(b) *Implementation of lease provisions.* The lease for each tenant of a project for the elderly or handicapped who is admitted on or after the date on which this part is implemented shall contain the lease provisions described in paragraph (a) (1) or (2) of this section, as appropriate. The lease for each tenant who occupies a unit in such a project under lease on the date of implementation of this part shall be amended to include the appropriate provisions of paragraph (a) of this section as follows:

(1) Upon annual reexamination of tenant income in accordance with any applicable regulation, or

(2) When a tenant wishes to own or keep a common household pet in his or her unit.

Subpart D—Nuisance or Threat to Health or Safety

§ 942.30 Nuisance or threat to health or safety.

Nothing in this part prohibits a PHA or an appropriate community authority from requiring the removal of any pet from a project, if the pet's conduct or condition is duly determined to constitute, under the provisions of State or local law, a nuisance or a threat to the health or safety of other occupants of the project or of other persons in the community where the project is located.

Dated: November 14, 1986.

Samuel R. Pierce, Jr.,

Secretary.

[FR Doc. 86-26747 Filed 11-28-86; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-86-1587; FR-2177]

Pet Ownership in Housing for the Elderly or Handicapped; Notice of Pet Deposit Limitation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of pet deposit limitation.

SUMMARY: 24 CFR 243.20(c)(3) requires HUD periodically to fix by Notice published in the **Federal Register**, a limitation on the amount of the pet deposit that project owners may charge tenants who own or keep cats or dogs in certain projects for the elderly or handicapped. This Notice announces a pet deposit limitation of $300.

EFFECTIVE DATE: This notice is related to FR-1936—Pet Ownership in Assisted Housing for the Elderly or Handicapped, published elsewhere in today's edition of the **Federal Register.** Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), the related final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of the related final rule and this notice following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, the related final rule and this notice will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Office of Multifamily Housing, Room 6180, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410, Telephone (202) 426–3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Elsewhere in today's edition of the **Federal Register,** HUD is publishing a final rule implementing section 227 of the Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n–1). This regulation provides for the ownership and keeping of common household pets in federally assisted housing for the elderly or handicapped. In order to compensate owners of projects for the elderly or handicapped for reasonable expenses directly attributable to the presence of pets in projects covered under 24 CFR Part 243, § 243.20(c)(3) permits project owners to establish house pet rules that require tenants who own or keep cats or dogs in their units to pay a refundable pet deposit.

Section 243.20(c)(3)(ii) provides that for certain tenants, the maximum amount of the pet deposit that may be charged by the project owner, on a per dwelling unit basis, may not exceed an amount periodically fixed by HUD by publication of a Notice in the **Federal Register.** These limitations apply to the following classes of tenants residing in projects that meet the definition of project for the elderly or handicapped under § 243.3(c):

(1) Tenants assisted (including tenants of a HUD-owned project, who were assisted before HUD acquired it) under:

(A) Section 202 of the Housing Act of 1959 or section 221(d)(3) (BMIR) of the National Housing Act, or

(B) 24 CFR Part 215 (Rent Supplement Payments), Part 236 (Subpart C—Interest Reduction Payments and Subpart D—Rental Assistance Payments), Part 880 (Section 8 New Construction), Part 881 (Section 8 Substantial Rehabilitation), Part 882 (Subparts D and E) (Section 8 Moderate Rehabilitation), Part 883 (Section 8 State Housing Agency Program), Part 884 (Section 8 Rural Set-Aside), or Part 886 (Subpart A (Loan Management) and Subpart C (Property Disposition)); and

(2) Tenants occupying "lower income units" under 24 CFR Part 850 (Housing Development Grant program).

In fixing the amount of the pet deposit applicable to these tenants, § 243.20(c)(3)(iii) requires HUD to consider factors such as projected, estimated expenses directly attributable to the presence of pets in the project; the ability of project owners to offset such expenses by the use of security deposits or HUD-reimbursable expenses; and the lower income status of tenants of projects for the elderly or handicapped.

