirements, the Secretary will publish a handbook indicating procedures that institutions may use to carry out the requirements of § 690.77. That handbook for the 1985–86 award year is expected to be mailed to all institutions during the Spring of 1985.

The amended § 690.77 provides that if the applicant is selected for verification, he or she must verify the following items:

• Adjusted gross income (AGI) and U.S. income tax paid as reported on the U.S. individual income tax return.
• Household size.
• Number in the household enrolled in postsecondary educational institutions.
• Independent student status.
• Untaxed income and benefits.

If the household size or the number enrolled in postsecondary educational institutions has changed at the time the student is being verified by the institution, the student must update this information to reflect the change that has occurred since the time the student applied for a Pell Grant. Students who have not been selected for verification are responsible for updating any changes in household size or the number enrolled in postsecondary institutions at the time they submit the first Student Aid Report to the institution. If these two items change after a student who is not selected for verification has submitted the first Student Aid Report or after a student has been verified, the student may not update these changes. By not allowing changes after this time the institution can avoid making adjustments to a student's award after a disbursement has been made to a student.

If a student's dependency status changes at any time after the student has applied for a Pell Grant, he or she must revise that status. By definition, a student's dependency status changes whenever a change in the projected dependency criteria affects the student's dependency status. However, it should be noted that if a student's marital status changes after he or she has applied for a Pell Grant, the change in marital status will not be updated, and therefore will not affect a student's dependency status.

Under the amended § 690.77, an applicant selected for verification must submit to the institution a U.S. income tax return or comparable state income tax return to verify adjusted gross income, U.S. income taxes paid and number in household. The IRS transcript of tax account information that a taxpayer may request and receive from the Internal Revenue Service may be used as an alternative to a tax return. If no return was filed or will be filed an applicant selected for verification must provide to the institution a signed statement which certifies that no tax return was filed, indicates the amount and source of income received, and lists the household members.

Not all State income tax returns are comparable to the U.S. income tax return. The Secretary has determined that a comparable State income tax return is one that is based on the Federal income tax return and one which requires the filer to provide the amount of Federal income tax paid as well as the same information that he or she is required to provide on the Federal tax return with regard to information being verified. However, the responsibility for assuring that the State income tax return is comparable to the U.S. income tax return rests with the institution.

As a general rule for documenting independent student status, institutions shall require that an unmarried applicant document his or her independent student status by submitting the Federal or comparable State income tax return of the applicant's parents and a written statement signed by the parents concerning the amount of assistance they provided to the applicant and the number of days in a year the applicant lived with them. For a married applicant, the parents need to provide only the written statement regarding support and residency.

If the Secretary or the institution has conflicting documentation with regard to the three factors used to determine independent student status—tax exemption, receipt of $750 and six weeks residence—no other documentation is acceptable to verify the applicant's independent student status. However, if neither the Secretary nor the institution has such conflicting documentation, the following rules apply.

1. For an applicant who will be 23 or older on January 1 of an award year, the applicant need not submit the required tax return and statement and the

institution shall consider that the applicant has verified his or her independent student status.

2. For a married applicant who will not be 23 or older on January 1 of an award year, the institution shall consider that the applicant has verified his or her independent student status if the institution determines that the applicant's parents are unable or unwilling to provide the required statement.

3. For an unmarried applicant who will not be 23 or older on January 1 of an award year, the institution shall consider that the applicant has verified his or her independent student status if the institution determines that—

a. The applicant's parents are unable or unwilling to provide the required tax return and statement and

b. The applicant had sufficient income to support himself or herself and any dependents in both the calendar year preceding the first calendar year of the award year and the first calendar year of that award year.

For those situations where an institution needs to determine whether the applicant's parents are unable or unwilling to provide required tax returns or statements, the institution shall make a reasonable effort to obtain the tax returns or statements from the applicant's parents.

The Secretary will notify institutions if he has conflicting documentation concerning whether an unmarried applicant was claimed as an exemption by his or her parents in a base year of an award year, i.e., the calendar year preceding an award year, 1984 for the 1985–1986 award year. The Secretary will compare application information filed by an applicant for an award year with the application information filed by the applicant for the previous award year.

If an unmarried applicant claims independent student status for an award year, the applicant must indicate that his or her parents did not claim him or her as a tax exemption in the base year or the first year of an award year. If the applicant filed an application for the previous award year, the applicant would have also had to indicate whether his or her parents claimed him or her as a tax exemption for the base year or the first year of that award year. The base for an award year is the same calendar year as the first calendar year of the preceding award year. For example, for the 1985–86 award year, the base year is calendar year 1984; for the preceding award year, 1984–85, the first calendar year of that award year is also 1984. The Secretary considers that there is inconsistent documentation if an applicant indicated for the current award year that his or her parents did not claim him or her as an exemption in the base year, i.e. 1984 for the 1985–86 award year in the above example, while indicating in the application for the preceding award year, 1984–85, that for the first calendar year of that award year, i.e. 1984, the parents were going to claim him or her as an exemption. Beginning in the 1984–85 award year, the Student Aid Report of an applicant with this inconsistency has a comment noting this conflicting documentation.

If verification results in a change from independent student status to dependent student status, the applicant must submit a new student aid application providing parental data in order to recalculate the applicant's expected family contribution. The applicant must verify the parental data provided on the new application.

The Secretary recognizes that the documentation requirements for verifying independent student status are complex. However, the Secretary believes that the magnitude of the error in awards made on the basis of incorrect dependency status, as found in the quality control reports in the Pell Grant Program, justifies this requirement.

As set forth in the amended § 690.77, in certain cases an institution must obtain signed statements from applicants and parents, as appropriate, to verify the number in household, the number in postsecondary institutions, and untaxed income and benefits. For number in household, the institution must first collect a signed copy of an appropriate tax form which indicates the number of exemptions. If there is a discrepancy between the number of exemptions claimed on the tax form and the number in the household indicated on the application, the discrepancy must be resolved, either by a signed statement or by other documentation on file at the institution.

For the number of family members in postsecondary educational institutions, the institution may, in lieu of a signed statement, use the applicant's student aid application if it provides the names of the household members who are or will be attending postsecondary institutions as at least half-time students, their ages, and the names of the institutions that they are planning to attend. With regard to untaxed income, institutions must verify untaxed income and benefits by obtaining, in addition to a tax return, a copy of the student aid application worksheet for untaxed income and benefits which is part of the application package, or a comparable listing of that information, with a signed statement certifying that the information on the worksheet or listing is correct.

If the institution determines that it has any reason to doubt the information supplied by the student for these two areas, a signed statement is not sufficient documentation to verify the accuracy of the data. In these cases, the institution must require additional documentation, such as a statement from the institution the other family member is attending indicating the individual is enrolled as at least a half-time student or a statement from the agency supplying the untaxed benefit of the amount of the benefits provided, unless the institution the student is attending certifies that such a statement is unavailable or not obtainable in a reasonable period of time.

Section 690.84 Audit and examination.

The audit and examination provisions (§ 690.85) were removed from the Pell Grant regulations in the NPRM because these provisions will be transferred to the Student Assistance General Provisions regulations (see § 668.23 of the Student Assistance General Provisions regulations NPRM published in the **Federal Register** on December 12, 1984, 49 FR 48494–48518). However, the Pell Grant final regulations will become effective before the amendments to the Student Assistance General Provisions regulations. Thus, Secretary has reinstated the audit provisions in the Pell Grant final regulations under § 690.84 in order to avoid any uncertainty about the effectiveness of the audit requirements for institutions participating in the Pell Grant Program. This section will be removed from the Pell Grant regulations when the Student Assistance General Provisions final regulations are published.

A summary of the comments received and the Department's response to those comments follows.

In the Preamble to the Notice of Proposed Rulemaking, the Secretary solicited comments on two topics. The first topic related to recalculation of an award when there is a change in enrollment status, the second related to a tape exchange as a substitute for the SAR submission requirement.

Recalculation of Awards Because of a Change in Enrollment Status

Comment: Most of the commenters were opposed to a change in the rule that gives institutions the option of recalculating awards when a student's enrollment status changes within an academic term. Two commenters thought that recalculating should be mandatory, but over one hundred commenters opposed such a requirement. A summary of the comments on this proposed change follows.

Several commenters questioned whether the problem was significant enough to merit a mandatory recalculation policy. Some of these commenters suggested that institutions can exercise the option of recalculation if there is a problem at their school.

Many commenters focused on the administrative burden for institutions in relation to the "potential" for abuse among students who change enrollment status. Among the burdens cited were monitoring the enrollment status of every Pell Grant recipient throughout the term if a school is required to recalculate in the same term, or the problem of adjusting awards in the subsequent term for students who receive incompletes, transfer from another institution or do not return to any school. One commenter stated that 40 percent of the entering freshmen at his institution do not enroll in the subsequent term. If a student did not return to the institution in a subsequent term, many commenters wondered whether the institution would be responsible for collecting the overpayment.

Several commenters suggested alternatives to recalculation. These alternatives included withholding the disbursement until after the drop/add period, or after the refund period. Another suggestion was to require two disbursements, one at the beginning of the term, and the second at the midpoint of the term when an adjustment could be made if the enrollment status changed. Many commenters suggested that an adjustment would not be necessary if the Pell Grant disbursement did not exceed direct institutional costs for that term.

Many commenters argued that mandatory recalculation was not necessary because institutions must have specific policies defining the effect of course incompletes and withdrawals for satisfactory progress. In addition, institutions must determine whether a student has completed a minimum percentage of work toward his degree within each increment established by the institution.

Several commenters expressed concern about the effect on Campus-based aid when an adjustment is made to the Pell Grant award. These commenters pointed out that an adjustment was not required for Campus-based aid and that this resulted in inconsistent treatment among the Title IV Higher Education Act programs. One commenter asked whether the adjustment in the Pell Grant award would qualify as unmet need for purposes of Campus-based assistance.

Finally, many commenters focused on the hardship for students, particularly those who withdrew from classes because of illness or other hardships. Many commenters suggested that students who were hardpressed financially would be discouraged from returning in subsequent terms.

Response: No change has been made. In the interest of minimizing the administrative burdens of institutions, the Secretary has decided not to change the current rule which gives institutions the option of recalculating when there is a change in enrollment status within a term. Even though Pell Grant recipients attending clock hour institutions must account for every hour they are paid for, the administrative problems of recalculating awards or collecting overpayments do not exist at most of those institutions because a student cannot receive a subsequent payment until he or she completes the hours for which he or she was originally paid. Unfortunately, this approach is not compatible with the nature of credit hour institutions that have academic terms. Students can enroll in subsequent terms without completing the credits in a previous term.

Although satisfactory progress requirements may deny assistance to students attending institutions that have strict standards, the intent of the recalculation policy is not to withhold completely assistance from students. Such a measure would not be appropriate for students who may have legitimate reasons for withdrawing from a course. Rather than withholding all assistance, a recalculation policy would merely hold students accountable for the courses they were paid for, but did not complete.

Since the recalculation proposals appear to be overly burdensome, the Secretary is soliciting comments on alternatives that will hold students more accountable for the courses they do not complete. Such an alternative should be less burdensome than recalculation, but more effective than satisfactory progress.

Tape Exchange Proposal

Comment: Many commenters supported, in principle, the proposal to eliminate the SAR submission requirement for students enrolled at an institution that participates in the full data tape exchange program provided by the Department of Education. In fact, several commenters suggested that this proposal should be implemented in the 1984–85 award year. Many commenters stated that this proposal would substantially reduce the administrative burden on institutions, but several commenters suggested several changes should be made to the tape exchange program to make the proposal more effective. Verification and edit codes would need to be included, and the tapes should be distributed to more than one institution, since a student will often attend an institution that is listed as his or her second or third choice.

A few commenters questioned the feasibility of the proposal for students who transfer to other institutions, or who have Student Aid Indexes that must be recalculated, or who have awards that must be adjusted. One commenter thought that students would become confused about different submission requirements, and another commenter suggested that students should be informed of this new procedure on the SAR. One commenter suggested that this proposal would create new opportunities for fraud and abuse.

Several commenters suggested alternatives to this proposal, such as sending SARs directly to the institution, or eliminating the central processor and allowing institutions to calculate the Student Aid Index.

Response: No change has been made. This proposal was suggested as an alternative to the SAR *submission* requirement. Transfer students or students who must change their SAR would still have to use the SAR. Additional planning is required before a tape exchange option can be implemented. Commenters provided many helpful suggestions for formulating a more specific proposal in the future.

Section 690.2 General definitions.

Comment: Several commenters stated that limiting students enrolled in the non-residential portion of a correspondence program to half-time enrollment was arbitrarily restrictive.

Response: No change has been made. Correspondence students have been restricted to half-time status because generally these students have a workload that is comparable to a part-time student.

Comment: Two commenters questioned the Secretary's statutory authority for limiting a student's Pell Grant eligibility to four academic years when the program the student was enrolled in exceeded five academic years.

Response: No change has been made. Section 411(a)(3) of the Higher Education Act states that, "The period during which a student may receive basic grants shall be the period required for the completion of the first undergraduate baccalaureate course of study being pursued by that student . . .". If an academic program is longer than five years for a full-time student, the Secretary does not consider the entire program to be an undergraduate course of study, but instead a combined program of undergraduate and graduate study. For example, this provision in the definition of an undergraduate student applies to students enrolled in a six year program who will not receive a Bachelor's degree but will instead receive a Doctor of Osteopathy or Doctor of Chiropractic at the completion of that program. These students are obviously not enrolled in undergraduate study for their entire six years of postsecondary study but are considered undergraduate students for purposes of the Pell Grant Program for the first four academic years of postsecondary study.

Section 690.3 Definitions of payment period.

Comment: One commenter stated that the wording in proposed § 690.3(a)(2)(iii) is ambiguous for students who are allowed to make up clock hours in the previous term at the same time they are enrolled in new coursework.

Response: A change has been made. The Secretary agrees that the phrase in the NPRM that refers to "clock hours remaining in that term" is ambiguous for these students and a revision has been made to that part of the regulations so that all unpaid clock hours are taken into account in calculating subsequent disbursements. However, a student cannot be paid for these clock hours until he or she has completed the hours required for the preceding payment period. This restriction has been placed in § 690.75.

Comment: One commenter suggested that the minimum full-time standard for students attending institutions with quarter terms should be increased because quarter hours are not equal to semester hours.

Response: No change has been made. The fact that a quarter hour is not equal to a semester hour is offset by the fact that a full-time student must complete three quarters, as opposed to two semesters, to receive a full Pell Grant award. Thus, a student must receive at least 36 quarters hours or 24 semester hours in order to receive a full Pell Grant award.

Section 690.5 Eligible program.

Comment: One commenter noted that eligible six month programs can only be offered by proprietary or postsecondary vocational institutions, and questioned whether six month programs offered by community colleges were eligible.

Response: No change has been made. For purposes of offering an eligible six month program, a community college can be considered to be both a postsecondary vocational institution and a public or private non-profit institution of higher education.

Comment: One commenter questioned the Secretary's authority to require that students without a high school diploma or its equivalent must have the ability to benefit from the training offered.

Response: No change has been made. The ability to benefit requirement is referred to in the next to last sentence of section 1201(a) and section 481(b) of the Higher Education Act.

Section 690.6 Duration of student eligibility.

Comment: Several commenters have interpreted paragraph (b) to mean that institutions must determine when each student has completed the course requirements for completing the first undergraduate baccalaureate course of study. Other commenters suggested that paragraph (a) was sufficient and paragraph (b) was unnecessary.

Response: No change has been made. Paragraph (b) has been added to stress that the institution rather than the student shall determine when a student has completed the first baccalaureate course of study. An institution may detemine that a student has fulfilled all the course requirements for a baccalaureate, and is no longer eligible, or the institution may have a policy of waiting until the student has actually received a baccalaureate. In either case, the institution determines when the baccalaureate course of study has been completed.

Section 690.8 Enrollment status for students taking non-credit or reduced credit remedial courses or regular and correspondence courses.

Comment: Many commenters objected to the one-year restriction on non-credit or reduced credit remedial work in determining enrollment status for students receiving a Pell Grant. Many of these commenters felt that any limits on remedial work should be determined by the institution. Other commenters suggested that the satisfactory progress standard of the institution should be relied on the determine any limit on remedial work. A few commenters objected to the limitation because they claimed it would be difficult to monitor when a student had completed an academic year of remedial work. Three commenters contended that this restriction would disproportionately affect low income students who are the very students the Pell Grant Program was designed to help. Finally, some commenters throught the Secretary did not have the statutory authority to limit Pell Grant payments for remedial work.

Three commenters thought that remedial work should not be included at all in determining enrollment status for a Pell Grant. This work was considered not to be a part of a student's postsecondary education. One commenter agreed with the one year limitation.

Response: No change has been made. As discussed at the beginning of this preamble, the Secretary is not excluding remedial courses from eligibility, but there must be some limit to the number of remedial courses taken before there is a question of whether the student is really enrolled in a postsecondary program of study. The purpose of the Pell Grant Program is to assist students who are enrolled in postsecondary education. The Secretary does not consider a student who enrolls in the equivalent of more than one year of remedial work to be enrolled in postsecondary education. The Pell Grant should not be used to pay for a substantial portion of a student's elementary or secondary training.

Comment: A few commenters suggested that English as a Second Language should be excluded from the one-year limitation because much of this training involves learning a foreign language that extends beyond the level of elementary or secondary education.

Response: A change has been made. The Secretary agrees that students enrolled in English as a Second Language (ESL) coursework should be exempted from the one-year limitation, assuming the student is enrolled in an eligible program as a regular student at the time he or she is enrolled in the ESL Program. Such a student would usually have the knowledge and skills of a high school graduate, but needs to learn a second language as part of his or her postsecondary program. The students would still be subject to the one-year limitation for any other courses that are remedial in nature.

Comment: Several commenters objected to the specificity of the requirements in paragraph (a)(2) for attributing the number of credit or clock hours to non-credit remedial courses. Some of these commenters thought this interfered with the academic standards of an institution.

Response: No change has been made. The previous regulation required the institution to determine the equivalent number of clock or credit hours which should be included for that work. In paragraph (a)(2) of these regulations, the Secretary has established specific procedures for determining equivalence in calculating enrollment status for a Pell Grant to ensure that the workload for non-credit remedial courses is comparable to that of regular courses. Institutions may apply different criteria for attributing the number of clock or credit hours to non-credit or reduced credit courses for academic purposes.

Comment: A few commenters objected to the chart in paragraph (b)(4) because the guidelines were too specific and interfered with an institution's academic standards while others objected because the chart was confusing. However, some commenters thought the chart was helpful.

Response: No change has been made. The chart reflects the established policy for determining enrollment status in calculating a Pell Grant award for students enrolled in both correspondence study and regular coursework. This procedure is only used to calculate Pell Grant awards and should not interfere with the academic standards of an institution.

Section 690.10 Administrative cost allowance to participating schools.

Comment: Several commenters objected to the phrase "Subject to available appropriations . . ." as a condition for paying an administrative cost allowance. Some of these commenters pointed out that this allowance is a part of the program funds rather than a separate appropriation.

Response: No change has been made. In 1981, Pub. L. 97-12 specifically prohibited the Secretary from making any payments to institutions for administrative expenses incurred in the 1981-82 award year. In case such a rescission is passed by Congress in the future, the phrase "Subject to available appropriations" is included in this section to avoid any potential conflict between the regulations and laws passed by Congress.