Expenses Attributable to Pet Presence

Commenters to the proposed pet regulation (49 FR 50562 (1984)) noted that the presence of pets in covered projects would increase project costs and administrative burdens on project management. These commenters predicted additional expenses as the result of: (1) Damage to pet owners' units; (2) damage to, and maintenance of, common areas; (3) increased fumigation and pest control costs; (4) pet boarding costs under emergency situations; (5) increased administrative costs from formulating pet rules, registering pets, monitoring pets, responding to pet complaints, changing leases and forms, complying with reporting requirements, and collecting pet charges; (6) costs associated with establishing pet and no-pet areas, maintaining pet and no-pet waiting lists, and moving tenants to establish and maintain such areas; and (7) costs associated with establishing pet waste disposal facilities.

To ensure compensation for these additional expenses, the commenters proposed various amounts for the pet deposit. The proposed amounts for deposits varied widely, based on the commenter's method of computation and whether the commenter advocated the recovery of all or a portion of project costs through security deposits. Deposits proposed were as high as $2,000, although deposits in the $400 to $500 range were more common.

Based on the comments to the proposed rule, it is impossible to predict with precision the expenses directly attributable to the presence of pets in the project. Most commenters merely suggested deposit amounts, and did not explain what costs were included in their computations or include any cost breakdowns. Where commenters described the various costs considered, many included general costs associated with the presence of pets in the project that under the final rule cannot be recouped through pet deposits, or costs that would have been incurred under the proposed pet regulation, but were eliminated in the final pet rule (e.g., costs associated with establishing and maintaining pet and no-pet areas, including tenant moves). In most cases, it was impossible to isolate these expenses, because cost breakdowns were not provided.

Where commenters offered data concerning the expenses that would be directly attributable to the presence of pets, the expenses were generally limited to the costs of repairs and replacements to, and fumigation of, the pet owner's dwelling unit, and pet boarding costs under emergency situations. Where specific component costs were provided: general cleaning expenses ranged from $24–$75; painting expenses from $75–$350; carpet cleaning costs from $25 to $150; carpet replacement from $300 to $800; drapery cleaning from $25–$48; fumigation costs from $35–$100, carpentry expenses from $50–$100; and boarding costs from $90–$210, based on a 30-day stay; and drapery replacement costs were approximately $200.

While consideration of all conceivable costs would result in a high deposit limitation, the Department believes that the probable financial liability caused by pets will be considerably less. The

Department considers the costs associated with damage to the dwelling unit claimed by many commenters to be excessive because they are based on a "worst case" scenerio. For example, one commenter's estimate of costs included expenses for the replacement of such items as doors, woodwork, appliances, floorboards, subflooring, and concrete floors. It would appear that the likelihood of such extensive damage to a unit would be extremely remote. Even the lower estimates based on carpet and drapery replacement, complete fumigation, carpentry costs, etc., may overstate the probable liability, since most pets will cause limited damage to the unit.

Similarly, inclusion of 30-day pet boarding costs in the calculation overstates such expenses. Boarding of a pet is provided for under very narrowly defined circumstances. Under § 243.45, a pet may be boarded if its health or safety is threatened by the death or incapacity of the pet owner, or by other factors that render the pet owner unable to care for the pet; the party (or parties) designated by the pet owner in the pet registration are unavailable to care for the pet; and there is no State or local agency authorized to care for abandoned pets. (Situations providing for boarding under § 243.30(c)(1) are similarly limited). Even if a pet is boarded under these provisions, the pet rule states that kenneling costs are to be borne by the tenant or the tenant's estate and that the pet deposit may be used only if these resources are inadequate. In addition, the final rule states the boarding period as a maximum—not more than 30 days—unlike the proposed rule, which provided for a 30-day minimum. Finally, project owners may avoid potential liability for this expense entirely by not incorporating in the tenant leases the provisions of § 243.30(c)(1) and (2) that deal with emergencies.