Comment: Two commenters suggested that the administrative cost allowance should be raised to $10.

Response: No change has been made. Section 489(a) of the Higher Education Act as amended by Pub. L. 97-35 only provides an allowance of $5 for each student.

Section 690.61 Submission process and deadline for student aid report.

Comment: Most commenters supported the single SAR submission deadline of June 30 because it is simpler to administer and less confusing for students. One commenter suggested the May 31 deadline date should be retained for students who enroll before May 1, so that the school could close its account in a timely manner. One commenter asked whether the June 30 deadline applied to students who must verify information on the SAR as required by § 690.77.

Response: No change has been made. The Secretary agrees with the majority of commenters that a single deadline date regardless of when the student first enrolls is easier to administer. The reference to § 690.77 in paragraph (b) indicates that the June 30 deadline date does not apply to students who must verify information on the SAR.

A student must still be enrolled at the time he submits the SAR to the institution, so a college that closes before June 30 can finalize its accounts for that year shortly after it closes. However, if a student submits an SAR when he is not enrolled at the school, but later enrolls on or before the June 30 deadline, he is eligible to receive payment for his entire period of enrollment during the award year.

Comment: Several commenters suggested that a student should not be required to be enrolled at the time he submits the SAR to the institution. They argued that as long as he has been enrolled at some time during the award year and has incurred educational expenses, he should be reimbursed for those expenditures. Students often submit the SARs late because of delays in the processing system.

Response: No change has been made. Some institutions may object to the administrative burden of allowing previously enrolled students to submit SARs at any time up to the June 30 deadline. However, the Secretary may propose in the future that the enrollment requirement for submission of the SAR should be eliminated, at which time further consideration would be given to this suggestion.

Section 690.62 Calculation of a Pell Grant.

Comment: Two commenters suggested that the Secretary was required under section 411(a)(2)(B)(iii) to publish criteria for when an institution can award a Pell Grant of less than $200 because of the requirement in division (i) that the amount of the grant cannot exceed a given percentage of the cost of attendance.

Response: No change has been made. Under division (i) the amount of a Pell Grant shall not exceed 50 percent of the cost of attendance. If the Pell Grant was less than $200 the award would not exceed 50 percent of the cost unless the cost of attendance was less than $400. All students other than those who are incarcerated or enrolled in correspondence study receive at least a standard maintenance allowance of $400. Accordingly, the Secretary has not published criteria for awards of less than $200 because it is highly unlikely that a student will have a cost of attendance of less than $400.

Section 690.65 Transfer student: attendance at more than one institution during an award year.

Comment: Several commenters found the more detailed description for calculating awards in paragraph (d) of the NPRM to be helpful, but a few suggested the distribution of Pell Grant disbursements at the second institution should be explained in the regulations.

Response: A change has been made. Paragraph (e) has been added to the final regulation to explain how the remaining percentage is to be distributed at the second institution.

Section 690.66 Correspondence study.

Comment: Several commenters suggested that paragraph (b)(1)(ii) of the NPRM should be eliminated because automatically limiting students to one-half the Scheduled Award is arbitrary and does not take into account students who have a workload that is greater than half-time.

Response: No change has been made. As stated in response to the comments on the definition of half-time student under § 690.2, correspondence students who are not enrolled in the residential portion of a program have been restricted to half-time status because generally these students have a workload that is comparable to a part-time student.

Comment: A few commenters objected to the double reduction proposed for correspondence students who were enrolled in a program that is less than an academic year. Under the proposed rule such a student's award would be calculated by multiplying one-half the Scheduled Award by the following fraction:

$$\frac{\text{hours in the program}}{\text{hours in the academic year}}$$

These commenters stated that the double reduction was unnecessarily restrictive.

Response: A change has been made. Since the half-time restriction ensures that a student enrolled in a six-month program will not be over-awarded, the Secretary agrees that a further reduction is not necessary.

Comment: Several commenters supported the proposal that allowed students who enrolled near the end of an award year to be placed in either the first or second award year when the payment period occurred in two award years. They thought this procedure would be easier to administer and that the award calculations were more equitable. However, two commenters questioned how this procedure affected institutions that participated under the Alternate Disbursement System (ADS).

Response: A change has been made. The option of placing students in either award year will not apply to ADS institutions. The second payment period at ADS institutions must end on June 30 for each award year. Paragraph (d) has been added to explain how calculations at ADS institutions must be made.

Section 690.73 Termination of institutional participation agreement—Regular Disbursement System (RDS).

Comment: Several commenters stated that the Secretary may not terminate a participation agreement with an institution without reasonable notice and an opportunity for a hearing according to section 487 of the HEA.

Response: No change has been made. Section 487 requires a hearing before an institution's eligibility to participate is not terminated under the provision of § 690.73. Under that section of the regulations, the Secretary is terminating the institution's agreement to participate under the RDS. An institution would still be eligible to participation, but under paragraph (e) of § 690.73 the Secretary will pay the institution's students only if the institution enters into an ADS agreement. The hearing requirement in section 487 applies to a suspension, limitation, or termination of the institution's eligibility to participate in the Pell Grant Program. The hearing requirement does not apply to the decision of whether the institution participates in the Pell Grant Program under the RDS or ADS Systems.

Section 690.74 Provision of funds to institutions.

Comment: Several commenters have interpreted the wording in this section to mean the Department of Education intends only to provide funds to institutions to cover reimbursement for Pell Grants awards already paid by the institution. Some commenters thought that institutions would have to borrow or use their own existing funds to make payments to students, after which the institution could seek reimbursement.

Response: No change has been made. As stated in the preamble to the Pell Grant Program regulations published in the Federal Register of October 6, 1983 the wording was changed to clarify the meaning of that section. Some institutions had previously interpreted this section to mean the Secretary was always required to provide funds to an institution in advance of its awarding of Pell Grants merely on the basis of a request of that institution for funds. The wording of this section was not revised to permit the Department of Education only to provide funds to institutions to cover reimbursements. The Secretary will continue to provide funds in advance of expenditures, but is not obligated to fulfill unwarranted requests for such funds. The Secretary must ensure that federal funds are not given for an unfounded or unreasonable institutional request.

Section 690.75 Determination of eligibility for payment.

Comment: Several commenters stated that the phrase "For each payment period" should be deleted from the beginning of § 690.75 because a student's satisfactory progress need not be determined every payment period.

Response: No change has been made. If all the elements of an institution's satisfactory progress standard are designed to be monitored only at the end of each academic year instead of at the end of each payment period, a student is maintaining satisfactory progress when payments are made during that academic year. However, if an institution's satisfactory progress standards are designed to be monitored at the end of each payment period a student may not be maintaining satisfactory progress within an academic year and therefore his status must be checked before any disbursement can be made.

Section 690.77 Verification of information on the SAR—withholding of payments.

Comment: Several commenters objected to the provision in paragraph (f) which grants an extension of the submission deadline for students who must resubmit a verified SAR when the SAR must be corrected. The student is then paid from the original SAR or the corrected SAR depending upon which SAR yields the lower award. These commenters suggested that the student should always be paid from the corrected SAR, citing section 411(a)(2)(A) of the Higher Education Act. That part of the statute states that the Secretary shall pay to each eligible student a Pell Grant in the amount he or she is eligible to receive.

Response: No change has been made. The Secretary has established a SAR submission deadline of June 30, or the latest date of enrollment, whichever come first. A valid SAR must be submitted within that time or else the student is not eligible for payment. A student whose original SAR must be corrected has never fulfilled that requirement because a valid SAR has not been submitted within the allowable time frame. Some deadline for submitting SAR's must be established for purposes of administrative efficiency. Students who submit SAR's that are not valid has misreported information on their applications. These students have been given a 60 day extension to correct the SAR and submit supporting documentation. A student who have misreported information and is given an extension to correct that error should not receive the additional benefit of a higher award.

Comment: One commenters indicated that § 690.77, describing requirements for verification, should specify the items to be verified, and the documentation required for verifying them. The commenter felt that items to be verified should include, at a minimum: Adjusted gross income, Federal income taxes paid, untaxed income and benefits, number of family members in the applicant's household, number of family members in postsecondary educational institutions, and independent student status.

Response: A change has been made. The Notice of Proposed Rulemaking would have required a student to submit documentation that the Secretary considers appropriate. The Secretary agrees with the commenter that the proposed rule needs clarification as to what the Secretary considers appropriate, and believes that at least the six items cited by the commenter should be verified: Adjusted gross income, Federal income taxes paid, untaxed income and benefits, number in household, number in postsecondary educational institutions, and independent student status. An institution may verify additional items if it wishes. The Secretary believes that the documentation for verifying these items should include a signed copy of the Federal income tax return, a comparable state income tax return or the IRS listing of tax account information from the Internal Revenue Service. If no income tax return was filed or will be filed, a signed statement providing the sources of income earned, the amount of income from each source, and a list of family members in the household must be provided. A signed statement must also be submitted to verify the number in postsecondary educational institutions, factors relating to independent student status, and untaxed income or benefits. In some cases documentation for the Social Security Administration or Veterans Administration may be required to verify benefits from those agencies. In some circumstances an income tax return must be requested by the institution to verify independent student status.

Section 690.78 Method of disbursement—by check or credit to the student's account.

Comment: Two commenters asked whether the 15 day period for requesting payment in paragraph (d)(2) referred to business days or calendar days.

Response: No change has been made. Since the regulations do not specifically state business days, the 15-day period is measured by calendar days.

Section 690.80 Recalculation of a Pell Grant award.

Comment: One commenter, under the heading of this section, raised a question dealing with the calculation of an expected family contribution that is more appropriate to Subparts C & D of this part. The commenter asked whether a person who filed an application to have his expected family contribution calculated using estimated income must submit a new application using actual income if his estimate turned out to be inaccurate.

Response: No change has been made. The expected family contribution does not change if the estimates on the income turn out to be incorrect, as long as the applicant has made a good faith estimate based on what he knew at the time he applied.

Comment: One commenter objected to the requirement of recalculating for a change in the cost of attendance when a student's enrollment status changes between payment periods. The commenter thought this requirement was overly burdensome.

Response:: No change has been made. If an institution must recalculate a student's enrollment status, verifying or correcting that student's cost of attendance should not be overly burdensome. An institution can assume that the costs have not changed unless it has documents that indicate the student's cost has changed.

Comment: One commenter pointed out that a recalculation for a change in enrollment status does not apply for clock hour institutions that do not have academic terms. The commenter suggested that paragraph (b)(1) should not apply to these institutions.

Response: A change has been made. The Secretary agrees that a recalculation is not relevant to these institutions since a change in enrollment status would only affect the timing of the disbursements. This paragraph has been revised to apply only to institutions that have academic terms.

Section 690.81 Fiscal control and fund accounting procedures.

Comment: Several commenters suggested that the option of sending a letter to a bank, listing the accounts in which the Federal funds will be deposited, should be retained. These commenters stated that including in the name of the account the fact that Federal funds are in that account is burdensome and expensive, particularly for large institutions that have funds from many different sources in their accounts.

Response: No change has been made. The difficulty of finding Federal funds deposited by institutions that have later closed has convinced the Secretary that the option of sending a letter to the bank must not be retained despite the additional burden this causes for some institutions.

Subpart H—Administration of Grant Payments—Alternate Disbursement System

Comment: One commenter objected to the verification and record retention requirements for ADS institutions in §§ 690.96 and 690.100. The commenter argued that institutions that select the Alternate Disbursement System should have fewer administrative responsibilities.

Response: No change has been made. Institutions participating in the Pell Grant Program under the Alternate Disbursement System still have fewer responsibilities than RDS institutions. There were no revisions to Subpart H in the Notice of Proposed Rulemaking. As stated in the preamble to the Pell Grant Program regulations published in the **Federal Register** of October 6, 1983, these requirements were made in response to recommendations of the former Department of Health, Education, and Welfare Audit Agency report on the ADS. The Secretary decided to include these requirements in the October 6, 1983 final regulations to close off an avenue of serious potential program abuse.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

The information collection requirements contained in these regulations in §§ 690.72, 690.77, 690.81, 690.82, 690.92, 690.76, and 690.100 will become effective after they have been approved by the Office of Management and Budget.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of any comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.063, Pell (Basic) Grant Program)

Dated: March 8, 1985.

William J. Bennett,

Secretary of Education.

PART 690—PELL GRANT PROGRAM

The Secretary revises Subparts A, B, F, G, and H of Part 690 of Title 34 of the Code of Federal Regulations to read as follows:

Subpart A—Scope, Purpose and General Definitions

Sec.

Authority: Section 411 of the Higher Education Act of 1965 as amended (20 U.S.C. 1070a), unless otherwise noted.

Subpart A—Scope, Purpose and General Definitions

§ 690.1 Scope and purpose.

The Pell Grant Program awards grants to help financially needy students meet the cost of their postsecondary education.
(20 U.S.C. 1070a)

§ 690.2 General definitions.

(a) Definitions of the following terms used in this part are described in Subpart A of the Student Assistance General Provisions, 34 CFR Part 668:

Academic year
Act
Award year
Clock hour
College Work-Study Program
Enrolled
Guaranteed Student Loan Program
National Direct Student Loan Program
National Defense Student Loan Program
National of the United States
One-year training program
Pell Grant Program
PLUS Loan Program
Proprietary institution of higher education
Postsecondary vocational institution
Public or private nonprofit institution of higher education
Recognized equivalent of a high school diploma
Regular student
Secretary
Six-month training program
State
State Student Incentive Grant Program
Supplemental Educational Opportunity Grant Program.

(b) Other terms used in this part are:

ADS institution: An institution that participates in the Pell Grant Program under the Alternate Disbursement System.

Comparable State income tax return: A state income tax return based on the Federal income tax return which requires the filer to provide the amount of Federal income tax paid as well as the same information that he or she is required to provide on the Federal income tax return with regard to information being verified.

Disbursement Schedule: A table showing the grant amounts three-quarter and half-time students at term based institutions using credit hours would receive for an academic year. This table, published annually by the Secretary is based on—

(1) A student's Effective Family Contribution:

(2) A student's attendance costs as defined in Subpart E; and

(3) The amount of funds available for making Pell Grants.

Electronic Pilot Project: An electronic exchange system between the Secretary and an institution under which a student is able to correct or verify information contained on his or her SAR at the institution he or she is attending and the institution is able to print out a Student Aid Report for that student which is based on the corrected or verified information.

Enrollment status: Full-time, three-quarter-time, of half-time depending on a student's credit hour work load per academic term at an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours.

(2) Full-time or part-time depending on a student's credit hour work load per academic year, at an institution that does not use academic terms and measures progress by credit hours.

(3) Full-time or part-time depending on a student's clock hour work load per week at an institution that measures progress by clock hours.

Full-time student: An enrolled student who is carrying a full-time academic work load (other than by correspondence)—as determined by the institution—under a standard applicable to all students enrolled in a particular program. However, an institution's full-time standard must equal or exceed one of the following minimum requirements.

(1) 12 semester hours or 12 quarter hours per academic term in an institution using a semester, trimester, or quarters system;

(2) 24 semester hours or 36 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year;

(3) 24 clock hours per week for an institution using clock hours;

(4) In an institution using both credit and clock hours, any combination of credit and clock hours where the sum of the following fractions is equal to or greater than one:

$$\frac{\text{Number of credit hours per term}}{12} + \frac{\text{Number of clock hours per week}}{24}$$

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

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

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

(2) A student enrolled solely in a program of study by correspondence who is carrying a work load of at least 12 hours of work per week, or is earning at least 6 credit hours per semester, trimester or quarter. However, regardless of the work, no student enrolled solely in correspondence study is considered more than a half-time student.

Institution of higher education (Institution): A public or private non-profit or proprietary institution of higher education or a postsecondary vocational institution.

Payment Schedules: A table showing a full-time student's scheduled Pell Grant for a given award year. This table, published annually by the Secretary, is based on—

(1) The student's Expected Family Contribution;

(2) The student's cost of attendance as defined in Subpart E; and

(3) The amount of funds available to the Secretary for making Pell Grants.

RDS Institution: An institution that participates in the Pell Grant Program under the Regular Disbursement System.

Scheduled Pell Grant: The amount of a Pell Grant which would be paid to a full-time student for a full academic year.

Student aid index: The term used on the Student Aid Report (SAR) to designate a student's expected family contribution for the Pell Grant Program.

Student Aid Report (SAR): A report provided to an applicant showing the amount of his or her expected family contribution.

Student Aid Report (SAR) Payment Document: A part of the SAR that is provided to the Secretary by an institution showing an applicant's expected family contribution, cost of attendance, and enrollment status, at that institution.

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

Undergraduate student: A student enrolled in an undergraduate course of study at an institution of higher education who—

(1) Has not earned a baccalaureate or first professional degree; and

(2) Is in an undergraduate course of study which usually does not exceed 4 academic years, or is enrolled in a 4 to 5 academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first 4 academic years of that program.

Valid Student Aid Report: A student Aid Report—

(a) On which all of the information used in the calculation of the applicant's expected family contribution is accurate and complete as of the date the application is signed; and

(b) For the Electronic Pilot Project, that is signed by the applicant, his or her spouse, and the applicant's parents if the applicant is a dependent student.

(20 U.S.C. 1070a unless otherwise noted.)

§ 690.3 Definitions of payment period.

(a) *Payment period for an RDS institution that has academic terms:*

(1) Except as noted in paragraph (a)(2) of this section, for an RDS institution that uses semesters, trimesters, quarters or other academic terms, the payment period is the semester, trimester, quarter or other academic term.

(2) For an RDS institution that uses semesters, trimesters, quarters or other academic terms and measures progress in clock hours—

(i) A payment period is a semester, trimester, quarter, or other academic term if the student completes all the clock hours scheduled for that term;

(ii) If at the end of a term, the student has not completed all of the clock hours scheduled for that term and the student has received a Pell Grant for that term, the payment period extends beyond that term for as long as it takes the student to complete the number of clock hours originally scheduled for that term; and

(iii) If a payment period extends into another term, the next payment period consists of the number of clock hours scheduled for that term that were not included in the previous payment period.

(b) *Payment period for an RDS institution that does not have academic terms:* (1) For a student whose educational program is one academic year—

(i) The first payment period is the period of time in which the student completes the first half of his or her academic year (in credit or clock hours); and

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

(2) For a student whose educational program is more than one academic year, the first and second payment periods must be calculated under paragraph (b)(1) of this section. For subsequent academic years, or fractions of academic years, each payment period must be the period of time in which a student completes—

(i) One-half of the academic year; or

(ii) The remaining hours in the student's educational program, which ever is to be completed first.

(3) For a student whose educational program is less than an academic year—

(i) The first payment period must be the period of time which the student completes the first half of his or her educational program (in credit or clock hours); and

(ii) The second payment period must be the period of time in which the student completes the second half of his or her educational program.

(4) If an RDS institution chooses to have more than two payment periods in an academic year or in a program of less than an academic year, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

(c) *Payment period for an ADS institution.* (1) If an ADS institution uses semesters, trimesters, quarters or other academic terms and measures progress in credit hours, the payment period must be the semester, trimester, quarter or other academic term.

(2) If an ADS institution measures progress in clock hours, or measures progress in credit hours but does not use academic terms, it shall have at least two payment periods, calculated as follows:

(i) If a student's academic year is within one award year and a student's educational program is at least one academic year—

(A) The first payment period must be the period of time in which a student completes the first half of his or her academic year; and

(B) The second payment period must be the period of time in which a student completes the second half of his or her academic year.