Moreover, under the final rule, the project owner is able to take reasonable measures to limit the potential expense directly attributable to pets by: (1) Refusing to register pets in the project if the project owner reasonably determines, based on the pet owner's habits and practices, that the pet owner will be unable to keep the pet in compliance with pet rules and other lease obligations (§ 243.20(b)(4)), (2) prescribing sanitary standards governing the proper disposal of pet wastes (§ 243.20(b)(2)); limiting the number, size, weight, and type of pets permitted in the dwelling unit (§ 243.20(c)(1) and (2)), and addressing standards of pet care and handling that are necessary to protect the condition of the tenant's unit and the general condition of the project premises (§ 243.20(c)(4)); and (3) enforcing these pet rules under § 243.24.

Based on all of these factors, the Department concludes that the financial liability that the presence of pets will cause project owners is not amenable to precise determination, but viewing the rule in its entirety and taking into consideration reasonably anticipated pet-related expenses, project owner liability should be lower than most of the estimates the commenters provided.

Ability of the Project Owner to Offset Expenses

In addition to the pet deposit, project owners have other resources available to offset pet-related expenses. As noted above, many of the expenses associated with the presence of pets in the project are related to the damage that the pet may cause to the dwelling unit. Most facilities have in place some form of security deposit to be used to offset damage caused to the dwelling unit.

Moreover, project owners' potential exposure to expenses from pet damage to dwelling units may be limited under certain programs that require HUD to pay reimbursement if the general security deposit is insufficient to cover all damages and rent arrearages. For example, for projects receiving Section 8 assistance under Parts 880, 881, and 883, this amount will be the lesser of the amount owed to the owner or one month's contract rent (minus the amount of the tenant's security deposit plus accrued interest). *See,* §§ 880.608(f), 881.608(f), and 883.709(f). *See also,* §§ 886.116(a) and 886.315(d).

Lower Income Status of Tenants

The third factor to be taken into account in setting the pet deposit limitation is the lower income status of tenants. The most recent information within the Department indicates that approximately 90 percent of all assisted families are very low-income families, with income levels below 50 percent of median income for their area. Moreover, there are factors that may increase the percentage of families with incomes of less than 50 percent of median income. For example, under section 16(b) of the United States Housing Act of 1937, not more than 5 percent of the dwelling units that initially become available for occupancy under public housing ACCs and Section 8 HAP contracts on or after October 1, 1981 are available for leasing by families with incomes between 50 and 80 percent of the area median. Except with the prior approval of HUD, after July 1, 1984 no families in this income range may be approved for admission under the Section 8 assistance programs under Parts 880 through 886, if the effective date of the HAP contract is October 1, 1981 or after. (§ 813.105(a)).

Based on the national median income, this means that the vast and growing majority of assisted tenants' family incomes is below $9,450 (based on a family of one) or $10,800 (based on a family of two). Unfortunately, HUD does not have further income level breakdowns (e.g., the percentage of families with incomes of less than 40%, 30%, 20%, etc., of median income for their area). However, the available data clearly indicate that tenants subject to this Notice possess a limited amount of disposable income.

To protect tenants of covered projects for the elderly or handicapped, a large number of commenters to the proposed pet regulation urged that the pet deposit reflect this limited ability to pay. Generally, suggested deposits were based on the tenant's share of monthly rent or a percentage of the tenant's monthly income, and were subject to overall limitations ranging from $50 to $100.

Conclusion

This Notice attempts to balance the interests of project owners and potential pet owners by carefully weighing the factors described in § 243.20(c)(3)(iii). In this process, the Department has attempted to set a limitation that provides adequate security to the project owner against reasonably anticipated pet-related damages that are not likely to be recovered from other sources, and that does not unreasonably strain tenants' financial capabilities.

HUD has concluded that a pet deposit limitation of $300 is appropriate as an initial limitation. This limitation is less than the deposits that most project owners and managers proposed. However, given the Department's conclusion noted above, that many of these deposit estimates are inflated or based on the "worst case" scenario, the fact that damages can be limited by the pet registration procedures and judicious prescription and enforcement of house pet rules, and the fact that other resources for project owner compensation may be available, the Department believes that this limitation will enable project owners to require a security deposit that will provide adequate protection under reasonably anticipated circumstances.

This figure exceeds the deposits proposed by commenters who focused on tenants' financial capabilities. While the pet deposit will be paid by individuals with limited discretionary income, the Department does not believe that the $300 limitation is so high that it imposes an unreasonable financial barrier to the exercise of the right to pet ownership. In this regard, the Department notes that the financial impact on pet owners is mitigated by the pet deposit accumulation provisions contained in the final rule. In the case of tenants whose rents are subsidized under the Rent Supplement, section 236 Rental Assistance Payments, or Section 8 programs, or tenants who are occupying lower income units under the Housing Development Grant program, the final rule *requires* that pet owners be permitted to accumulate the deposit through an initial payment of up to $50, and subsequent monthly payments of up to $10. Gradual accumulation of the pet deposit is specifically authorized with respect to other covered tenants. Other matters regarding the administration of the pet deposit (such as interest on the deposit and replenishment of deposit) are left to the discretion of the project owner, subject to the provisions of State and local law.

This Notice has attempted to balance the relevant factors in the final rule using the best information available to the Department. HUD will continue to monitor the adequacy of the limitation set in this Notice, and solicits data on a continuing basis concerning the effect of the limitation on project owners and tenants. Greater accuracy regarding the computation of the pet deposit limitation can be achieved in future Notices, based on more accurate data reflecting greater HUD and project owner experience with pets in assisted housing.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

Authority: Sec. 227(b), Housing and Urban-Rural Recovery Act of 1983 (12 U.S.C. 1701n-1); and sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Dated: November 17, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-26746 Filed 11-28-86; 8:45 am]

BILLING CODE 4210-32-M

federal register

Monday
December 1, 1986

Part III

Department of Education

34 CFR Part 692

State Student Incentive Grant Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 692

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the State Student Incentive Grant (SSIG) Program to require a State which participates in the SSIG Program to match its Federal allotment with State appropriations and to allow a State to match its Federal allotment at the program level rather than at the individual grant level. The Secretary also amends the SSIG Program regulations to conform the regulations to the recently enacted Comprehensive Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, and to the Compact of Free Association, Pub. L. 99–239.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of the amendments to §§ 692.3 and 692.40(a)(6). The amendment to § 692.3 takes effect on July 1, 1987, the beginning of the 1987–88 award year. The amendment to § 692.40(a)(6) will become effective after the information collection requirement contained in that section has been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, Regional Office Building 3, Room 4018, 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 245–9720.

SUPPLEMENTARY INFORMATION: Under the existing SSIG Program regulations, a State may force an institution participating in its SSIG Program to provide the required State matching funds as a condition of participation in its program. The Secretary believes that this practice is not in keeping with the underlying purpose of the SSIG Program which is to encourage States to establish or expand their own grant programs of student financial assistance. Therefore, the Secretary has amended § 692.3 to make Subpart G of 34 CFR Part 74 (Administration of Grants) inapplicable to the SSIG Program. Subpart G permits grantees to meet their cost-sharing obligations with donated funds from third parties. As a result of the amendment to § 692.3, each State must match its Federal allotment of SSIG funds with direct State appropriations. As amended, § 692.3 will not preclude a State from receiving voluntary contributions from private sources which it could then use in its SSIG program as long as those funds are not used as part of the State's required match.