(ii) If a student's academic year is not within one award year or the student's educational program is less than a full academic year—

(A) The first payment period must be the period of time in which a student completes the first half of the hour she or she is scheduled to complete within the award year; and

(B) The second payment period must begin when the first payment period ends and end when a student completes all hours he or she was schedule to complete between the beginning of the second payment period and June 30.

(iii) A student who does not complete all the clock hours required for the second payment period of any award year may complete them during the following award year. In this case, the first payment period of the new award year must begin when a student finishes all carried over hours for which he or she was paid.

(20 U.S.C. 1070a)

§ 690.4 Eligible student.

(a) A student is eligible to receive a Pell Grant if the student—

(1) Is a regular student;

(2) (i) Is a U.S. citizen or National;

(ii) Is a permanent resident of the Trust Territory of the Pacific Islands, or the Northern Marina Islands; or

(iii) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(A) Is a permanent resident of the United States; or

(B) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

(3) Is enrolled as at least a half-time undergraduate student; and

(4) Meets the requirements of § 690.75.

(b) A member of a religious order, community, society, agency of or organization who is pursuing a course of study in an institution of higher education is considered to have an expected family contribution of at least $3,000 if that religious order—

(1) Has as a primary objective the promotion of ideals and beliefs regarding a Supreme Being; and

(2) Provides subsistence support to its members, or has directed the member to pursue the course of study.

(20 U.S.C. 1070a)

§ 690.5 Eligible program.

(a) *General:* An eligible program is an undergraduate program of education or training which—

(1) Has an admission standard that admits as regular students only persons who—

(i) Have a high school diploma;

(ii) Have a General Education Development (G.E.D.) Certificate or a State certificate received after passing a State-authorized examination which the State recognizes as the equivalent of a high school diploma; or

(iii) Are beyond the age of compulsory school attendance in the State in which the institution offering the program is located, and have the ability to benefit from the education or training offered; and

(2)(i) Leads to a bachelor, associate, or undergraduate professional degree;

(ii) Is at least a two-year program which is acceptable for full credit toward a bachelor degree;

(iii) Is a least a 1-year program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation; or

(iv) Is, if offered by a proprietary or postsecondary vocational institution, at least a six-month program leading to a certificate or degree, which prepares students for gainful employment in a recognized occupation.

(b) *Study by correspondence.* An eligible program of study by correspondence is an undergraduate program of education or training which meets the criteria for an eligible program in paragraph (a) of this section and which is designed to require at least 12 hours of preparation per week.

(20 U.S.C. 1070a)

§ 690.6 Duration of student eligibility.

(a) A student is eligible to receive a Pell Grant for the period of time required to complete his or her first undergraduate baccalaureate course of study.

(b) An institution shall determine when the student has completed the academic curriculum requirements for that first undergraduate baccalaureate course of study.

(20 U.S.C. 1070a)

§ 690.7 Institutional participation.

(a)(1) An institution of higher education is eligible to participate in the Pell Grant program if it—

(i) Meets the appropriate definition set forth in 34 CFR Part 668, Subpart A;

(ii) Enters into a program participation agreement with the Secretary; and

(iii) Complies with that agreement and with the applicable provisions of this part and 34 CFR Part 668.

(2) If an institution begins participation in the Pell Grant Program during an award year, a student enrolled and attending that institution is eligible to receive a Pell Grant for the payment period during which the institution enters into a program participation agreement with the Secretary and any subsequent payment period.

(b) If an institution becomes ineligible to participate in the Pell Grant Program during an award year, an eligible student who was attending the institution and who submitted a valid SAR to the institution (or to the Secretary if it is an ADS institution) before the date the institution became ineligible is paid a Pell Grant for that award year for—

(1) The payment periods that the student completed before the institution became ineligible; and

(2) The payment period in which the institution became ineligible.

(c) An RDS institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary—

(1) The name and enrollment status of each eligible student who, during the award year, submitted a valid SAR to the institution before it became ineligible;

(2) The amount of funds paid to each Pell Grant recipient for that award year;

(3) The amount due each student eligible to receive a Pell Grant through the end of the payment period during which the institution became ineligible; and

(4) An accounting of the Pell Grant expenditures for that award year to the date of termination.

(d) An ADS institution which becomes ineligible shall, within 45 days after the effective date of loss of eligibility, provide to the Secretary the name and enrollment status of each student who applied for and was determined eligible for a Pell Grant, and who was attending the institution when its eligibility was terminated.

(20 U.S.C. 1070a)

§ 690.8 Enrollment status for students taking non-credit or reduced credit remedial courses or regular and correspondence courses.

(a) *Non-credit or reduced credit remedial course.* (1) A non-credit or reduced credit remedial course is a course of study designed to increase the ability of a student to pursue an undergraduate course of study leading to a certificate or degrees.

(i) A non-credit remedial course is one for which no credit is given toward a certificate or degree; and

(ii) A reduced credit remedial course is one for which reduced credit is given toward a certificate or degree.

(2) Except as provided in paragraphs (a)(3) and (a)(4) of this section, in determining a student's enrollment status, an institution and the Secretary shall include any non-credit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a non-credit or reduced credit remedial course by:

(i) Calculating the number of classroom and homework hours required for that course;

(ii) Comparing those hours with the hours required for non-remedial courses in a similar subject; and

(iii) Giving the remedial course the same number of credit or clock hours it gives the non-remedial course with the most comparable classroom and homework requirements.

(3) When calculating an eligible student's enrollment status, neither an institution nor the Secretary may take into account any non-credit or reduced credit remedial course in a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program.

(4)(i) When calculating an eligible student's enrollment status, neither the institution nor the Secretary may take into account more than one academic year's worth of non-credit or reduced credit remedial coursework, regardless of whether that coursework was completed. However, courses in English as a second language do not count against the one year academic year limitation.

(ii) One academic year's worth of non-credit or reduced credit remedial coursework for the purpose of paragarph (a)(4)(i) of this section is equivalent to—

(A) 30 semester or 45 quarter hours; or

(B) 900 clock hours.

(b) *Combination of regular and correspondence study.* (1) If—in addition to regular coursework—a student takes correspondence courses from either his or her own institution or another institution having an agreement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b)(2) of this section.

(2) Except as noted in paragraph (b)(3) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work which—

(i) Applies toward a student's degree or certificate or is remedial work taken by the student to help in his or her course of study;

(ii) Is completed within the period of time required for regular course work; and

(iii) Does not exceed the amount of a student's regular course work for the payment period for which the student's enrollment status is being calculated.

(3) Notwithstanding the limitation in paragraph (b)(2)(iii) of this section a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b)(2) of this section produces an enrollment status greater than half-time.

(4) The following chart provides examples of the rules set forth in paragraph (b) of this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making the half-time enrollment equal to six credits per term.

Under § 690.8	Number of credit hours regular work	Number of credit hours correspondence work	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(2)(iii)	3	3	6	Half-time.
(b)(2)(iii)	3	6	6	Half-time.
(b)(2)(iii)	3	9	6	Half-time.
(b)(2)(iii)	6	3	9	Three quarter time.
(b)(2)(iii)	6	6	12	Full-time
(b)(2)(iii) and (b)(3).	2	6	6	Half-time.

(20 U.S.C. 1070a)

§ 690.9 Written agreements between two or more eligible institutions.

(a) A student who is enrolled in an eligible program at one eligible institution and taking courses at one or more other eligible institutions which apply toward his or her degree or certificate at the first institution may receive Pell Grant assistance for attendance at both institutions only if there is a written agreement between the institutions.

(1) The institution at which the student is enrolled and expects to receive his or her degree or certificate shall determine and pay the student's Pell Grant assistance. However, the other institution may determine and pay the student's Pell Grant assistance if the institutions agree in writing to that arrangement.

(2) The institution which determines and pays the Pell Grant assistance shall—

(i) Take into account all courses which apply to the student's degree or certificate taken by the student at each eligible institution participating in the agreement when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of Pell Grant assistance.

(20 U.S.C. 1070a)

§ 690.10 Administrative cost allowance to participating schools.

(a) Subject to available appropriations, the Secretary pays to each participating institution $5.00 for each student who receives a Pell Grant at that institution for an award year.

(b) All funds an institution receives under this section must be used solely for the institution's cost of administering the Pell Grant, Supplemental Educational Opportunity Grant, College Work-Study and National Direct Student Loan programs.

(20 U.S.C. 1096a)

§ 690.11 Pell Grant payments from more than one institution.

A student is not entitled to receive Pell Grant payments concurrently from more than one institution or from the Secretary and an institution.

(20 U.S.C. 1070a)

Subpart B—Application Procedures for Determining Expected Family Contribution

§ 690.12 Application.

(a) As the first step to receiving a Pell Grant, a student shall apply on an approved form to the Secretary to have his or her expected family contribution determined. A copy of this form is not acceptable.

(b) The student shall provide the address of his or her residence unless the student is incarcerated and the educational institution has made special arrangements with the Secretary to receive relevant correspondence on behalf of the student. If such an arrangement is made, the student shall provide the address indicated by the institution.

(c) A student, and where required the student's parents or spouse, shall provide to the institution or the Secretary a copy of his or her Federal, State, and/or local income tax returns and any other documents, if requested by the Secretary or the institution for verification of the accuracy of the information submitted.

(d) For each award year the Secretary, through publication in the Federal Register, establishes deadline dates for submitting these applications and for making corrections to the information contained in the applications.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB control number 1840-0110)

§ 690.13 Notification of expected family contribution.

The Secretary sends to each eligible applicant a "Student Aid Report" (SAR) which states the amount of the applicant's expected family contribution (student aid index) and information used in that calculation. If any of the information is incorrect, an applicant shall correct it according to procedures established by the Secretary through publication in the Federal Register.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB control number 1840-0132).

§ 690.14 Applicant's request for recalculation of expected family contribution because of clerical or arithmetic error, or updating of projected data.

(a) An applicant may request a recalculation of his or her expected family contribution if he or she believes a clerical or arithmetic error has occurred, or if the information submitted was inaccurate when the application was signed.

(b) An applicant, unless selected for verification under §§ 690.77 or 690.96 shall update the following items on his or her SAR so that these items are accurate as of the date he or she submits that SAR to the institution or the Secretary:

(1) Family members in the household.

(2) Family members enrolled as at least half-time students in institutions of higher education.

(3) Whether the applicant was claimed as a tax exemption by the parents.

(4) Whether the parents provided more than $750.

(5) Whether the applicant lives with the parents for more than 42 days.

(c) A request for recalculation must be made on an approved form and this form must be received by the Secretary no later than the deadline date established by the Secretary through publication in the Federal Register.

(20 U.S.C. 1070a)

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Subpart F—Determination of Pell Grant Awards

§ 690.61 Submission process and deadline for student aid report.

(a) *Submission process.* (1)(i) In order to receive a Pell Grant at an RDS institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

(ii) In order to receive an initial Pell Grant payment for an award year at an ADS institution, a student shall submit a valid SAR to that institution and shall submit both that SAR and an ED Form 304 to the Secretary.

(iii) In order to receive subsequent Pell Grant payments at an ADS institution, the student shall submit an ED Form 304-1 to the Secretary.

(2) An institution is entitled to rely on SAR information except under conditions set forth in §§ 690.77, 690.96 and 668.16(f).

(b) *Student Aid Report deadline.* (1) Except as noted in §§ 690.77 and 690.96, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to his or her institution by June 30 of that award year.

(2) Except as noted in §§ 690.77 and 690.96, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to an institution while he or she is still enrolled and eligible for payment at that institution.

(c) *ED Form 304 and ED Form 304-1 deadlines.* (1) In order to receive the first Pell Grant payment for an award year, a student attending an ADS institution shall submit a certified ED Form 304 together with a valid SAR to the Secretary by July 15 of the subsequent award year.

(2) In order to receive additional Pell Grant payments for an award year, a student attending an ADS institution shall submit additional requests for payment and/or corrected ADS Student Reports (ED Form 304-1) to the Secretary by August 26 of the subsequent award year.

(20 U.S.C. 1070a)

§ 690.62 Calculation of a Pell Grant.

(a) The amount of a student's Pell Grant for an academic year is based upon the payment and disbursement schedules published by the Secretary for each award year.

(b) At full funding, no payment may be made to a student if the student's Scheduled Pell Grant is less than $200.

(c) At less-than-full-funding, no payment may be made if—

(1) The student's Scheduled Pell Grant is less than $50; or

(2) The student's Scheduled Pell Grant at full funding would have been less than $200.

(20 U.S.C. 1070a(a)(2))

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

(a) At an institution using semesters, trimesters, quarters, or other academic terms and measuring progress by credit hours, a student's Pell Grant for each payment period is calculated by—

(1) Determining his or her enrollement status for the term;

(2) Based upon that enrollment status, determining his or her annual award from the Payment Schedule (full-time students), or one of the Disbursement Schedules (part-time students), as appropriate; and

(3)(i) Dividing the amount determined in paragraph (a)(2) of this section by the number of terms in the academic year unless the terms of an RDS institution are not of equal length; or

(ii) If the terms of an RDS institution are not of equal length, multiplying the amount determined in paragraph (a)(2) of this section by the following fraction:

$$\frac{\text{The length of the term in question}}{\text{The length of the academic year}}$$

(b) A single disbursement may not exceed 50 percent of the award determined in paragraph (a)(2) of this section. To ensure this result, an institution shall make multiple disbursements within a term, if that term is longer than half the academic year. Subsequent disbursements within that term may not be made until the student has completed the portion of the term for which he or she was initially paid.

(c) At an institution which measures progress by clock hours or which measures progress by credit hours or units but does not use semesters, trimesters, quarters or other academic terms, a student's Pell Grant for each payment period is calculated by—

(1) Determining the student's Scheduled Pell Grant; and

(2) Multiplying the Scheduled Pell Grant by—

$$\frac{\text{The number of credit or clock hours the student is expected to take in a payment period}}{\text{The number of credit or clock hours in an academic year}}$$

(d) Notwithstanding paragraphs (a), (b), and (c) of this section—

(1) A student may not receive a Pell Grant if the amount which the student would receive, projected on the basis of a full academic year, would be less than either $200 at full funding or $50 at less than full funding; and

(2) The amount of a student's award for an award year may not exceed his or her Scheduled Pell Grant award for that award year.

(20 U.S.C. 1070a)

§ 690.64 Calculation of a Pell Grant for a payment period which occurs in two award years.

(a) If a student enrolls in a payment period which is scheduled to occur in two award years—

(1) The entire payment period must be considered to occur within one award year.

(2) The institution shall determine for each Pell Grant recipient the award year in which the payment period will be placed subject to the restrictions set forth in paragraph (a)(3) of this section.

(3) The institution shall place a payment period with more than six months scheduled to occur within one award year in that award year.

(4) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year.

(5) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(b) An institution may not make a payment which will result in the student receiving more than his or her Scheduled Pell Grant for an award year.

(c)(1) If a term-based institution offers a series of mini-sessions which occurs in two award years, the combined sessions must be treated as one term. A student may not receive more than one term's award for completing any combination of these mini-sessions.

(2) For such mini-sessions, a term-based institution shall determine the student's enrollment status for the entire term. That enrollment status shall be based upon—

(i) The total number of credits enrolled for in all sessions if that number is known when the award is calculated; or

(ii) A projected number of credits based upon the credits enrolled for in the first session, if the number of credits to be taken in subsequent sessions is unknown when the award is calculated.

(20 U.S.C.1070a)

§ 690.65 Transfer student: Attendance at more than one institution during an award year.

(a)(1) If a student who receives a Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student shall submit an SAR to the second institution to receive a grant at the second institution. (The institution shall follow the procedures regarding transfer students set forth in 34 CFR 668.14.)

(2) If the second institution is an ADS institution, the student shall submit an SAR to that institution and that SAR and a certified ED Form 304 and/or ED Form 304-1 to the Secretary.

(b) The second institution (or the Secretary for an ADS institution) shall calculate the student's award according to § 690.63.

(c) The second institution (or the Secretary for an ADS institution) may pay a Pell Grant for only that portion of the award year in which a student is enrolled at that institution. The grant amount must be adjusted if necessary to ensure that the grant does not exceed the student's Scheduled Pell Grant for that award year.

(d) If a student's Scheduled Pell Grant at the second institution differs from the Scheduled Pell Grant at the first institution, the grant amount at the second institution is calculated as follows—

(1) The amount received at the first institution is compared to the Scheduled Pell Grant at the first institution to determine the percentage of the Scheduled Pell Grant that the student has received.

(2) That percentage is subtracted from 100 percent.

(3) The remaining percentage is the percentage of the Scheduled Pell Grant at the second institution to which the student is entitled.

(e) The student's Pell Grant for each payment period is calculated according to the procedures in § 690.63 unless the remaining percentage of the Scheduled Pell Grant at the second institution, referred to in paragraph (d)(3) of this section, is less than the amount the student would normally receive for that payment period. In that case, the student's Pell Grant is equal to that remaining percentage.

(f) A transfer student shall repay any amount received in an award year which exceeds his or her Scheduled Pell Grant.

(20 U.S.C. 1070a)

§ 690.66 Correspondence study.

A student enrolled in an eligible program of study by correspondence must be paid according to the following procedures:

(a) The institution shall determine the length of each correspondence program it offers by preparing a written schedule for submission of lessons, reflecting a workload of at least 12 hours of preparation per week.

(b)(1) For an RDS institution, if there is not a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant; and

(ii) Multiplying the Schedule Pell Grant by one-half.

(2) An academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year, or program if the program is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (b)(1)(ii) of this section after he or she has submitted 25 percent of the lessons or otherwise completed 25 percent of the work scheduled for the academic year, or for the program if the program is less than an academic year.

(4) The institution shall make the final payment for the second payment period after the student has submitted 75 percent of the lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(c)(1) For an RDS institution, if there is a required period of residential training in the program, a student's Pell Grant for an academic year is calculated by—

(i) Determining the student's Scheduled Pell Grant, and;

(ii) Multiplying the Scheduled Pell Grant by one-half.

(2) The non-residential portion of an academic year must consist of two payment periods. The first payment period must be the period of time in which the student completes the first half of his or her academic year or the non-residential portion of the program if it is less than an academic year. The second payment period must be the period of time in which the student completes the second half of the academic year or non-residential portion of the program.

(3) For the first payment period, the institution shall pay the student one-half of the amount calculated in paragraph (c)(1)(ii) of this section after he or she

has submitted 25 percent of the non-residential lessons or otherwise completed 25 percent of the work scheduled for the academic year or for the program if the program is less than an academic year.

(4) The institution shall make the final payment (for the non-residential portion of the program) for the second payment period after the student has submitted 75 percent of the non-residential lessons or otherwise completed 75 percent of the work scheduled for the academic year or for the program.

(5) A student's Pell Grant disbursement for the residential portion of the program is calculated according to the procedures in § 690.63(c) for a student enrolled in a regular course of study at an institution that measures progress by clock hours.

(d)(1) For an ADS institution, a student's Pell Grant for an award year is calculated by—

(i) Determining the student's Scheduled Pell Grant; and

(ii) Multiplying the Scheduled Pell Grant by one-half.

(2) An ADS institution shall have two payment periods in an award year.

(3) If a student's academic year is within one award year he or she must receive—

(i) One-half the amount calculated in paragraph (d)(1)(ii) of this section for the first payment period, which is the period of time in which a student completes the first half of his or her academic year; and

(ii) The final payment for the second payment period, which is the period of time in which a student completes the second half of his or her academic year.