Under the existing regulations, a State must match each SSIG grant it awards. In order to provide a State with greater flexibility in its administration of its SSIG program, the Secretary has amended § 692.21(g)(1) to permit a State to match the Federal funds it receives on a program rather than on a grant basis. As a result, if the State matches its Federal SSIG allotment with an equal amount of State funds, it will no longer have to use State funds to pay fifty percent of each SSIG Program grant it awards.

The Federal rules established by statute and regulations, which govern the administration of the SSIG Program, apply equally to those aspects of funded programs supported by Federal funds and State appropriations. States still will be required, for example, to select all SSIG recipients on the basis of substantial financial need.

Changes to Program Regulations

Several changes have been made to § 692.40 of the SSIG Program regulations to reflect changes made to the SSIG Program by section 16032(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, and by the Compact of Free Association, Pub. L. 99–239.

Consolidated Omnibus Budget Reconciliation Act of 1985

Section 16032(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 amended the Higher Education Act of 1965 to make statutorily ineligible for SSIG Program assistance a student who is in default on an NDSL, GSL, or PLUS loan made for attendance at any institution or who owes a repayment on an SSIG, SEOG, or Pell Grant awarded for attendance at any institution.

Section 692.40 has been amended to incorporate this eligibility criterion and to specify that a student who is in default on a National Defense (or Direct) Student Loan may receive further SSIG Program assistance if the institution that made the loan or the Secretary (in the case of an assigned loan) certifies that the student has made satisfactory arrangements to repay the loan.

Compact of Free Association

On January 14, 1986, President Reagan signed the Compact of Free Association, which will terminate the trusteeship status of certain islands in the Pacific that were previously part of the Trust Territory of the Pacific Islands. This Compact will create two new entities—the Federated States of Micronesia and the Marshall Islands. In addition, another separate Compact is currently under consideration by the Congress which will create an independent entity, the Republic of Palau. Although the first Compact was signed into law on January 14, 1986, the effective date is being delayed, pending enactment of the Palau Compact.

Although the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau will not be eligible to participate in the SSIG Program, citizens of these islands who are in attendance at institutions of higher education in States that are participating in the program will continue to be eligible for SSIG Program assistance, under the Compacts of Free Association. Therefore, the Secretary is revising the student eligibility criteria in § 692.40 to include the citizens of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau, in anticipation that the Compacts will become effective in the near future.

However, the Secretary has also retained the references to the Trust Territory of the Pacific Islands to maintain the eligibility of permanent residents of the Trust Territory until the Compacts become effective.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Compact of Free Association require the Secretary to revise the program's student eligibility provisions. Since these regulations merely implement statutory amendments and do not establish substantive policy, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Summary of Comments and responses

The following is a summary of the significant comments received and the

Department's responses to those comments.

Section 692.3

Comment: Several commenters objected to the requirement that a State match its Federal allotment from direct State appropriations, thereby eliminating the practice of having participating institutions provide the required State matching funds as a condition of participation in the State's SSIG Program. Several commenters expressed the opinion that if this proposal were adopted, many needy students would be deprived of student financial assistance because economically depressed States depend upon institutions for this required match. The commenters stated that many of these economically depressed States will find it difficult if not impossible to provide the required 50 percent match from direct State appropriations. A majority of the commenters approved of allowing States to have the option of using a third party to contribute the required match, which they claim gives States more flexibility in providing support for students.

Response: No change has been made. The Secretary believes that the underlying purpose of the SSIG Program is to encourage States to establish and expand their own grant programs of student aid. Institutions should not be required to take on the State's responsibility to match its Federal SSIG allotment. These regulations, however, will not preclude a State from receiving voluntary contributions from private sources which it could use in tis State SSIG Program as long as those funds are not used as part of the State's required match.

Comment: One commenter stated that the proposed change would result in a 50 percent reduction in SSIG assistance for students attending private institutions.

Response: The Secretary disagrees with the commenter. This regulatory change should not work to the disadvantage of any category of student, because under the change made to § 692.21(g)(1), a State may match its Federal allocation of SSIG funds at the program rather than the grant level, and thereby continue to provide assistance on the basis of need to students at both public and private institutions. For a further explanation of § 692.21(g), see the comments and responses for that section.

Comment: Most of the commenters objected to the timing of the requirement to match the Federal program funds from direct State appropriations, claiming the issuance of new rules should await the enactment of the legislation reauthorizing the Higher Education Act, since both houses of Congress have provisions before them that would accomplish the purpose of this rule. Two commenters were opposed to the effective date of July 1, 1987 (the beginning of the 1987–88 award year) for implementation of the requirement because they were concerned that some State legislatures might not be able to take action to appropriate and budget funds for the program prior to July 1, 1987. One commenter urged the Department to maintain the proposed July 1 effective date.

Response: No change has been made. Publication of the regulations is necessary at this time, as is the July 1, 1987, effective date, in order to fulfill the legislative intent of the SSIG Program and to provide States with adequate lead time for implementation. The Department has not been made aware of any State affected by this program change that would not be able to appropriate and budget the required funds in time for grants for academic year 1987–88. If regulatory changes are necessary as a result of revised legislation, the changes will be incorporated after the legislation is enacted.

Comment: One commenter questioned whether there was any statutory provision to support the Secretary's view that funds for the non-Federal match must be provided from direct State appropriations.

Response: Section 415C(b)(5) of the Higher Education Act of 1965 as amended authorizes the Secretary to allot program funds only to States that provide for the non-Federal share from "Funds supplied by the State." Moreover, that section provides that these State funds must represent an additional expenditure by the State over the amount it expended for grants for students before the State initially received SSIG funds. The Secretary believes that this section requires a State's matching share to be provided by the State rather than by an institution.

Comment: One commenter questioned what would happen to a State that does not appropriate funds for the SSIG Program. The commenter expressed concern that if no State funds were appropriated to satisfy the matching requirement, higher education institutions in the State would lose a valuable form of assistance.

Response: If a State does not appropriate funds for the SSIG Program, the State would not be eligible to receive its allotment of SSIG funds.

Section 692.21(g)

Comment: One commenter felt that allowing States to match at the program rather than grant level will impose a greater burden on small private colleges.

Response: The Secretary disagrees with the commenter. Changing the matching requirement from a grant to a program basis places no burden on institutions.

Comment: One commenter requested an explanation of the following sentence in the preamble to the NPRM: "Thus a State could use its SSIG Federal allotment to provide grants to students at private institutions as long as it provides at least as much money from direct State appropriations for grants to students at public institutions for the same academic year".

Response: Under § 692.21(g), a State will be allowed to match its Federal allotment of SSIG funds on a program rather than an individual grant basis. Therefore if a State receives $500,000 of Federal SSIG funds, it must spend $500,000 of State SSIG funds. However, if a State is precluded from using State SSIG funds to award grants to students attending private institutions, it could use the Federal funds it receives for that purpose and use its State SSIG funds for awards to students attending public institutions.

Comment: One commenter asked what was meant by "direct State appropriations" in the preamble to the NPRM. Specifically, the commenter wanted to know if a State could require participating public institutions to provide for the State match from funds which had been appropriated by the State for the general operating expenses of the institutions.

Response: A State must provide for its required match of SSIG Federal funds from it has specifically appropriated for its SSIG Program. Section 415C(b)(5) of the program statute provides that State matching funds must be an expenditure by the State for grants for students.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

The information collection requirement contained in these regulations in § 692.40(a)(6) will become effective after it has 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 comments on the proposed rules 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 692

Education, Grant programs, Education, State-administered, Education, Student Aid.