(4) If a student's academic year is not within one award year he or she must receive—

(i) One-half the amount calculated in paragraph (d)(1)(ii) of this section for the first payment period which is the period of time in which a student completes the first half of the hours he or she is scheduled to complete within the award year; and

(ii) The final payment for the second payment period which begins when the first payment period ends and ends when a student completes all hours he or she was scheduled to complete between the beginning of the second payment period and June 30.

(5) A student who does not complete all the hours of preparation required for the second payment period of any award year may complete them during the following award year. In this case, the first payment period of the new award year begins when a student finishes all carried over hours for which he or she was paid.

(6) For the first payment period, the institution shall pay the student after he or she has submitted 25 percent of the lessons or otherwise completed 25 percent of the work scheduled for the award year.

(7) For the second payment period, the institution shall pay the student after he or she has submitted 75 percent of the work scheduled for the award year.

(20 U.S.C. 1070a)

Subpart G—Administration of Grant Payments—Regular Disbursement System (RDS)

§ 690.71 Scope.

This subpart deals with program administration by an RDS institution of higher education. An RDS institution shall enter into a program participation agreement with the Secretary so that is may calculate and pay Pell Grant awards to students.

(20 U.S.C. 1070a)

§ 690.72 Institutional participation agreement—Regular Disbursement System (RDS).

(a) The Secretary may enter into an agreement with an institution of higher education under which it will calculate and pay Pell Grant awards to its students. This RDS agreement is on a standard form provided by the Secretary which contains the necessary terms to carry out this part.

(b) The Secretary sends Payment and Disbursement Schedules for each award year to an RDS institution that has entered into an agreement under paragraph (a) of this section.

(20 U.S.C. 1070a)

§ 690.73 Termination of institutional participation agreement—Regular Disbursement System (RDS).

(a) *Termination by the Secretary.* The Secretary may terminate the agreement with an RDS institution by giving the institution—

(1) 30 days written notice; or

(2) Less than 30 days written notice if shorter notice is necessary to prevent the likelihood of a substantial loss of funds to the Federal government or to students.

(b) *Information required.* An RDS institution shall provide the following information to the Secretary if the Secretary terminates the agreement:

(1) The name and enrollment status of each eligible student who submitted a valid SAR to the institution before the termination date.

(2) The amount of funds the institution paid to Pell Grant recipients for the award year in which the agreement is terminated.

(3) The amount due to each student eligible to receive a Pell Grant through the end of the award year.

(4) An accounting of Pell Grant expenditures to the date of termination.

(c) *Termination by the institution.* An RDS institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of that award year. The institution shall carry out the agreement for the remainder of that award year.

(d) *Termination because of a change in ownership which results in a change of control.* The RDS agreement automatically terminates when an RDS institution changes ownership which results in a change of control. The Secretary may enter into an RDS agreement with the new owner if the institution complies with requirements set forth in Subpart B of the Student Assistance General Provisions (34 CFR Part 668).

(e) If an RDS agreement is terminated the institution's eligibility to participate in the Pell Grant Program as discussed in § 690.7 is not terminated but the Secretary pays that institution's students only if the institution enters into an ADS agreement.

(20 U.S.C. 1070a)

§ 690.74 Provision of funds to institutions.

The Secretary provides funds to an RDS institution for each award year in advance or by way of reimbursement during the course of that year, based on the Secretary's determination of the institution's need for funds to pay Pell Grants or its need for reimbursement for Pell Grants already paid.

(20 U.S.C. 1070a)

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Pell Grant to an eligible student only after it has been determined that the financial aid transcript requirements of 34 CFR Part 668 have been met, and the student—

(1) Has filed with the institution a signed Statement of Educational Purpose/Registration Compliance as required by 34 CFR Part 668;

(2) Is maintaining satisfactory progress in his or her course of study;

(3) Is not in default on any National Defense/Direct Student Loan made by that institution or on any Guaranteed Student Loan or PLUS Loan received to meet the cost of attendance at that institution;

(4) Is not, as a parent of another student, in default on a PLUS Loan

received to meet the cost of attendance at that institution;

(5) Does not owe a refund on a Pell Grant, a Supplemental Educational Opportunity Grant, or a State Student Incentive Grant received to meet the cost of attendance at that institution; and

(6) Has completed required clock hours for which he or she has been paid a Pell Grant.

(b) If an eligible student submits an SAR to the institution and becomes ineligible before receiving a payment, the institution may pay the student only the amount which it determines could have been used for educational purposes before the student became ineligible.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the payment period, the institution may pay a Pell Grant to the student for the entire payment period.

(d) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination after the end of the payment period, the institution may neither pay the student a Pell Grant for that payment period nor make adjustments in subsequent Pell Grant payments to compensate for the loss of aid for that period.

(e) Conditions under which students who are overpaid grants may continue to receive Pell Grants are as follows:

(1) *Overpayment of a Pell Grant.* If an institution makes an overpayment of a Pell Grant to a student, it may continue to make Pell Grant payments to that student if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment in the award year in which it occurred by adjusting subsequent Pell Grant payments for that award year.

(2) *Overpayment of a Pell Grant due to institutional error.* In addition to the exception provided in paragraph (e)(1) of this section, if the institution makes an overpayment of a Pell Grant to a student as a result of its own error, it may continue to make payments to that student if—

(i) The student is otherwise eligible; and

(ii) The student acknowledges in writing the amount of overpayment and agrees to repay it in a reasonable period of time.

(3) *Overpayment on a Supplemental Educational Opportunity Grant.* An institution may continue to make Pell Grant payments to a student who receives an overpayment on a Supplemental Grant if—

(i) The student is otherwise eligible; and

(ii) The institution can eliminate the overpayment by adjusting subsequent financial aid payments (other than Pell Grants) in the same award year in which the overpayment occurred.

(f) An institution, in determining whether a student is in default on a loan made under the Guaranteed Student Loan Program/PLUS Loan Program or a loan made to the student as a parent of another student under the PLUS Loan Program, may rely upon the student's written statement that he or she is not in default unless the institution has information to the contrary.

(g) Conditions under which students may receive Pell Grants for attendance at an institution when they are in default on loans made for attendance at that institution are as follows:

(1) *Guaranteed Student Loans and PLUS Program Loans.* An institution may pay a Pell Grant to a student who is in default on a Guaranteed Student Loan of a PLUS Loan if the Secretary (in the case of a federally guaranteed loan) or a guarantee agency (in the the case of a loan guaranteed by that guarantee agency) determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *National Defense/Direct Student Loan.* An institution may pay a Pell Grant to a student who is in default on a National Defense-Direct Student Loan made at that institution, if the student has made arrangements, satisfactory to the institution, to repay the loan.

(3) *Loans discharged in bankruptcy.* The Secretary does not consider a loan made under the National Defense Student Loan, National Direct Student Loan, Guaranteed Student Loan, or PLUS Loan programs, which has been discharged in bankruptcy, to be in default for purposes of this section.

(20 U.S.C. 1070a)

§ 690.76 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds due a student for any completed period in one lump sum. The student's enrollment status must be determined according to work already completed.

(20 U.S.C. 1070a)

§ 690.77 Verification of information on the SAR—withholding of payments.

(a)(1) The Secretary may require that a student verify the information submitted on the application and included on the SAR by submitting appropriate documentation to the institution or to the Secretary.

(2) The Secretary may also require that the institution withhold payment of a student's grant until the institution or the Secretary determines that the student has supplied the correct information.

(b) If an institution believes that any information on the SAR used in calculating the student's expected family contribution is inaccurate, or if the application is chosen by the Secretary for verification, the institution shall request that the student verify the information on the SAR.

(c) Except as provided in paragraphs (d)(5) and (6) of this section, if a student is selected for verification under paragraph (a) or (b) of this section, the institution shall require a student to submit acceptable documentation that verifies or updates the following information reported on the student aid application:

(1) The adjusted gross income (AGI).

(2) The U.S. income tax paid.

(3) The number of family members in the household of the student and his or her spouse, and his or her parents if the student is a dependent student.

(4) The number of family members in postsecondary educational institutions as at least half-time students in the household of the student and his or her spouse, and the student's parents if the student is a dependent student.

(5) The factors relating to the student's independent student status.

(6) Any untaxed income and benefits, including—

(i) U.S. income tax deduction for a married couple if both work;

(ii) Social security benefits if required by a comment on the student's Student Aid Report (SAR);

(iii) Student veterans educational benefits; and

(iv) Other untaxed income and benefits included on the student aid application.

(d)(1) An institution shall require a student selected for verification to submit to it for adjusted gross income (AGI), U.S. income tax paid, and number in household—

(i)(A) A signed copy of the federal income tax return or comparable State income tax return of the applicant and, where relevant, the applicant's parents and spouse;

(B) The IRS listing of tax account information from the Internal Revenue Service of the applicant and, where relevant, the applicant's parents and spouse; or

(C) If no return was filed or will be filed, a signed statement certifying that no tax return was filed or will be filed by the applicant and, where relevant, the applicant's parents and spouse and providing—

(*1*) The sources of income earned for work stated on the application;

(*2*) The amount of income from each source; and

(*3*) A list of the household members in each relevant household; and

(ii) If there is a difference in the number of exemptions claimed on a Federal or comparable state income tax return and the number in the household on the student aid application, a signed statement which lists the names of the household members and explains any difference between the information included on the student aid application and the tax returns unless other information in the institution's records explains the difference.

(2) An institution shall require a student selected for verification to submit to it for the number of family members in the household in postsecondary educational institutions the following:

(i) If the institution determines that it has no reason to doubt the accuracy of the information provided, a signed statement from the applicant's parents in the case of a dependent student, or from the applicant in the case of an independent student, which lists—

(A) The names of the household members who are or will be attending postsecondary institutions as at least half-time students;

(B) Their ages; and

(C) The names and addresses of those institutions.

(ii) If the institution determines that it has any reason to doubt the accuracy of the information provided—

(A) The information called for in paragraph (d)(2)(i) of this section; and

(B) A statement from each institution required to be listed under paragraph (d)(2)(i)(c) of this section that the household member in question is or will be attending the institution on at least a half time basis, unless the institution the student is attending certifies that such a statement would not be available because the household member in question has not yet registered at the institution he or she is planning to attend.

(3)(i) Except as provided in paragraph (d)(3)(iii) of this section, an institution shall require an unmarried student selected for verification to submit to it—

(A) A signed copy of the Federal or comparable State income tax return of the student's parent(s) for the calendar year preceding the first calendar year of an award year, or if the parent(s) did not file and will not file a tax return for that year, a written statement to that effect signed by the parent(s); and

(B) A written statement signed by the student's parent(s) certifying that—

(*1*) The parent(s) will not and did not provide the student with financial assistance of more than $750 in the first calendar year of an award year or the preceding calendar year; and

(*2*) The student did not and will not live with the parent(s) for more than forty-two days in either of those years.

(ii) Except as provided in paragraph (d)(3)(iii) of this section, an institution shall require a married student selected for verification to submit to it a written statement signed by the student's parent(s) certifying that—

(A) The parent(s) do not and will not provide the student with financial assistance of more than $750 in the first calendar year of an award year; and

(B) The student did not and will not live with the parent(s) for more than forty-two days in that year.

(iii)(A) No documentation or statements are required of a student who is 23 or older as of January 1 of the award year for which aid is requested to verify his or his independent student status if the Secretary or the institution does not have conflicting documentation regarding any of the three factors used to determine independent student status.

(B) An institution shall consider the independent student status of a married student who is under 23 on January 1 of the award year for which aid is requested to be verified if—

(*1*) The institution determines that the student's parents are unable or unwilling to provide the required statements; and

(*2*) The Secretary or the institution does not have conflicting documentation regarding any of the factors used to determine independent student status.

(C) An institution shall consider the independent student status of an unmarried student who is under 23 on January 1 of the award year for which aid is requested to be verified if the institution determines that the applicant had sufficient income to support himself or herself including any dependents for the calendar year preceding the first calendar year of the award year. An institution must make this determination if—

(*1*) The institution determines that the student's parents are unable or unwilling to provide the required tax returns or statements; and

(*2*) The Secretary or the institution does not have conflicting documentation regarding any of the three factors used to determine independent student status.

(4) An institution shall require a student selected for verification to submit to it—

(i) for untaxed income and benefits set forth in paragraph (c)(6)(i) and (iv) of this section, a signed copy of the Federal or comparable State income tax return if collected under paragraph (d)(1) of this section, or the IRS listing of tax account information from the Internal Revenue Service if collected by the institution to verify adjusted gross income, and one of the following:

(A) If the institution determines that it has no reason to doubt the accuracy of the information provided, the worksheet for untaxed income and benefits from the student aid application, or a comparable listing of the untaxed income and benefits specified in paragraph (c)(6)(iv) of this section, accompanied by a signed statement certifying that the information on the worksheet or listing is correct.

(B) If the institution determines that it has any reason to doubt the accuracy of the information provided—

(*1*) The documentation requested in paragraph (d)(4)(i)(A) of this section; and

(*2*) A statement from the agency that supplied the benefits indicating the amount of those benefits, unless the institution certifies that such a statement is not available;

(ii) For social security benefits, a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the student's parents, the parent's children under 18 years of age, the student and the student's spouse if the student's Student Aid Report (SAR) requires that the student verify his or her Social Security benefits; and

(iii) For veterans educational benefits—

(A) A copy of the student's award letter from the Veterans Administration (VA); or

(B) A statement from the institution's veterans office on campus specifying the latest monthly amount being received by the student and the number of months for which these benefits will be received.

(5) For veterans educational benefits, the institution may verify the applicant's

benefits by using the VA rate table issued by the Veterans Administration instead of requiring the applicant to provide the documentation under paragraph (d)(4)(iii) of this section.

(6) If a student applies for a Pell Grant using estimated income information as specified in § 690.39 or § 690.48, that estimated information shall not be subject to verification.

(e)(1) If as a result of the verification process the SAR needs to be corrected, the student shall correct the SAR by—

(i) Putting accurate information on the SAR;

(ii) Getting the appropriate signatures on the SAR; and

(iii) Resubmitting the SAR to the Secretary.

(2) The student shall submit the corrected SAR to the institution and the institution must recalculate the student's award based on this verified SAR. Any overpayment must be repaid by the student.

(f)(1) If an institution has documentation which indicates the information on the SAR used to calculate the student's award for any award year is inaccurate, it may not pay a Pell Grant for any award year until the student corrects or verifies the data and repays any overpayment.

(2) If an institution believes, but cannot document, that discrepancies exist on the SAR, it may not withhold payment unless authorized by the Secretary.

(3) If the student has received funds based on information which may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot, the institution shall forward the student's name, social security number, and other revelant information to the Secretary.

(4) The Secretary does not process any other Pell Grant application for a student that has been requested to provide information until the student provides the documentation or the Secretary decides there is no longer a need for the documentation.

(g)(1) If the Secretary requests documentation, the student shall comply within a time period set by the Secretary through publication in the Federal Register.

(2) If the student provides the requested documentation, and if necessary, a reprocessed and verified SAR on time, he or she is eligible for a Pell Grant.

(h)(1) A student may submit a verified SAR to the institution after the appropriate deadline specified in § 690.61 but within an established additional time period set by the Secretary through publication in the Federal Register. If a verified SAR is submitted to the institution during the period permitted by the Secretary after the appropriate deadline specified in § 690.61, payment is based on—

(i) The original SAR, if the student aid index on the verified SAR is lower than the student aid index on the original SAR, or

(ii) The verified SAR, if the student aid index on the verified SAR is higher than the student aid index on the original SAR.

(2) If the student does not provide the requested documentation, and if necessary, a reprocessed verified SAR, within the period established in paragraph (f)(1) of this section—

(i) The student forfeits the Pell Grant for the award year; and

(ii) Any grant payments the student previously received for that award year must be returned to the Secretary.

(i) For situations, including but not limited to suspected fraud or abuse, the Secretary may determine not to process any Pell Grant application for a student until that student has verified the information about which there is a discrepancy or the Secretary decides there is no longer a need for verification.

(20 U.S.C. 1070a)

§ 690.78 Method of disbursement—by check or credit to a student's account.

(a) The institution may pay a student either directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how that amount will be paid.

(b)(1) The institution may not make a payment to a student for a payment period until the student is registered for classes for that period.

(2) The earliest an institution may directly pay a registered student is 10 days before the first day of classes of a payment period.

(3) The earliest an institution may credit a registered student's account is three weeks before the first day of classes of a payment period.

(c) The institution shall return to the Pell Grant account any funds paid to a student who, before the first day of classes—

(1) Officially or unofficially withdraws; or

(2) Is expelled.

(d)(1) If an institution intends to pay a student directly, it shall notify him or her before the payment is made when it will pay the Pell Grant award.

(2) If a student does not pick up the check on time, the institution shall still pay the student if he or she requests payment within 15 days after the last date that his or her enrollment ends in that award year.

(3) If the student has not picked up his or her payment at the end of the 15 day period, the institution may credit the student's account for any amount owed to the institution for the award year.

(4) A student forfeits the right to receive the payment if he or she does not pick up a payment by the end of the 15 day period.

(5) Notwithstanding paragraph (d)(4) of this section, the institution may, if it chooses, pay a student who did not pick up his or her payment, through the next payment period.

(20 U.S.C. 1070a)

§ 690.79 Recovery of overpayments.

(a)(1) The student is liable for any Pell Grant overpayment made to him or her.

(2) The institution is liable for any overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this Part. The institution shall restore those funds to its Pell Grant account even if it cannot collect the overpayment from the student.

(b) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by—

(1) Making a reasonable effort to contact the student and recover the overpayment; and, if unsuccessful,

(2) Providing the Secretary with the student's name, social security number, amount of overpayment, and other relevant information.

(c) If an institution refers a student who received an overpayment for which it is not liable to the Secretary for recovery, the student remains ineligible, for further Title IV student financial assistance for attendance at that institution until final resolution of the overpayment.

(20 U.S.C. 1070a)

§ 690.80 Recalculation of a Pell Grant award.

(a) *Change in expected family contribution.* (1) The institution shall recalculate a Pell Grant award for the entire award year if the student's expected family contribution changes at any time during the award year. The change may result from—

(i) The correction of a clerical or arithmetic error under § 690.14;

(ii) Extraordinary circumstances which affect the expected family contribution under § 690.39 or § 690.48; or

(iii) A correction based on information required in § 690.12 or § 690.77.

(2) Except as described in § 690.77(f)(1), the institution shall adjust the student's award when an overaward or underaward is caused by the change in the expected family contribution. That adjustment must be made—

(i) Within the same award year—if possible—to correct any overpayment or underpayment; or

(ii) During the next award year to correct any overpayment that could not be adjusted during the year in which the student was overpaid.

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another term within the same award year, the institution shall recalculate the Pell Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. If such a policy is established, it must apply to all students.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution shall recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

(c) *Change in cost of attendance.* If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the same, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students.

(20 U.S.C. 1070a)

§ 690.81 Fiscal control and fund accounting procedures.

(a)(1) An institution shall establish and maintain on a current basis financial records that reflect all program transactions. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity.

(2) The institution shall account for the receipt and expenditure of Pell Grant funds in accordance with generally accepted accounting principles.

(b) A separate bank account for Pell Grant funds is not required. However, the institution shall notify any bank in which it deposits Pell Grant funds of all accounts in that bank in which it deposits Federal funds. This notice must be given by including in the name of each such account that Federal funds are deposited therein.

(c) Except for funds received for administrative expenses, funds received by an institution under this part may be used only to pay Pell Grants to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used or hypothecated for any other purpose.

(20 U.S.C. 1070a)

§ 690.82 Maintenance and retention of records.

(a) Each institution shall maintain adequate records (including those related to verification) which include the fiscal and accounting records that are required under § 690.81, records required for audits in 34 CFR 668.20, the Student Aid Report of each student applying for a Pell Grant, and records indicating—

(1) The eligibility of all enrolled students who have submitted valid SARs to the institution;

(2) The name and social security number of and the amount paid to each student;

(3) The amount and date of each payment;

(4) The amount and date of any overpayment that has been restored to the program account;

(5) Each student's cost of attendance;

(6) How each student's full or part-time enrollment status was determined; and

(7) Each student's enrollment period.

(b)(1) The institution shall make the records listed in paragraph (a) of this section available for inspection by the Secretary's authorized representative at any reasonable time in the institution's offices. It shall keep the records for each award year for five years after that award year has ended.

(2) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(c) The institution shall keep records involved in any claim or expenditure questioned by Federal audit until resolution of any audit questions.

(d) An institution may substitute microform copies in lieu of original records in meeting the requirements of this section.

(20 U.S.C. 1070a, 1232f)

(Approved by the Office of Management and Budget under OMB Control numbers 1840-0132)

§ 690.83 Submission of reports.

(a) An institution shall submit to the Secretary all SAR Payment Documents for a given award year by December 31 following the end of that award year.

(b) An institution shall submit in accordance with deadline dates established by the Secretary, through publication in the **Federal Register**, other reports and information the Secretary requires in connection with the funds advanced to it and shall comply with the procedures the Secretary finds necessary to ensure that the reports are correct.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB Control numbers 1840-0132)

§ 690.84 Audit and examination.

(a) *Federal audits.* The institution shall give the Secretary, the Comptroller General of the United States, or their duly authorized representatives, access to the records specified in § 690.81 and § 690.82 and to any other pertinent books, documents, papers, and records.

(b) *Non-Federal audits.* (1) The institution shall have a financial and compliance audit of Pell Grant Program transactions. The audit must be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office publication, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.* Procedures for audits are contained in audit guides developed by, and available from the Office of the Inspector General of the Department. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations and GAO's standards.

(2) The audit must be completed not less frequently than once every two years, and be submitted to the Secretary within 9 months of the end of the audit period. Each audit must cover the institution's activities for the entire period since the preceding audit.

(3) The institution must have an audit performed at least once very two years.

(c) *Submission and access.* The institution shall submit audit reports to the institution's local regional office of the Department of Education's Audit Agency. It shall give the Audit Agency and the Secretary access to records or other documents necessary to the audit's review.

(20 U.S.C. 1070a)

Subpart H—Administration of Grant Payments—Alternate Disbursement System (ADS)

§ 690.91 Scope.

This subpart deals with program administration by an ADS institution of higher education. Under the ADS, the Secretary calculates and pays the Pell Grant awards to students.

(20 U.S.C. 1070a)

§ 690.92 Institutional participation agreement—Alternate Disbursement System (ADS).

(a) The Secretary may enter into an agreement with an institution of higher education under which the Secretary calculates and pays Pell Grant awards to students enrolled at that institution based upon the information provided to the Secretary by the institution and the student.

(b) The agreement is on a standard form provided by the Secretary and contains the necessary terms to carry out this subpart.

(20 U.S.C. 1070a)

§ 690.93 Disbursement system changes.

(a) *Change to Regular Disbursement System (RDS).* The Secretary may allow an ADS institution to change its method of participation in the Pell Grant Program to the Regular Disbursement System (RDS).

(2) In order to make the change, the institution shall—

(i) Notify the Secretary no later than January 31 of its desire to make the change for the succeeding award year;

(ii) Submit all required reports by April 30; and

(iii) Sign a new participation agreement.

(3) If the Secretary agrees to the change, the new participation agreement goes into effect on July 1 of the succeeding award year.

(b) *Voluntary change to the Alternate Disbursement System (ADS).* (1) The Secretary may allow an RDS institution to voluntarily change its method of participation in the Pell Grant Program to the ADS.

(2) In order to make the change, the institution shall—

(i) Notify the Secretary no later than January 31 of its desire to make the change for the succeeding award year,

(ii) Submit all required reports through the February 15 Progress Report for that award year by April 30; and

(iii) Sign a new participation agreement.

(3) If the Secretary agrees to the change, the new participation agreement goes into effect on July 1 of the succeeding award year.

(c) *Change to ADS after termination of RDS agreement.* If the institution's RDS agreement is terminated by the Secretary according to § 690.73(a), the Secretary may allow the institution to enter into an ADS agreement.

(20 U.S.C. 1070a)

§ 690.94 Termination of agreement alternate disbursement system.

(a) *Termination by the Secretary.* The Secretary may terminate the agreement with an institution according to the procedures established by Subpart G of the Student Assistance General Provisions (34 CFR Part 668).

(b) *Termination by the Institution.* The institution may terminate the agreement by giving the Secretary written notice. The termination becomes effective on June 30 of the award year in which the institution provides the written notice. The institution shall carry out the agreement for the remainder of the award year.

(c) *Termination because of change in the ownership that results in a change of control.* (1) The agreement terminates when an institution undergoes a change of ownership that results in a change of control.

(2) The Secretary may enter into an agreement with the new owner after the institution complies with the requirements of § 668.18 of the Student Assistance General Provisions regulations (34 CFR 668.18).

(d) *Limitation of agreement.* (1) Instead of terminating the agreement, the Secretary and the institution may jointly agree to limit the agreement.

(2) The Secretary may limit the agreement in accordance with Subpart G of the Student Assistance General Provisions, 34 CFR 668.71–668.88.

(20 U.S.C. 1070a)

§ 690.95 General procedures for receiving payment.

An eligible student attending an ADS institution shall apply for and receive a Pell Grant as follows:

(a)(1) The student shall submit a Student Aid Report (SAR) to the institution within the deadline date for submitting the SAR to the institution set forth in § 690.61(b) and the limitation set forth in § 690.61(c).

(b)(1) Upon receipt of an SAR, the institution shall give the student a Pell Grant request for Payment Form (ED Form 304) which the student uses to request a Pell Grant payment from the Secretary.

(2)(i) On the ED Form 304, the student shall provide his or her name, social security number and address. The address provided by the student must be his or her residence and not the address of the institution, unless the student resides at the school or is incarcerated; in which case the student may use the institution's address; and

(ii) The student shall sign the Statement of Educational Purpose/Registration Compliance (This statement is the same statement set forth in 34 CFR 668).

(3) On the ED Form 304, the institution shall provide information regarding a student's eligibility to receive a Pell Grant, as well as the student's enrollment status, cost of attendance and dates of attendance.

(4) With regard to the student's eligibility for a Pell Grant, the institution shall determine that the student—

(i) Has presented a valid SAR to the institution as required by § 690.61;

(ii) Has met the eligibility requirements set forth in § 690.4;

(iii) Is maintaining satisfactory academic progress in his or her course of study;

(iv) Is not in default on—

(A) A National Defense/Direct Student Loan made by the institution;

(B) A Guaranteed Student Loan or PLUS Program Loan received for attendance at that institution; or

(C) A PLUS Program Loan received by the student as a parent of another student for attendance at that institution; and

(v) Does not owe a refund on a Pell Grant, a Supplemental Grant, or a State Student Incentive Grant received for attendance at that institution. (In determining whether the student owes a refund on a grant, the institution is entitled to rely on information in its possession).

(5) If an institution determined that, at the beginning of a payment period, the student is not maintaining satisfactory academic progress, but reverses the determination before the end of the payment period, the institution may certify ED Form 304 for the entire payment period.

(6) If an institution determines that, at the beginning of a payment period, the student is not maintaining satisfactory academic progress, but reverses the determination after the end of the payment period, the institution may not certify ED Form 304 for that payment period. The Secretary does not make adjustments in subsequent Pell Grant payments to compensate for the loss of Pell Grant aid for that payment period.

(c) If the institution determines that the student has a valid SAR and is eligible for a Pell Grant it shall certify the accuracy of the information it provides on the ED Form 304 and return the SAR and the certified ED Form 304 to the student.

(d) The student shall submit both the valid SAR and the certified ED Form 304 to the Secretary before the deadline date established in § 690.61

(e) Upon receipt of the SAR and the certified ED Form 304 the Secretary calculates a student's award in accordance with Subpart F of this part.

(f)(1) In each payment period, the Secretary pays a student at such times and in such installments as the Secretary determines will best meet the student's needs.

(2) The Secretary makes only one payment to a student if a portion of an academic year occuring within one award period is less than three months.

(3) The Secretary may pay funds due a student for any completed period of enrollment in one lump sum. The student's enrollment status for that period is determined according to work already completed.

(g)(1) The Secretary also sends the student an ADS Student Report (ED Form 304-1). This form—

(i) Notifies the student of the amount of his or her Scheduled Pell Grant, the amount of expected disbursement, and the amount of the first payment; and

(ii) Is used to request subsequent payments from the Secretary during the award year.

(2) The institution shall provide the information requested on the ED Form 304-1 and shall certify that the information included on the ED Form 304-1 is accurate and that the student is eligible for payment.

(3) The student shall submit the certified ED Form 304-1 to the Secretary to receive an additional grant payment before the deadline date established in § 690.61

(20 U.S.C. 1070a)

§ 690.96 Verification of information on the SAR.

(a) An institution shall require a student to verify the information included on his or her SAR if—

(1) Directed to do so by the Secretary;

(2) The institution has documentation which indicates that the information on the SAR used to calculate the student's award is inaccurate; or

(3) The institution believes, but does not have documentation, that the information on the SAR used to calculate the student's award is inaccurate.

(b)(1) If the institution requests that the student verify the information on his or her SAR for the reasons stated in paragraph (a)(1) or (2) of this section, it may not certify the student's ED Form 304 until it is satisfied that the information on the SAR is correct.

(2) If the institution requests that the student verify the information of his or her SAR for the reason stated in paragraph (a)(3) of this section, it shall—

(i) Certify ED Form 304; and

(ii) Notify the Secretary.

(c) If a student is selected for verification under paragraph (a)(1) or (2) of this section the institution shall require a student to submit acceptable documentation in accordance with the procedures in § 690.77 (c) and (d).

(d)(1) If, as a result of the verification process, the SAR needs to be corrected, the student shall correct the SAR by—

(i) Putting accurate information on the SAR;

(ii) Getting the necessary signatures on the SAR; and

(iii) Resubmitting the SAR to the Secretary.

(2) The student shall resubmit the reprocessed SAR he or she receives to the institution.

(3) The institution shall certify ED Form 304 if it is satisfied that the information on the resubmitted SAR is accurate.

(e)(1) If a student submits the verified SAR to the institution before the appropriate deadline specified in § 690.61, the Secretary pays the student the amount of the payment based on the verified SAR.

(2) The student may submit the verified SAR to the institution after the appropriate deadline specified in § 690.61, but within an established additional time period set by the Secretary through publication in the **Federal Register.** If the verified SAR is submitted to the institution during the established period after the deadline, payment is based on—

(i) The original SAR, if the student aid index on the verified SAR is lower than the student aid index on the original SAR; or

(ii) The verified SAR, if the student aid index on the verified SAR is higher than the student aid index on the original SAR.

(3) If the student does not provide the requested documentation, and if necessary a reprocessed, verified SAR, within the established time period—

(i) The student forfeits the Pell Grant for the award year; and

(ii) Any grant payments the student previously received for that award year must be returned to the Secretary.

(f) For situations, including but not limited to suspected fraud or abuse, the Secretary may determine not to process any Pell Grant application for a student until that student has verified the information about which there is a discrepancy or the Secretary decides there is no further need for verification.

(20 U.S.C. 1070a)

§ 690.97 Withdrawals and refunds.

(a)(1) The institution shall notify the Secretary of the date that a student officially or unofficially withdraws or is expelled for a payment period for which the student was paid.

(2) If the institution also participates in any other title IV programs, the institution shall comply with § 668.21 of the Student Assistance General Provisions regulations and provide the Secretary with the information required by § 668.21(a)(3).

(3) For purposes of this section, the date of a student's unofficial withdrawal must be determined under § 668.21(c)(4).

(b) If the date provided by the institution under paragraph (a) of this section is before the mid-point of the payment period for which the student has been paid, the student shall refund a prorated portion of the payment as determined by the Secretary.

(20 U.S.C. 1070a)

§ 690.98 Recovery of overpayments.

(a) The student is liable for any overpayment made to him or her.

(b)(1) The institution is liable for any overpayment made to a student by the Secretary on the basis of inaccurate information provided by the institution.

(2) The institution shall repay to the Secretary the amount of the overpayment for which it is liable even if the overpayment cannot be collected from the student.

(c) If an overpayment is made for which the institution is not liable, the institution shall help the Secretary to recover the overpayment by providing the Secretary with the student's name, social security number, and most recent address, and other relevant information.

(20 U.S.C. 1070a)

§ 690.99 Recalculation of a Pell Grant award.

(a) If the student's expected family contribution changes, the Secretary recalculates his or her Pell Grant award.

(b) The Secretary adjusts the award and pays the student the amount he or she is entitled to for the award year if the expected family contribution is recalculated because of—

(1) A clerical or arithmetic error as described in § 690.13; or

(2) Extraordinary circumstances which effect the expected family contribution as described in §§ 690.39 and 690.48.

(c) If a student's expected family contribution is recalculated because of a correction of the information requested under § 690.96, the student's grant for the award year is adjusted by the Secretary as provided for in § 690.96. Where possible, the adjustment is made within the same award year.

(d) If the recalculation takes place in a subsequent award year, the student—

(1) Is eligible to receive payment unless prohibited under the provisions of § 690.96; and

(2) Shall return any overpayment.

(20 U.S.C. 1070a)

§ 690.100 Maintenance and retention of records.

(a) An institution shall establish and maintain the following:

(1) The Student Aid Report for each student.

(2) A copy of ED Form 304 and Form 304-1 that the institution certifies for each student.

(3) The name and social security number of each student.

(4) The student's cost of attendance.

(5) How the student's full or part-time enrollment status was determined.

(6) The student's enrollment period.

(7) Information collected in compliance with § 690.96.

(8) Information necessary to determine whether the student was eligible to receive a Pell Grant.

(b)(1) For each of its Pell Grant recipients an institution shall maintain records which are—

(i) Systematically organized;

(ii) Maintained for five years after the award year in which the recipient ceased enrollment; and

(iii) Readily available for review by the Secretary or a designated ED official at the geographical location where the student is to receive a degree or certificate of program or course completion.

(2) An institution may substitute micro-file copies for original records in meeting the requirements of this section.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget under OMB control numbers 1840-0132, 1840-0063 and 1840-0008)

§ 690.101 Submission of reports.

An institution shall submit any reports and information the Secretary requires in connection with the participation of an institution in the Alternate Disbursement System.

(20 U.S.C. 1070a)

(Approved by the Office of Management and Budget OMB control number 1840-0025)

[FR Doc. 85-6060 Filed 3-14-85; 8:45 am]
BILLING CODE 4000-01-M

federal register

Friday
March 15, 1985

Part V

Office of Management and Budget

Management of Federal Information Resources; Notice and Request for Public Comment

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Draft OMB Circular No. A——: Request for Public Comment.

SUMMARY: This Circular is intended to provide a general policy framework for management of Federal information resources. The Circular implements provisions of the Paperwork Reduction Act of 1980 as well as other statutes, Executive Orders, and policies concerning general information policy, information technology, privacy, and maintenance of Federal records. The Office of Management and Budget published a notice concerning development of the Circular on September 12, 1983, and received comments and suggestions from the public. This Circular supersedes OMB Circular Nos. A-71, A-90, A-108, and A-121.

DATE: Comments from the public should be submitted no later than May 14, 1985.

ADDRESS: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235 New Executive Office Building, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395-4814.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (hereinafter the Act), Pub. L. 96-511, 94 Stat. 2812, codified at Chapter 35 of Title 44 of the United States Codes, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 of the Act provides authority to the Director, Office of Management and Budget (OMB), to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

This Circular implements OMB authority under the Act with respect to section 3504(b), general information policy, section 3504(e), records management, section 3504(f), privacy, and section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974 (5 U.S.C. 552a); section 111 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); and Executive Order 12046 of March 27, 1978. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other sections of the Paperwork Reduction Act dealing with controlling the reporting and recordkeeping burden placed on the public.

In addition, this Circular revises and consolidates policy and procedures in five existing OMB directives and rescinds these directives.

A-71—Responsibilities for the Administration and Management of Automatic Data Processing Activities
Transmittal Memorandum No. 1 to Circular No. A-71—Security of Federal Automated Information Systems
A-90—Cooperating with State and Local Governments to Coordinate and Improve Information Systems
A-108—Responsibilities for the Maintenance of Records about Individuals by Federal Agencies
A-121—Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities.

Development of this Circular. On September 12, 1983, OMB published a Notice in the **Federal Register**, 48 FR 40964, announcing development of an OMB policy circular on Federal information management and soliciting public comment. The notice stated that OMB was engaged in rewriting the five policy directives above and also solicited public comment on 16 issues going beyond the five policy directives. In response to this notice, by January 1984 OMB received comments from 14 Federal agencies and 39 members of the public. These comments were summarized by OMB and the summary was widely distributed to interested parties. Comments on the notice have been considered in formulating this Circular.

OMB's review of the five existing policy directives led to the conclusion that much, but not all, of their content was procedural in nature, concerned chiefly with how policies were to be carried out. OMB determined that it was important clearly to distinguish the statement of policies from the procedures for implementing those policies. For this reason the main body of this Circular consists of basic considerations and assumptions, policies, and assignments of responsibility; the appendices to this Circular consist of procedures for implementing various policies. OMB developed the main body of this Circular relying upon comments on the **Federal Register** notice as well as other forms of Federal agency and public input, principally meetings with interested parties. For the procedural revisions, OMB relied on the assistance of interagency task groups.

The revised contents of Circular No. A-71, dealing with assignments of responsibilities, are in the main body of this Circular. The contents of Circular No. A-90 are rescinded entirely, with the exception of a policy statement at section 8(b)(17) of this Circular. Revisions of the procedural aspects of the other three policy directives—Transmittal Memorandum No. 1 to A-71, A-108, and A-121—are appendices to this Circular. The appendices will have the same prescriptive force as this Circular and will, when final, be issued as part of this Circular.

On September 17, 1984, the President signed National Security Decision Directive (NSDD) No. 145, National Policy on Telecommunications and Automated Information Systems Security. The NSDD requires that the Director, OMB, review for consistency with the NSDD, and amend as appropriate, OMB Circular No. A-71, Transmittal Memorandum No. 1. The draft Circular and Appendix III are intended to satisfy the NSDD requirement.

Analysis of Key Sections

7. Basic Considerations and Assumptions. Basic considerations and assumptions are statements that provide the underpinnings for the prescriptive policies in section 8. These are either derived from statutes or legislative history, or represent executive branch management philosophy as embodied in this Circular.

—Statements 7-a through 7-d provide the general context for management of Federal information resources.
—Statement 7-e states a general predisposition to use up-to-date information technology to manage Federal information resources.
—Statements 7-f and 7-g pertain to the Privacy Act and the Freedom of Information Act, respectively.
—Statement 7-h pertains to the National Science and Technology Policy, Organization and Priorities Act.
—Statement 7-i pertains to the Federal Records Act.