Citation of Legal Authority

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

(Catalog of Federal Domestic Assistance Number 84.069: State Student Incentive Grant Program)

Dated: October 17, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 692 of Title 34 of the Code of Federal Regulations as follows:

PART 692—STATE STUDENT INCENTIVE GRANT PROGRAM

1. The authority citation for Part 692 is revised to read as follows:

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

2. In § 692.3, paragraph (b) is revised to read as follows:

§ 692.3 What regulations apply to the State Student Incentive Grant Program?

* * * * *

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants) except for Subpart G, Part 76 (State-Administered Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).

* * * * *

3. In § 692.21, paragraph (g)(1) is revised to read as follows:

§ 692.21 What requirements must be met by a State program?

* * * * *

(g) * * *

(1) The State will pay an amount for grants under this part for each fiscal year that is not less than the payment to the State under this part of that fiscal year; and

* * * * *

4. In § 692.40, paragraphs (a)(1), (5), and (6) are revised to read as follows:

§ 692.40 What are the requirements for student eligibility?

(a) * * *

(1)(i) Be a U.S. citizen or national;

(ii) Provide 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;

(iii) Be a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands; or

(iv) Be a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

* * * * *

(5)(1) Not owe a refund on a grant received for attendance at any institution under the Pell Grant, Supplemental Educational Opportunity Grant, or State Student Incentive Grant programs;

(ii) Not be in default on a loan made at any institution under the National Defense Student Loan or National Direct Student Loan programs unless he or she has made arrangements, satisfactory to the institution, to repay the loan; and

(iii) Not be in default on a loan made under the Guaranteed Student Loan program or the PLUS program to meet the cost of attending any institution unless the Secretary (for a federally insured loan) or a guarantee agency (for a loan guaranteed by a guarantee agency) determines that the student has made satisfactory arrangements to repay the loan; and

(6) File with the institution a statement (which need not be notarized but which must include the student's social security number or, if the student does not have a social security number, the student's student identification number) that the money attributable to the grant will be used solely for expenses related to attendance or continued attendance at the institution.

* * * * *

[FR Doc. 86–26878 Filed 11–28–86; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
December 1, 1986

Part IV

Department of the Treasury

Fiscal Service

Notice to Awardees Under the International Settlement Act of 1949 and the Czechoslovakian Claims Settlement Act of 1981

DEPARTMENT OF THE TREASURY

Fiscal Service

Notice to Awardees Under the International Claims Settlement Act of 1949 and the Czechoslovakian Claims Settlement Act of 1981

AGENCY: Financial Management Service, Treasury.

ACTION: Notice.

SUMMARY: The persons listed in the supplementary information section of this notice have been granted awards by the Foreign Claims Settlement Commission (FCSC) under the International Claims Settlement Act of 1949, 22 U.S.C. 1621–1645o (1986), and the Czechoslovakian Claims Settlement Act of 1981, 22 U.S.C. 1642–1642p (1986), but have failed to file valid applications in order to receive these payments. Pursuant to the Czechoslovakian Claims Settlement Act of 1981, 22 U.S.C. note 8 preceding section 1642 (1986), unless valid applications for payment are made by January 30, 1987, the awards of persons listed below shall lapse and amounts payable to these persons shall be paid on a pro rata basis by the Financial Management Service on account of all other awards under title IV of the International Claims Settlement Act of 1949 and the Czechoslovakian Claims Settlement Act of 1981.

DATE: Claims must be submitted by January 30, 1987.

ADDRESS: Inquiries should be submitted to: Department of the Treasury, Financial Management Service, Program Accounting Section Treasury Annex #1, Rm. 340, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Bernice Mays, Chief Program Accounting Section, (202) 566–8642.