—Statement 7–j states a relationship between Federal information policy and international information policy.

8. Policies. This section is divided into two subsections that generally correspond to the twofold definition of information resources management in section 6-b, namely, information itself and the resources associated with information.

a. Information Management. The Paperwork Reduction Act acknowledges that information is a valuable resource and should be managed as such. Proceeding from this premise, this subsection states policies concerning the management of Federal information.

(1) and (2). Information Collection and Sharing. Because creation or collection of information requires allocation of scarce resources, agencies must economize on such activities. Agencies must justify the creation or collection of new information in the light of their statutory missions, and must plan from the outset for the steps in the information life cycle. Before creating or collecting new information, agencies should look first to other agencies and the private sector in order to satisfy their needs. These requirements complement the Paperwork Reduction Act and OMB's regulation *Controlling Paperwork Burdens on the Public* (5 CFR Part 1320), which requires agencies to demonstrate that collections of information have practical utility and are not duplicative of information already available to the agency from other sources.

(3) through (6). Privacy Act and Freedom of Information Act. These paragraphs contain policy statements pertaining to the Privacy Act and incorporating the policies of OMB Circular No. A–108, which is rescinded and superseded. Agencies are to ensure that they meet the requirements of the Privacy Act regarding collection of individually identifiable information. Such information is to be maintained and protected so as to preclude intrusion into the privacy of individuals. Individuals must be accorded access and amendment rights to records, as provided in the Privacy Act. Appendix I prescribes procedures for the maintenance of records about individuals in accordance with the Privacy Act.

In addition to Privacy Act considerations, statements (3) and (4) include provisions concerning proprietary information. Agencies are to minimize their collection of proprietary information, consistent with legal requirements and operational necessity and, when such information must be collected, agencies must provide for its protection.

(7). Training. Agency personnel must receive proper training to safeguard information resources. Training is particularly important in view of the changing nature of information resources management. The development of end user computing and office automation, for example, place the management of information and information technology in the hands of nearly all agency personnel rather than in the hands of a few employees at centralized facilities such as large computer centers. Policies and procedures for computer security, records management, protection of privacy, and other safeguards need to be incorporated into information resources management training programs.

(8) and (9). Information Dissemination. The mere fact that an agency has created or collected information is not itself a valid reason for creating a program to disseminate the information to the public. Agencies create and collect much information, often for purely internal governmental purposes, that is not intended for dissemination, for which there is no public demand, and the dissemination of which would serve no public purpose and would not be cost-justified; e.g., compilations of routine time and attendance records for Federal employees, or publication of the thousands of pages common carrier tariff filings by regulatory agencies. While such information may be subject to access upon request under provisions of agency statutes, the Freedom of Information Act, or the Privacy Act, the agency must demonstrate in each case the need actively to disseminate such information. Over time, changes in laws, economic conditions, or information technology can result in changes in public demand, public purpose, or dissemination costs; e.g., an agency's shift to electronic filing of reports might generate a public demand for electronic dissemination that could be satisfied at minimal cost to the government. The decision to disseminate information, however, entails potentially significant costs and must be addressed separately from the decision to create or collect information.

If agencies do contemplate disseminating particular information, they should plan for its dissemination before creating or collecting the information (see 8–a(1)). Planning for dissemination should recognize that, while government information provided to the public should be distributed in a useful form, dissemination activities consume significant economic resources and may not be essential to the government or the public. It is important, therefore, that agencies set strict conditions upon the dissemination function.

The first question an agency must ask itself is whether it should disseminate a given information product or service at all; or, if the agency is already disseminating the product or service, whether it should continue to do so. Before deciding to disseminate an information product or service, and periodically thereafter, an agency must be able to demonstrate that the dissemination of the product or service is either required by law, or is clearly permitted by law and is essential to accomplishing the agency's mission.

Given a statutory and mission-related basis, agencies must also ask themselves whether a proposed or existing information product or service substantially duplicates similar products or services that are already available, either from another agency or from the private sector. More than this, even if the product or service does not presently exist, an agency must ask whether it is reasonable to expect that another organization, public or private, would offer the product or service if the agency did not offer it. It so, then the agency should not disseminate the information product or service. Where possible, agencies should disseminate information products and services through existing programs, such as statutory authorized technical information clearinghouses and the Federal Depository Libraries, rather than creating new programs. (Note that "government publications," as defined at 44 U.S.C. 1902, must be made available through the Federal Depository Libraries.)

When agencies have justified and made the basic decision to disseminate information, they must also satisfy conditions regarding the manner of dissemination. First, agencies must act in the most cost effective manner, which includes maximum reliance on the private sector. This is merely an application of the policy stated in OMB Circular No. A–76, Performance of Commercial Activities, to agency information dissemination programs. It is "the general policy of the government to rely on commercial sources to supply the products and services the government needs," including products and services the government needs in order to disseminate information to the public. For example, before an agency establishes a service for electronic dissemination of government information via an online computer system, the agency should compare the cost of contracting for operation of the service versus in-house performance and determine whether in-house performance is less costly.

Agencies also must take reasonable steps to ensure that members of the public whom the agency has an obligation to reach have a reasonable ability to acquire the information. If the information product or service is of broad public interest, agencies can economize on information dissemination programs and at the same time ensure that the interested public has reasonable opportunity to receive government information by using existing dissemination mechanisms, as noted above. In addition, agencies should take care that they do not permit contractors functioning as sole suppliers for the government to exercise monopolistic controls in ways that defeat the agencies' information dissemination obligations, for example by setting unreasonably high prices. In some cases agencies may need to formulate contractual terms with a sole supplier contractor so that the contractor functions as a mere intermediary for the agency in dealing with end users in the public.

The Federal Government is the sole possessor and supplier of certain types of information, which is frequently of substantial commercial value. Dissemination of such information, or its dissemination in a specific form or medium, may represent a government service from which recipients derive special benefits, in which case they may be subject to OMB Circular No. A-25, User Charges. For example, where the information is already substantially available in printed form, agencies should consider dissemination in electronic form to be service of special benefit, the costs of which should be recovered through user charges. At present, most agencies do not have coherent, agencywide policies and procedures for setting user charges for information products and services with a view to cost recovery. Agencies will not be required to recover costs for information products through user charges, where appropriate. Agencies must also establish procedures for periodically reviewing their information dissemination programs.

b. Information Systems and Information Technology Management. This subsection states policies concerning the planning, acquisition, operation, and management of Federal information systems and technology. The Federal information systems and technology budget, which was $14 billion in FY 1985, is projected to increase at a rate faster than that of the overall Federal budget. With outlays at these levels and agencies becoming increasingly dependent upon information technology to accomplish their missions, it is essential that planning processess be applied to the acquisition and application of information technology.

(1). Planning. The Paperwork Reduction Act mandates a stronger central role in information resources planning. Specifically, the Act requires that OMB: (1) Publish a five-year governmentwide automatic data processing and telecommunications plan; (2) review and coordinate agency proposals for the acquisition and use of information technology; and (3) promote the use of the technology to improve governmental efficiency and effectiveness. In order to meet these objectives, it is necessary to initiate a governmentwide process for developing and institutionalizing information technology planning that is based in agency programs and missions. The planning must also be tied to the budget so that budgetary decisions derive from plans, and conversely, so that budgetary constraints are reflected in the plans. The process must further ensure that sufficient information is available to the central agencies to enable them to monitor compliance with Federal policies and identify major issues, including cross-cutting issues where more active centralized planning and management may be appropriate. Hence, agencies must institute information planning processes tied to both the conduct of programs and the preparation of the agency's budget.

(2) and (3). Management Controls and Accountability. Basic management controls for agency information systems are fundamental to sound information resources management. These controls should ensure the documentation and periodic review of major information systems, as well as periodic cost-benefit evaluation of overall information resources management in light of agency missions. In order to provide greater incentive for management efficiencies, accountability for information systems should be vested in the officials responsible for operating the programs that the systems support.
Program managers depend upon information systems to carry out their programs, and yet frequently they do not have direct control over the technical and operational support for those systems. Program managers often depend upon agency computer centers or contracted service organizations, the heads of which may not be directly accountable to the program managers in a formal organizational sense. Program managers are nonetheless responsible for conducting their programs and, to the extent successful conduct of the programs entails support from information systems, program managers must be held accountable for acquiring that support. The responsibilities of program managers are therefore presumed to include securing information systems support as needed, and planning for contingencies. Technical support organizations have a concomitant responsibility to meet their commitments, contractual or otherwise, to their program clients, but the program official has the ultimate responsibility for delivering a program's product or service.

(4) and (5). Sharing Information Processing Capacity. Circular No. A-121, which is rescinded and superseded, required only that the holder of excess automatic data processing capacity share such capacity. Because the holder of excess capacity has little incentive to seek opportunities for sharing, however, the new policy requires both that the holder share capacity and that the agency seeking information processing capacity fulfill its needs from other agencies or the private sector, whenever possible, before acquiring the new capacity itself. Procedural aspects of these policy statements are found in Appendix II.

(6) and (7). Life Cycle Costing; and Avoiding Duplication. Agencies frequently develop information technology incrementally, through a series of interim upgrades, without regard for longer term considerations such as the information systems' life cycle. As part of their planning, agencies need to consider the full information system life cycle when determining the cost of information technology. Similarly, agency planning should ensure that information systems are not unnecessarily duplicative of systems available elsewhere in government or from the private sector.

(8). Software Management. The prevailing agency practice of developing customized computer software is a source of inefficiency, as the General Accounting Office and others have noted. This practice is excessively costly in terms of initial development, continued maintenance, and eventual conversion to new technology, because it requires the agency to bear the full cost of developing and maintaining the software its uses. Managers are therefore enjoined to acquire generic, off-the-shelf software available from the

private sector instead of developing their own.

(9). Interconnectivity. Agencies often acquire technology that is incapable of communicating with other systems with which the agencies need to communicate. Interconnectivity or compatibility among information systems has consequently emerged as a significant information resources management problem. Agencies must acquire or develop information systems in a manner that enhances necessary compatibility.

(10) through (13). Security. Security of information systems means both the protection of information while it is within the systems and also the assurance that the systems do exactly what they are supposed to do and nothing more. Information system security entails managment controls to ensure the integrity of operations including such matters as proper access to the information in the systems and proper handling of input and output. In this sense, security of information systems is first and foremost a management issue and only secondly a technical problem of computer security.

The recent introduction of smaller and more powerful computer systems and new communications technology and transmission media, together with the greater involvement of end users in managing information resources, have increased the potential vulnerability of Federal information systems and hence the level of management concern. Protecting personal, proprietary, and other sensitive data from unauthorized access or misuse; detecting and preventing computer related fraud and abuse; and assuring continuity of operations of major information systems in the event of emergency related disruptions are increasingly serious policy issues. Policy previously found in Transmittal Memorandum No. 1 to OMB Circular No. A-71 is here revised; procedural aspects of the policy are in Appendix III to the Circular.

The General Accounting Office reported in its review of the first-year implementation of the Federal Managers Financial Integrity Act (FIA) that internal controls in automatic data processing systems received inadequate coverage in FIA evaluations. GAO noted that some agencies were uncertain of the relationship between (a) OMB Circular A-71, Transmittal Memorandum No. 1, Security of Federal Automated Information Systems, and (b) OMB Circular No. A-123, Internal Control Systems. The relationship between security of automated information systems and agency internal control reports is now stated clearly in Appendix III.

(14). Standards. The National Bureau of Standards, Department of Commerce, develops and issues Federal Information Processing Standards, and the National Communications System develops and issues Federal Telecommunications Standards. Some standards are mandatory for Federal agencies, while others are voluntary. Agencies may waive the use of Federal standards under certain conditions and pursuant to certain procedures, which vary depending upon the individual standard. While governmentwide standards can result in management efficiencies, standards can also have the untoward effects of regulations, as noted in OMB Circular No. A-119. Agencies need to be mindful of the regulatory effects of standards, and should continuously assess their relative costs and benefits and their effects upon the agency's accomplishment of its mission.

(15) Avoiding Information Technology Monopolies. Many agencies operate one or more central information technology facilities to support agency programs. In these agencies, program managers are often required to use the central facilities. The manager of such a monopoly facility has a lesser incentive to control costs, since he or she has a captive clientele. The program manager has little leverage to ensure that information processing resources are efficiently allocated since he or she cannot seek, or can seek only with great difficulty, alternative sources of supply. To provide incentives conducive to more businesslike procedures in these facilities, agencies should avoid monopolistic information processing arrangements and should enter into them only if their cost effectiveness is clear and they are subject to periodic review. Appendix II specifies certain procedures with respect to this policy.

(16) Cost Recovery. This policy constitutes a revision to policy stated in OMB Circular No. A-121. Whereas Circular No. A-121 required only that costs for automatic data processing facilities be *allocated* to users, agencies must now *recover* the costs of information technology facilities from government users. Experience with Circular No. A-121 showed OMB that allocating costs had little effect on agencies' behavior; recovering costs means that actual transfers of funds will take place between suppliers and users of information technology facilities. Procedural aspects of the policy appear in Appendix II.

(17) Coordination with State and Local Government. This policy reaffirms policy previously found in Circular No. A-90, Transmittal Memorandum No. 1. The interagency group that worked on the revision of Circular No. A-90 recommended, and OMB agreed, that the Circular should be rescinded except for a single policy statement prohibiting Federal agencies from placing unnecessary restrictions on the information systems that State and local governments use to carry out federally financed program activities.

(18) Application of Up-to-date Information Technology. Recent availability of low cost, highly efficient and effective electronic information technology can greatly increase worker productivity and facilitate operation of Federal agency programs. The Circular states a predisposition, based in the Paperwork Reduction Act, in favor of applying such technology to the information life cycle within a responsible management context. Two broad areas of information technology merit further discussion: (1) Electronic information collection and dissemination, and (2) end user computing.

Electronic Collection and Dissemination of Information. Federal agencies are moving rapidly to provide for collection and dissemination of information through electronic media. In developing this Circular, OMB considered whether it was necessary to provide specific policies concerning electronic collection and dissemination of governmental information. OMB concluded that, except for the general predisposition in favor of applying new technological developments to information resources management, the policies that apply to information collection and dissemination in other media also apply to electronic collection and dissemination. It is important, however, that agencies recognize the necessity of systematically thinking through the application of policies stated elsewhere in this Circular to electronic collection and dissemination of information. For example, when developing electronic collection programs, agencies shall give particular attention to issues such as privacy, public access, and records management. When developing electronic dissemination programs, agencies should ensure that access is provided to each class of users upon reasonable terms, avoid problems arising from monopolistic control, ensure maximum reliance upon the private sector, and take necessary steps for cost accounting and cost recovery.

End User Computing. Federal agencies are also moving rapidly to acquire end user computing capabilities. OMB endorses the managed innovation approach to end user computing presented in GSA's publication *Managing End User Computing in the Federal Government* (June 1983). Because end user computing places management of information in the hands of individual agency personnel rather than in a central automatic data processing organization, the Circular requires that agencies train end users in their responsibilities for safeguarding information; Appendix III deals in part with the security of end user computing.

9. Assignment of Responsibilities. This section assigns responsibilities for the management of Federal information resources addressed in this Circular. OMB Circular No. A-71 is rescinded and its contents are revised and incorporated into this section along with responsibilities assigned under the Paperwork Reduction Act; section III of the Federal Property and Administrative Services Act, as amended; and Executive Order 12046. Certain assignments of responsibility from OMB to other agencies, as noted below, are also included. Following are principal noteworthy aspects of this section.

Triennial Reviews. The Administrator of Information and Regulatory Affairs and the Deputy Administrator of the General Services Administration, in an exchange of correspondence dated June 13 and July 22, 1983, concurred that GSS has the necessary statutory authority to conduct reviews of Federal agency Information Resources Management (IRM) activities. The Paperwork Reduction Act provides that the Director of OMB, ". . . shall with the advice and assistance of GSA selectively review, at least once every three years, the IRM activities of each agency to ascertain their adequacy and efficiency." Separate reviews of agency IRM activities by OMB and GSA would be unnecessarily duplicative, which would not be consistent with the Act. Accordingly, the IRM reviews conducted by GSA will be designed to meet OMB's requirements under the Paperwork Reduction Act as well as GSA's own needs.

Senior Officials for Information Resources Management. In accordance with 44 U.S.C. Chapter 35, agencies are required to designate a senior official to carry out responsibilities under the Paperwork Reduction Act. The designation of the official is intended to assure clear accountability for setting policy for agency information resources management activities, provide for greater coordination among the agency's information activities, and ensure greater visibility of such activities within the agency. The responsibilities of the senior official for information resources management were identified in OMB Bulletin No. 81-21, which has expired. Those responsibilities are now established in this Circular.

International Information Policy. The Circular deals with the management of information resources held by the Federal government. While the creation, collection, processing, transmission, dissemination, use, storage, and disposition of information by the Federal government has international ramifications, Federal government information policy is not the same as "U.S. information policy," which refers to U.S. national interests in the information field vis-a-vis the policies and interests of other nations. The Circular formally acknowledges this distinction and assigns responsibilities for international information policy only insofar as it relates to Federal government information policy.

Timely Technology Procurement. Inherent in effective management of information technology is the ability of program managers to acquire technology in a timely manner. GSA is assigned the responsibility in section 9 to develop cirteria that will streamline procurement procedures and delegate procurement authority to agencies that comply with those procedures. All Federal agencies are directed in section 9 to develop internal policies and procedures that further provide for timely acquisition of information technology

Records Management. The Paperwork Reduction Act makes the management of Federal records an integral part of information resources management. While no new policies are embodied in this Circular, responsibilities have been assigned in order to ensure that agency records management programs are considered within the context of Federal information resources management.

10. *Oversight.* The broad scope of the Circular dictates a strategy of focusing oversight on a series of aspects of information resources management rather than on a single comprehensive reporting scheme. OMB intends to use existing mechanisms, such as the fiscal budget, information collection budget, and management reviews, to examine agency compliance with the Circular. For example, during 1984 the management reviews for the FY 1986 budget year concentrated on five cross-cutting information issues: overall information resources management strategy, telecommunications, software management, "electronic filing," and end user computing. OMB issued date call bulletins requesting information specific to these issues, targeted the issues for special attention during the management reviews, and requested individual agencies to submit management improvement plans on specific aspects of the issues. Pursuit of this kind of selective oversight strategy permits OMB and the agencies the flexibility to shift the focus of oversight as information issues and the technological environment changes.

Darrell A. Johnson,

Acting Deputy Associate Director for Administration.

CIRCULAR NO A- ——

To the heads of Executive Departments and Establishments

Subject: Management of Federal Information Resources

1. *Purpose:* This Circular establishes policy for the management of Federal information resources. Procedural guidelines for implementing specific aspects of these policies are included as appendices.

2. *Rescissions:* This Circular rescinds OMB Circulars No. A-71, A-90, A-108, and A-121, and all Transmittal Memoranda to those Circulars.

3. *Authorities:* This Circular is issued pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a), section 111 of the Federal Property and Administrative Services Act of 1949 as amended (40 U.S.C. 759), the Budget and Accounting Act of 1921 as amended (31 U.S.C. 11), and Executive Order 12046 of March 27, 1978.

4. *Applicability and Scope:*

a. The policies in this Circular apply to the information activities of all agencies of the executive branch of the Federal government.

b. Information classified for national security purposes should also be handled in accordance with the appropriate national security directives.

5. *Background:* The Paperwork Reduction Act (hereinafter the Act) establishes a broad mandate for agencies to perform their information management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the Act requires that the Director of the Office of Management and Budget (OMB) develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to

determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

6. *Definitions*: As used in this circular—

a. The term "agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government excluding the Executive Office of the President with the exception of the Office of Management and Budget and the Office of Administration, or any independent regulatory agency.

b. The term "information" means any communication or reception of knowledge such as facts, data, or opinions, including numerical, graphic, or narrative forms, whether oral or maintained in any medium, including computerized data bases, paper, microform, or magnetic tape.

c. The term "government information" means information created, collected, processed, transmitted, disseminated, used, stored, or disposed of by the Federal government.

d. The term "information system" means the organized collection, processing, and transmission of information in accordance with defined procedures, whether automated or manual.

e. The term "major information system" means an information system that requires special continuing management attention because of its importance to an agency mission; its high development, operating or maintenance costs; or it significant impact on the administration or agency programs, finances, property, or other resources.

f. The term "access to information" refers to the function of providing to members of the public, upon their request, the government information to which they are entitled under law.

g. The term "dissemination of information" refers to the function of distributing government information to the public whether through printed documents, or electronic or other media. "Dissemination of information" does not include intra-agency use of information, interagency sharing of information, or responding to requests for "access to information."

h. The term "information technology" means the hardware and software used in connection with government information, regardless of the technology involved, whether computers, telecommunications, micrographics, or others.

i. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function or which is the operation of information technology.

j. The term "information resources management" means the planning, budgeting, organizing, directing, training, and control associated with government information. The term encompasses both information itself and the related resources, such as personnel, equipment, funds, and technology.

Other definitions splecific to the subjects of the appendices appear in the appendices.

7. *Basic Considerations and Assumptions*:

a. The Federal government is the largest single producer, consumer, and disseminator of information in the United States. Because of the size of the government's information activities, the management of Federal information resources is an issue of continuing importance to the public and to the government itself.

b. Government information is a valuable resource. It is an essential tool for managing the government's operations, provides citizens with knowledge of their society, and is a commodity with economic value in the marketplace.

c. The value of government information to the government is solely a function of the degree to which the information contributes to achieving agencies' missions.

d. The public and private benefits derived from government information must exceed the public and private costs of the information.

e. The use of up-to-date information technology offers opportunities to improve the management of government programs, and access to, and dissemination of, government information.

f. The public's right to access to government information must be protected in the management of Federal agency records.

g. The individual's right to privacy must be protected in Federal Government information activities involving personal information.

h. The open and efficient exchange of government scientific and technical information, subject to applicable national security controls and proprietary rights others may have in such information, fosters excellence in scientific research and the effective use of Federal research and development funds.

i. The value of preserving government records is a function of the degree to which preservation protects the legal and financial rights of the government or its citizens, and provides an official record of Federal agency activities for agency management and historical purposes.

j. Federal Government information policies and activities can affect, and be affected by, the information policies and activities of other nations.

8. *Policies*:

a. *Information Management*. Agencies shall:

(1) Create or collect only that information necessary to achieve agency mission objectives and only after planning for its processing, transmission, dissemination, use, storage, and disposition;

(2) Seek to satisfy new information needs through interagency or intergovernmental sharing of information or through commercial sources before creating or collecting new information;

(3) Limit the collection of individually identifiable information and proprietary information to that which is legally authorized and necessary to achieve agency mission objectives;

(4) Maintain and protect individually identifiable information and proprietary information in a manner that precludes:

(a) Unwarranted intrusion upon personal privacy (see Appendix I); and

(b) Violation of obligations of confidentiality;

(5) Provide individuals with reasonable access to, and the ability to amend errors in, systems of records, consistent with the Privacy Act;

(6) Provide public access to government information, consistent with the Freedom of Information Act;

(7) Ensure that agency personnel are trained to safeguard information resources;

(8) Disseminate government information products and services only where:

(a) Dissemination is either required by law, or

(b) Dissemination is essential to the agency's accomplishing its mission, and the products or services do not duplicate similar products or services that are already provided by other government or private sector organizations, or that could reasonably be expected to be provided by them in the absence of agency dissemination;

(9) Disseminate government information products and services, when the above conditions are met:

(a) In a manner that reasonably ensures the information will reach the members of the public the agency is responsible for reaching;

(b) In the manner most cost effective for the government, including placing maximum feasible reliance on the private sector for the dissemination of the products or services;

(c) So as to recover costs of disseminating the products or services through user charges, where appropriate, in accordance with OMB Circular No. A-25; and

(d) Only after establishing procedures for periodically reviewing the continued need for and manner of dissemination of the products or services.

b. *Information Systems and Information Technology Management.* Agencies shall:

(1) Establish multiyear strategic planning processes for acquiring and operating information technology that meet program and mission needs, reflect budget contraints, and form the bases for their budget requests;

(2) Establish systems of management control that document the requirement that each major information system is intended to serve; and provide for periodic review of those requirements over the life of the system in order to determine whether the requirements continue to exist and the system continues to meet the purposes for which it was developed;

(3) Make the official whose program an information system supports responsible and accountable for the products of that system;

(4) Meet information processing needs through interagency sharing and from commercial sources before acquiring new information processing capacity;

(5) Share available information processing capacity with other agencies to the extent practicable and legally permissible;

(6) Acquire information technology in a competitive manner that minimizes total life cycle costs;

(7) Ensure that existing and planning major information systems do not unnecessarily duplicate information systems available from other agencies or from the private sector;

(8) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented;

(9) Acquire or develop information systems in a manner that facilitates interconnectivity;

(10) Assure that information systems operate effectively and accurately;

(11) Establish a level of security for all agency information systems commensurate with the sensitivity of the information and the risk and magnitude of loss or harm that could result from improper operation of the information systems (See Appendix III);

(12) Assure that only authorized personnel have access to information systems;

(13) Plan to provide information systems with reasonable continuity of support should their normal operations be disrupted in an emergency;

(14) Use Federal Information Processing and Telecommunications Standards except where it can be demonstrated that the costs of using a standard exceed the benefits or the standard will impede the agency in accomplishing its mission;

(15) Not require program managers to use specific information technology facilities or services unless it is clear and is convincingly documented, subject to periodic review, that such use is the most cost effective method for meeting program requirements;

(16) Account for the full costs of operating information technology facilities and recover such costs from government users as provided in Appendix II;

(17) Not prescribe Federal Information system requirements that unduly restrict the prerogatives of heads of State and local government units;

(18) Seek opportunities to improve the operation of government programs or to realize savings for the government and the public through the application of up-to-date information technology to government information activities.

9. *Assignment of Responsibilities:*

a. *All Federal Agencies.* The head of each agency shall:

(1) Have primary responsibility for managing agency information resources;

(2) Ensure that the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB are implemented appropriately within the agency;

(3) Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in the Circular;

(4) Develop agency policies and procedures that provide for timely acquisition of required information technology;

(5) Maintain an inventory of the agencies' major information systems and information dissemination programs;

(6) Maintain a record of agency activities in accordance with the Federal Records Act of 1950, as amended.

(7) Identify to the Director, OMB, statutory, regulatory, and other impediments to efficient management of Federal information resources and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

(8) Assist OMB in the performance of its functions under the Paperwork Reduction Act, including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

(9) Appoint a senior official, who shall report directly to the agency head, to carry out the responsibilities of the agency under the Paperwork Reduction Act. The head of the agency shall keep the Director, OMB, advised as to the name, title, authority, responsibilities, and organizational resources of the senior official. For purposes of this paragraph military departments and the Office of the Secretary of Defense may each appoint one official.

b. *Department of State.* The Secretary of State shall:

(1) Advise the Director, OMB, on the development of United States positions and policies on international information policy issues affecting Federal government information activities and ensure that such positions and policies are consistent with Federal information policy;

(2) Ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international information technology standards, and advise the Director, OMB, of such activities.

c. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology;

(2) Advise the Director, OMB, on the development of policies relating to the procurement and management of Federal telecommunications resources;

(3) Provide OMB and the agencies with scientific and technical advisory services relating to the development and use of information technology;

(4) Conduct studies and evaluations concerning telecommunications technology, and concerning the improvement, expansion, testing, operation, and use of Federal telecommunications systems and advise the Director, OMB, and appropriate agencies of the recommendations that result from such studies;

(5) Develop, in consultation with the Secretary of State and the Director, OMB, plans, policies, and programs relating to international

telecommunications issues affecting government information activities;

(6) Identify needs for standardization of telecommunications and information processing technology, and develop standards, in consultation with the Executive Agent, National Communications System and the Administrator of General Services, to ensure efficient application of such technology;

(7) Ensure that the Federal government is represented in the development of national and, in consultation with the Secretary of State, international information technology standards, and advise the Director, OMB, of such activities.

d. *General Services Administration (GSA).* The Administrator of General Services shall:

(1) Advise the Director, OMB, and agency heads on matters affecting the procurement of information technology;

(2) Coordinate and, when required, provide for the purchase, lease, and maintenance of information technology required by Federal agencies;

(3) Develop criteria for timely procurement of information technology and delegate procurement authority to agencies that comply with the criteria;

(4) Provide guidelines and regulations for Federal agencies on the acquisition, use, maintenance, and disposition of information technology;

(5) Develop policies and guidelines that facilitate the sharing of information technology among agencies as required by this Circular;

(6) Review agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act and report the results to the Director, OMB;

(7) Manage the Automatic Data Processing Fund and the Federal Telecommunications Fund in accordance with the Federal Property and Administrative Services Act, as amended;

(8) Establish procedures for approval, implementation, and dissemination of Federal telecommunications standards and guidelines and for implementation of Federal Information Processing Standards.

e. *National Communications System.* The Executive Agent, National Communications System, shall develop, in consultation with the Administrator of General Services, uniform Federal telecommunications standards and guidelines to ensure national security, emergency preparedness, and continuity of government.

f. *Office of Personnel Management.* The Director, Office of Personnel Management, shall:

(1) Develop and conduct training programs for Federal personnel on information resources management, including end user computing;

(2) Evaluate periodically future personnel management and staffing requirements for Federal information resources management;

(3) Establish personnel security policies and develop training programs for Federal personnel associated with the design, operation, or maintenance of information systems.

g. *National Archives and Records Administration.* The Archivist of the United States shall:

(1) Administer the Federal records management program in accordance with the National Archives and Records Act;

(2) Assist the Director, OMB, in developing standards and guidelines relating to the records management program.

h. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Provide overall leadership and coordination of Federal information resources management within the Executive Branch;

(2) Serve as the President's principal adviser on procurement and management of Federal telecommunications systems, and develop and establish policies for procurement and management of such systems;

(3) Issue policies, procedures, and guidelines to assist agencies in achieving integrated, effective, and efficient information resources management;

(4) Initiate and review proposals for changes in legislation, regulations, and agency procedures to improve Federal information resources management;

(5) Review and approve or disapprove agency proposals for collection of information from the public, as defined in 5 CFR 1320.7;

(6) Develop and publish annually, in consultation with the Administrator of General Services, a five-year plan for meeting the information technology needs of the Federal government;

(7) Evaluate agencies' information resources management and identify cross-cutting information policy issues through the review of agency information programs, information collection budgets, information technology acquisition plans, fiscal budgets, and by other means;

(8) Provide policy oversight for the Federal records management function conducted by the National Archives and Records Administration and coordinate records management policies and programs with other information activities;

(9) Review, with the advice and assistance of the Administrator of General Services, selected agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act;

(10) Review agencies' policies, practices, and programs pertaining to the security, protection, sharing, and disclosure of information, in order to ensure compliance with the Privacy Act and related statutes;

(11) Resolve information technology procurement disputes between agencies and the General Services Administration pursuant to section 111 of the Federal Property and Administrative Services Act;

(12) Review proposed U.S. government position and policy statements on international issues affecting Federal government information activities and advise the Secretary of State as to their consistency with Federal information policy.

10. *Oversight.* The Director, OMB, will use information technology planning reviews, fiscal budget reviews, information collection budget reviews, management reviews, GSA reviews of agency information resources management activities, and such other measures as he deems necessary to evaluate the adequacy and efficiency of each agency's information resources management and compliance with this Circular.

Appendix I: Federal Agency Responsibilities for Maintaining Records about Individuals
Appendix II: Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities
Appendix III: Security of Federal Automated Information Systems

David A. Stockman,
Director.

Appendix I—Federal Agency Responsibilities for Maintaining Records about Individuals

1. *Purpose and Scope.* This appendix describes agency responsibilities for implementing the Privacy Act of 1974, 5 U.S.C. 552a as amended (hereinafter "the Act"). It applies to all agencies subject to the Act. The appendix constitutes a revision to procedures formerly contained in OMB Circular No. A-108, now rescinded.

2. *Definitions.*

a. The terms "agency," "individual," "maintain," "record," "system of records," and "routine use," as used in this appendix, are defined in the Act (5 U.S.C. 552a(a)).

b. The term "minor change to a system of records" means a change that does not significantly change the system; that is, does not affect the character or purpose of the system and does not affect the ability of an individual to gain access to his or her record or to any information pertaining to him or her which is contained in the system; e.g., changing the title of the system manager.

3. *Assignment of Responsibilities.*

a. *All Federal Agencies.* In addition to meeting the agency requirements contained in the Act, and the specific reporting requirements detailed in this appendix, the head of each agency shall ensure that the following reviews are conducted as often as specified below, and be prepared to report to the Director, OMB, the results of such reviews and the corrective action taken to resolve problems uncovered. The head of each agency shall:

(1) *Section (m) Contracts.* Review every five years a random sample of agency contracts that provide for the maintenance of a system of records on behalf of the agency to accomplish an agency function, in order to ensure that the wording of each contract makes the provisions of the Act apply. (5 U.S.C. 552a(m)(1))

(2) *Recordkeeping Practices.* Review annual agency recordkeeping and disposal policies and practices in order to assure compliance with the Act.

(3) *Routine Use Disclosures.* Review every three years the routine use disclosures associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the disclosing agency originally collected the information.

(4) *Exemption of Systems of Records.* Review every three years each system of records for which an exemption from any provision of the Act has been asserted in order to determine whether such exemption is still needed.

(5) *Matching Programs.* Review annually each ongoing matching program in which the agency has participated during the year, either as a source or as a matching agency, in order to ensure that the requirements of the Act, the OMB Matching Guidelines, and the OMB Model Control System and Checklist have been met.

(6) *Privacy Act Training.* Review annually agency training practices in order to ensure that all agency personnel are familiar with the requirements of the Act, with the agency's implementing regulation, and with any special requirements that their specific jobs entail.

(7) *Violations.* Review annually the actions of agency personnel that have resulted either in the agency being found civilly liable under section (g) of the Act, or an employee being found criminally liable under the provisions of section (i) of the Act, in order to determine the extent of the problem and to find the most effective way to prevent recurrences of the problem.

b. *Department of Commerce.* The Secretary of Commerce shall, consistent with guidelines issued by the Director, OMB, develop and issue standards and guidelines for assuring the security of automated information systems.

c. *General Services Administration.* The Administrator of General Services shall, consistent with guidelines issued by the Director, OMB, issue instructions on what agencies must do in order to comply with the requirements of section (m) of the Act when contracting for the operation of a system of records to accomplish an agency purpose.

d. *Office of Personnel Management.* The Director of the Office of Personnel Management shall, consistent with guidelines issued by the Director, OMB:

(1) Develop and maintain governmentwide standards and procedures for civilian personnel information processing and recordkeeping directives to assure conformance with the Act.

(2) Develop and conduct training programs for agency personnel, including both the conduct of courses in various substantive areas (e.g., legal, administrative, information technology) and the development of materials that agencies can use in their own courses. The assignment of this responsibility to OPM does not affect the responsibility of individual agency heads for developing and conducting training programs tailored to the specific needs of their own personnel.

e. *National Archives and Records Administration.* The Archivist of the United States shall, consistent with guidelines issues by the Director, OMB:

(1) Issue instructions on the format of the agency notices and rules required to be published under the Act.

(2) Compile and publish annually the rules promulgated under 5 U.S.C. 552a(f) and agency notices published under 5 U.S.C. 552a(e)(4) in a form available to the public.

(3) Issue procedures governing the transfer of records to Federal Records Centers for storage, processing, and servicing pursuant to 44 U.S.C. 3103. For purposes of the Act, such records are considered to be maintained by the agency that deposited them. The Archivist may disclose deposited records only according to the access rules established by the agency that deposited them.

(4) Provide annually to the Director, OMB, a listing of Privacy Act publication activities, for the previous calendar year, of each agency subject to the Act. This listing shall include the number of new systems of records published, the number of amended systems, the number of exemptions, and the number of uses.

f. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Issue guidelines and directives to the agencies to implement the Act.

(2) Assist the agencies, at their request, in implementing their Privacy Act programs.

(3) Review the new and altered system reports agencies submit pursuant to section (o) of the Act.

(4) Compile the annual report of the President to the Congress in accordance with section (p) of the Act.

4. *Reporting Requirements.*

a. *Privacy Act Annual Reports.* Agencies shall submit a Privacy Act Annual Report to the Director, OMB, covering their Privacy Act activities for the calendar year. The format and timing of the report will be established by the Director, OMB. (5 U.S.C. 552a (p)).

b. *New and Altered System Reports.* The Act requires agencies to publish notices in the **Federal Register** describing new or altered systems or records, and to submit reports on these systems to the Director, OMB, and to the Congress.

(1) *Altered System of Records.* Minor changes to systems of records need not be reported. The following changes are those for which a report is required:

(a) An increase or change in the number of types of individuals on whom records are maintained. For example, a decision to expand a system that originally covered only residents of public housing in major cities to cover such residents nationwide would require a report. Increases attributable to normal growth should not be reported.

(b) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would require a report.

(c) A change that alters the purpose for which the information is used.

(d) A change to equipment configuration (either hardware or software) that creates substantially greater access to the records in the systems. For example, locating interactive terminals at regional offices for accessing a system formerly accessible only at the headquarters would require a report.

(e) The addition of an exemption (pursuant to sections (j) or (k) of the Act). Note that, in submitting a rulemaking for an exemption as part of a report of a new or altered system, agencies will meet the reporting requirements of Executive Order 12291 and need not make a separate submission under that order.

When an agency makes a change to an information technology installation, telecommunication network, or any other general changes in information collection, processing, dissemination, or storage that affect multiple systems of records, it may submit a single consolidated new or altered system report, with changes to existing notices and supporting documentation included in the submission.

(2) *Contents of the Report.* The report for a new or altered system has three elements: a transmittal letter, a narrative statement, and supporting documentation that includes a copy of the proposed **Federal Register** notice. There is no prescribed format for either the letter or the narrative statement. The notice must appear in the format prescribed by the Office of the Federal Register's *Document Drafting Handbook.*

(a) *Transmittal Letter.* The transmittal letter should be signed by the senior agency official responsible for implementation of the Act within the agency and should contain the name and telephone number of the individual who can best answer questions about the system. The letter should contain the agency's assurance that the proposed system does not duplicate any existing agency systems. It should also state that a copy of the report has been distributed to the Speaker of the House and the President of the Senate as the Act requires. The letter may also include requests for waiver of the reporting time period.

(b) *Narrative Statement.* the narrative statement should be brief. It should make reference, as appropriate, to information in the supporting documentation rather than restating such information. The statement should:

(*1*) Identify the authority under which the system is maintained. The agency should avoid citing housekeeping statutes, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information. When the system is being operated to support an agency housekeeping program, e.g., a carpool locator, the agency may, however, cite a general housekeeping statute that authorizes the agency head to keep such records as are necessary.

(*2*) Provide the agency's evaluation of the probable or potential effects of the proposal on the privacy of individuals.

(*3*) Describe the relationship of the proposal, if any, to the other branches of the Federal Government and to State and local governments.

(*4*) Provide a brief description of the steps taken by the agency to minimize the risk of unauthorized access to the system of records. A more detailed assessment of the risks and specific administrative, technical, procedural, and physical safeguards established shall be made available to OMB upon request.

(*5*) Explain how each proposed routing use satisfies the compatability requirement of subsection (a)(7) of the Act.

(c) *Supporting Documentation.* Attach the following to all new or altered system reports:

(*1*) An advance copy of the new or altered system notice (consistent with the provisions of 5 U.S.C. 552a(e)(4)) that the agency proposes to publish for the new or altered system. For proposed altered systems the documentation should be in the same form as the agency proposes to publish in the public notice.

(*2*) An advance copy of any new rules or changes to published rules (consistent with the provision of 5 USC 552a(f), (j), and (k)) that the agency proposes to issue for the new or altered system. If no changes to existing rules are required, the report shall so state. Proposed changes to existing rules shall be provided in the same form as the agency proposes to publish for formal rulemaking.

(*3*) OMB control numbers, expiration dates, and titles of any OMB approved information collection requirements contained in the system of records. If the request for OMB clearance of an information collection is pending, the agency may simply state the title of the collection and the date it was submitted for OMB clearance.

(3) *Timing and Distribution for Submitting New and Altered System Reports.* Submit reports on new and altered systems of records not later than 60 days prior to establishment of a new system or the implementation of an altered system (5 U.S.C. 552a(o)). Submit three copies of each report to:

President of the Senate, Washington, D.C. 20510

Speaker of the House of Representatives, Washington, D.C. 20515

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

Agencies may assume that OMB concurs in their proposal if OMB has not commented within 60 days from the date the transmittal letter was signed. Agencies may publish system and routine use notices as well as exemption rules in the **Federal Register** at the same time that they send the new or altered system report to OMB and the Congress. The 60 day period for OMB and Congressional review and the 30 day notice and comment period for routine uses and exemptions will then run concurrently.

(4) *Waivers of Report Time Period.* The Director, OMB, may grant a waiver of the 60 day period if the agency asks for the waiver and can demonstrate compelling reasons. Agencies may assume that OMB concurs in their request if OMB has not commented within 30 days of the date the transmittal letter was signed. When a waiver is granted, the agency is not thereby relieved of any other responsibility or liability under the Act. Note that OMB cannot waive time periods specifically established by the Act. Agencies will still have to meet the statutory notice and comment periods required for establishing a routine use or claiming an exemption.

Appendix II—Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities

1. *Purpose.*

This appendix establishes procedures for cost accounting, cost recovery, and interagency sharing of Federal information technology facilities. The appendix revises procedures formerly contained in OMB Circular No. A-121, now rescinded.

2. *Applicability.*

This appendix applies to all information technology facilities that are operated by, or on behalf of, a Federal agency; provide service to more than one user; operate one or more general management computers; and have obligations in excess of $100,000 per year.

3. *Definitions.*

a. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology. An information technology facility includes:

(1) The personnel who operate computers or telecommunications systems; develop or maintain software; provide user liaison and training; schedule computers, prepare and control input data; control, reproduce, and distribute output data; maintain tape and disk libraries; provide security, maintenance, and custodial services; and directly manage or provide direct administrative support to personnel engaged in these activities.

(2) The owned or leased computer and telecommunications hardware, including central processing units; associated peripheral equipment such as disk drives, tape drives, drum storage, printers, card readers, and consoles; data entry equipment; data reproduction, decollation, booking, and binding equipment; telecommunications equipment used for the transfer of data between remote sites and the facility including telecommunications control units, terminals, modems, and dedicated telephone lines.

(3) The software, including operating system software, utilities, sorts, language processors, access methods, data base processors, and other similar multi-user software required by the facility for support of the facility and/or for general use by users of the facility. All software acquired or maintained by users of the facility is excluded.

(4) The physical facilities, including computer rooms; tape and disk libraries; stockrooms and warehouse space; office space; physical fixtures.

b. The term "full costs" means all significant expenses incurred in the operation of an information technology facility. The following cost elements are included:

(1) Personnel, including salaries, overtime, and fringe benefits of civilian and military personnel; training; and travel.

(2) Equipment, including depreciation for owned, capitalized equipment; rental costs; lease costs; and direct expenses for noncapitalized equipment.

(3) Software, including depreciation for capitalized costs of developing, converting, or acquiring software; rental costs for software; and direct expenses for noncapitalized acquisition of software.

(4) Supplies, including office supplies; data processing materials; and miscellaneous expenses.

(5) Contracted services, including technical and consulting services; equipment maintenance; data entry support; operations support; facilities management; maintenance of software; and telecommunications network services.

(6) Space occupancy, including rental and lease of buildings, general office furniture, and equipment; building maintenance; heating, air conditioning and other utilities; telephone services; and building security and custodial services.

(7) Intra-agency services, including the costs of normal agency support services, that are paid by the installation.

(8) Interagency services, including the costs of services provided by other agencies and departments, that are paid by the installation.

c. The term "user" means an organizational or programmatic entity that receives service from an information technology facility. A user may be either internal or external to the agency organization responsible for the facility.

d. The term "general management computer" means a digital computer that is used for any purpose other than as a part of a process control system, space system, mobile system, or a system meeting one of the exclusions identified in the Department of Defense Authorization Act of 1982.

4. *Cost Accounting, Cost Recovery, and Interagency Sharing for Information Technology Facilities.*

a. *Interagency Sharing.* Agencies shall:

(1) Share their information technology facilities with users from other agencies to the maximum extent feasible.

(2) Document sharing arrangements, where the total annual reimbursement exceeds $500,000, with individual written agreements that identify:

(a) Services available for sharing;

(b) Service priority procedures and terms (e.g., quality performance standards) to be provided to each user;

(c) Prices to be charged for providing services;

(d) Reimbursement arrangements for services provided;

(e) Arrangements for terminating the sharing agreement;

(3) Provide standard terms and conditions to users obtaining similar services insofar as possible.

(4) Use such sharing arrangements, when fully documented and part of a formal sharing program, in justifications to OMB for resource requests and allocations only where exceptional circumstances preclude the user agency from using alternative sources.

b. *Cost Accounting.* Agencies shall:

(1) Assure that agency cost accounting procedures are consistent with the Federal Government Accounting Pamphlet No. 4, "Guidelines for Accounting for Automatic Data Processing" (U.S. General Accounting Office, 1978), for the operation of information technology facilities where estimated full costs exceed $3 million per year

(2) Make annual estimates, using cost finding techniques, of the full costs of operating facilities where estimated costs are less than $3 million per year.

c. *User Cost Distribution System.* Agencies shall implement a user cost system to distribute the full cost of providing services. The user cost system will:

(1) Be consistent with guidance provided in the Federal Government Accounting Pamphlet No. 4 and in the Federal Information Processing Standards Publication No. 96, "Guidelines for Developing and Implementing a Charging System for Data Processing Services" (National Bureau of Standards, Department of Commerce, 1982).

(2) Price each service provided by the facility to the users of that service on an equitable cost sharing basis commensurate with the amount of resources required to provide that service and the priority of service provided. The cost of individual transactions may be estimated provided that they are periodically reconciled to assure that the full costs of operations are equitably allocated among all users. Fixed price arrangements for services during a specified period of time are permissable provided that such prices are periodically adjusted to assure an equitable allocation of costs.

(3) Directly distribute to the recipient of the services the full costs of dedicated services, including application systems developed and maintained; software unique to a single application; and remote terminals and modems.

d. *Cost Recovery.* Agencies shall:

(1) Submit periodic statements to all users of agency information technology facilities specifying the costs of services provided;

(2) Recover full costs from Federal users of the facility; and

(3) Recover costs from nonfederal users of the facilities consistent with OMB Circular No. A-25.

e. *Accounting for Reimbursements Received.* Agencies shall:

(1) Reduce agency budget and appropriation requests by the amount of planned reimbursements from shared information technology facilities;

(2) Prepare, at the close of each fiscal year a report that documents in the agency's official records the full cost of operating information technology facilities that recover more than $500,000 per year from sharing reimbursements. The report should document past year

costs and provide estimates for the current and budget years;

(3) Deposit to the U.S. Treasury as miscellaneous receipts the excess of reimbursements over full costs in any fiscal year; and

(4) Use, at agency discretion, the portion of reimbursements arising from equipment and software depreciation for the replacement and augmentation of information technology capital assets, provided such usage is specifically approved as part of the budget and appropriation.

5. *Selection of Information Technology Facilities to Support New Applications. In selecting information technology facilities to support new applications, agencies shall establish a management control procedure for determining which facility will be used to support each significant application. This procedure shall ensure that:*

(a) All alternative facilities are considered, including other Federal agency and nonfederal facilities and services;

(b) Agency rules do not require that priority be given to the use of in-house facilities;

(c) The user of the application has primary responsibility for selecting the facility; and

(d) Each selection decision is documented in the agency's official records.

6. *Assignment of Responsibilities.*

a. *All Federal Agencies.* The head of each agency shall:

(1) Establish policies and procedures and assign responsibilities to implement the requirements of this appendix; and

(2) Ensure that contracts awarded for the operation of compliance with the requirements of this appendix.

b. *General Services Administration.* The Administratior of General Services shall:

(1) Ensure that information technology facilities designated as Federal Data Processing Centers comply with the procedures established by this appendix;

(2) Ensure that provisions consistent with this appendix are included in contracts for the operation of information technology facilities when acquiring services of behalf of an agency;

7. *Implementation Requirements.* Agencies shall implement the provisions of this appendix within 180 days of the publication of this Circular.

Appendix III—Security of Federal Automated Information Systems

1. *Purpose.* This appendix establishes a minimum set of controls to be included in Federal automated information systems security programs; assigns responsibilities for the security of agency automated information systems; and clarifies the relationship between such agency security programs and internal control systems established in accordance with OMB Circular No. A–123, Internal Control Systems. The appendix revises procedures formerly contained in Transmittal Memorandum No. 1 to OMB Circular No. A–71, now rescinded, and incorporates provisions from applicable national security directives.

2. *Definitions.*

a. The term "automated information system" means an information system (defined in section 6d of the Circular) that is automated.

b. The term "information technology installation" means one or more computer or office automation systems including related telecommunications, peripheral and storage units, central processing units, and operating and support system software. Information technology installations may range from information technology facilities such as large centralized computer centers to individual stand-alone microprocessors such as personal computers.

c. The term "sensitive data" means data that require protection due to the risk or magnitude or loss or harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the data. The term includes records about individuals requiring protection under the Privacy Act, proprietary data, and data not releasable under the Freedom of Information Act, as well as agency data that affect the agency's mission.

d. The term "sensitive application" means an application of information technology that requires protection because it processes sensitive data, or because of the risk and magnitude of loss or harm that could result from improper operation or deliberate manipulation of the application.

e. The term " security specifications" means a detailed description of the safeguards required to protect a sensitive application.

3. *Automated Information Systems Security Programs.* Agencies shall assure an adequate level of security for all agency automated information systems, whether maintained in-house or commercially. Specifically, agencies shall:

—Assure that automated information systems operate effectively and accurately;

—Assure that there are appropriate technical, personnel, administrative, environmental, and telecommunications safeguards in automated informations systems; and

—Assure the continuity of operation of automated information systems that support critical agency functions.

Agencies shall implement an automated information systems security program, including the preparation of policies, standards, and procedures. This program will be consistent with governmentwide policies, procedures, and standards issued by the Office of Management and Budget, the Department of Commerce, the Department of Defense, the General Services Administration, and the Office of Personnel Management. Agency programs shall, at a minimum, include three primary elements: applications security, personnel security, and information technology installation security.

a. *Applications Security.*

(1) *Management Control Process and Sensitivity Evaluation.* Agencies shall establish a management control process to assure that appropriate administrative, physical, and technical safeguards are incorporated into all new applications, and into significant modifications to existing applications. Management officials who are the primary users of applications should evaluate the sensitivity of new or existing applications being substantially modified. For those applications considered sensitive, the management control process shall, at a minimum, include security specifications and design reviews and systems tests.

(a) *Security Specifications.* Agencies shall define and approve security requirements and specifications prior to acquiring or starting formal development of the applications. The results of risk analyses performed at the information technology installation where the applications will be processed should be taken into account when defining and approving security specifications for the applications. Other vulnerabilities of the applications, such as in telecommunications links, shall also be considered in defining security requirements. The views and recommendations of the information technology user organization, the information technology installation, and the individual responsible for security at the installation shall be considered prior to the approval of security specifications for the applications.

(b) *Design Reviews and System Tests.* Agencies shall conduct and approve design reviews and system tests, prior to placing the application into operation, to assure the proposed design meets the approved security specifications. The objective of the system tests should be to verify that required administrative, technical, and physical safeguards are operationally adequate. The results of the design reviews and system tests shall be fully documented and maintained in the official agency records.

(c) *Certification.* Upon completion of the system tests, an agency official shall certify that the system meets all applicable Federal policies, regulations, and standards, and that the results of the tests demonstrate that the installed security safeguards are adequate for the application.

(2) *Periodic Review and Recertification.* Agencies shall conduct periodic audits or reviews of sensitive applications and recertify the adequacy of security safeguards. Audits or reviews shall evaluate the adequacy of implemented safeguards, assure they are functioning properly, identify vulnerabilities that could heighten threats to sensitive data or valuable resources, and assist with the implementation of new safeguards where required. They are intended to provide a basis for recertification of the security of the application. Recertification shall be fully documented and maintained in the official agency records. Audits or reviews and recertifications shall be performed at least every three years. They should be considered as part of agency vulnerability assessments and internal control reviews conducted in accordance with OMB Circular No. A-123. Security or other control weaknesses identified shall be included in the annual internal control assurance letter and report required by Circular No. A-123.

(3) *Contingency Plans.* Agencies shall establish policies and assign responsibilities to assure that appropriate contingency plans are developed and maintained by end users of information technology applications. The intent of such plans is to assure that end users can continue to perform essential functions in the event their information technology support is interrupted. Such plans should be consistent with disaster recovery and continuity of operations plans maintained by the installation where the application is processed.

b. *Personnel Security.* Agencies shall establish and manage personnel security policies and procedures for screening all individuals participating in the design, development, operation, or maintenance of Federal automated information systems. The level of screening required by these policies should vary from minimal checks to full background investigations, depending upon the sensitivity of the information to be handled and the risk and magnitude of loss or harm that could be caused by the individual. These policies shall be established for both Federal and contractor personnel. Personnel security policies for Federal employees shall be consistent with policies issued by the Office of Personnel Management.

c. *Information Technology Installation Security.* Agencies shall assure that an appropriate level of security is maintained at all information technology installation operated by or on behalf of the Federal government (e.g., government-owned, contractor-operated installations).

(1) *Assigning Responsibility.* Agencies shall assign responsibility for the security of each installation to a management official knowledgeable in information technology and security matters.

(2) *Periodic Risk Analysis.* Agencies shall establish a program for the conduct of periodic risk analyses at each installation to ensure that appropriate, cost effective safeguards are incorporated into existing and new installations. The objective of a risk analysis is to provide a measure of the relative vulnerabilities and threats to an installation so that security resources can be effectively distributed to minimize potential loss. Risk analyses may vary from an informal review of a microcomputer installation to a formal, fully quantified risk analysis of a large scale computer system. The results of these analyses should be documented and taken into consideration by management officials when certifying sensitive applications systems processed at the installation. Such analyses should also be consulted during the evaluation of general controls over the management of information technology installations conducted in accordance with OMB Circular No. A-123. A risk analysis shall be performed:

(a) Prior to the approval of design specifications for new installations;

(b) Whenever a significant change occurs to the installations (e.g., adding a local area network; changing from batch to online processing; adding dial-up capability). Agency criteria for defining significant change shall be commensurate with the sensitivity of the data processed by the facility.

(c) At periodic intervals established by the agency commensurate with the sensitivity of the data processed, but not to exceed every five years if no risk analysis has been performed during that period.

(3) *Disaster and Continuity Plan.* Agencies shall maintain disaster recovery and continuity of operations plans for all information technology installations. The objective of these plans should be to provide reasonable continuity of data processing support should events occur that prevent normal operations at the installation. For large installations, the plans should be fully documented and operationally tested periodically, at a frequency commensurate with the risk and magnitude of loss or harm that could result from disruption of information technology support.

(4) *Acquisition Specifications.* Agencies shall establish policies and responsibilities to assure that appropriate technical, administrative, physical, and personnel security requirements are included in specifications for the acquisition or operation of information technology installations, equipment, software, and related services, whether procured by the agency or by GSA. These security requirements shall be reviewed and approved by the management official responsible for security at the installation making the acquisition.

d. *Trainging Programs for Automated Information Systems Security.* Agencies shall establish a security awareness and training program to assure that agency and contractor personnel involved in the management, operation, programming, maintenance, or use of information technology are aware of their security responsibilities and know how to fulfill them. Users of information technology systems should be apprised of the vulnerabilities of such systems and trained in techniques to enhance security.

4. *Assignment of Responsibilities.*

a. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue standards and guidelines for assuring the security of Federal automated information systems; and

(2) Provide technical assistance to Federal agencies in implementing those standards and guidelines.

b. *Department of Defense.* The Secretary of Defense shall:

(1) Act, in accordance with applicable national security directives, as executive agent of the government for the security of automated information systems that process information the loss of which could adversely affect the national security interest; and

(2) Provide technical material and assistance to Federal agencies concerning security of Federal automated information systems, including acquisition and use of encryption devices approved by the

National Security Agency for telecommunications security.

c. *General Services Administration.* The Administrator of General Services shall:

(1) Issue policies and regulations for the physical and environmental security of computer rooms in Federal buildings consistent with standards issued by the Department of Commerce and the Department of Defense.

(2) Assure that agency procurement requests for computers, software, telecommunications services, and related services include security requirements. Delegations of procurement authority to agencies by GSA under mandatory programs, dollar threshold delegations, certification programs, or other so-called blanket delegations shall include requirements for agency specification of security requirements.

(3) Assure that information technology equipment, software, computer room construction, guard or custodial services, telecommunications services, and any other related services procured by GSA meet the security requirements established and specified by the user agency and are consistent with other applicable policies and standards issued by OMB, the Department of Commerce, the Department of Defense, and the Office of Personnel Management.

d. *Office of Personnel Mangement.* The Director, Office of Personnel Management, shall establish personnel security policies for Federal personnel associated with the design, programming, operation, maintenance, or use of Federal automated information systems. Requirements for personnel checks imposed by these policies should vary commensurate with the risk and magnitude of loss or harm that could be caused by the individual. The checks may range from merely normal reemployment screening procedures to full background investigations.

5. *Reports.* In their annual internal control report to the President and the Congress, required under OMB Circular No. A-123, agencies shall:

a. Describe any material weaknesses identified during audits or reviews of sensitive applications or when conducting risk analyses of installations; and

b. Provide assurance that there is adequate security of agency automated information systems.

[FR Doc. 85-6167 Filed 3-14-85; 8:45 am]
BILLING CODE 3110-01-M