BILLING CODE 4810-35-M

SUPPLEMENTARY INFORMATION: These are the names of persons granted awards under the International Claims Settlement Act of 1949 and the Czechoslovakian Claims Settlement Act of 1981 who must file applications:

CZECHOSLOVAKIA 1st PROGRAM

ABELES JULIUS
ALT ELSE
ALTSCHUL KURT
ANDEL JOHN
ARMSTRONG ANNA
ASCHNER JOSEPH
AUERBACH MARIANNE H
BANCAK OTOKAR J
BARDOCI MARY ANNA
BARGER JOHN SR
BATES CHARLES V
BAUM HERMA
BAUM THOMAS
BEDNARIK MARTIN
BEDNO ALEXANDER
BEER HELEN
BELAN JOHN
BELAN STEPHEN
BELDOVIC JOSEPH
BELFORD BARBARA
BENEDICT ANNIE
BENEDICT EMIL
BENES HELEN
BENOVITZ ESTHER
BERGMANN HENRY
BERGMANN VERA
BERKOWITZ BEN
BERKOWITZ HERMAN
BERKOWITZ JOSEPH
BERKOWITZ LOUIS
BERKOWITZ SAM
BIER MARIE
BLOCK MARTHA
BLUM SIEGFRIED
BODLAK JAROSLAV
BODNAR JULIANNA
BODNAR MARY
BOOR JOHN
BORGIDA EDITH
BRNKO ZUZANA
BROCK KATE S
BROD JOSEPH
BRUCKNER FRITZ
BRUNNER FREDERICK B
BUBLINEC ROSE
BUCEK LOUIS & ANNA
BUCENEC PAUL
BYSTRICKY JOSEPH
CAMBALA ANNA
CAPEK BARNEY
CERMAK FRANCES
CHRVALA VINCENT
CICAK NICHOLAS
CIHAK MARIE
CINTULA KAROLINA
COREN OLGA B
CRAIG FRANK B
CRAIG WILLIAM
CROMES MARY SOLTIS
CSAUCSIK ANDRASZ
CUCH GUSTAVRD S
CVIK MICHAEL
CVINCEK PAUL
DAMKO VERA
DANO VINCENT
DE FLORIAN MARIE T
DE LEON LORE EDITH H
DENNL OSCAR W
DE SINGLY ELIZABETH S
DEUTSCH RISA
DIAMOND MARGARET
DIESENDRUCK LILLI
DIESTENFELD ERNESTINE
DIRR EMILIE
DOBOS JOHN
DOCAR RUDOLPH J
DRACH JOHN SR
DUNDALA IRENE
DUNDALA MICHAEL
DVORAK JOSEPH
EATON LEO
ECKES ANNA GALL
EISENSTEIN GERTRUDE
EISLER ARTHUR
EVANKO JOHN
FANTA VIOLA WELSH
FARBER BERTHA
FECKO MARIA
FILJAC BENEDICT
FINE MATILDA
FISCHER JACQUES
FISCHER MARIE
FISCHER MARIE G
FOLTINEK MATTHEW
FOLTYN ANDREW
FOLTYN MIKLOS
FRANCHAK MARIE MARGARET
FROEHLICH PETER G
FURTH WALTER
GALL ANDREW
GALL JOHN F
GAYDOS JOHN
GEHRING MATILDA
GERGEL BARBARA
GIANETTA CAROLINE
GOLD ANNA
GOLDBERGER LOUIS LARRY
GOLDNER DEZSO
GOPPOLD ALOIS
GOPPOLD MARIE
GOTLEY JOSEPHINE
GRAMKE MARIE
GRASGREEN SAMUEL
GROON FRANCIS
GRUNEWALD EDITH R
GRUNTHAL PAUL
GULASH WILLIAM
GUTAN ETHEL
GUTMAN GERTRUDE
HALUSKA STEPHEN
HANAUER KLARA
HANZL MATHEW
HARTMAN HELEN
HENSEL IGNATZ
HESSE ANNA
HIBSCHMAN JACOB
HITSCHMANN HEDWIG
HLAVA MARY
HLAVKA MARY
HNATEK ANNA ROSE
HOCKE CHARLES JOSEPH
HOCKE STEFANIE
HODGSON JAMES F
HOFFER SIEGMUND
HOLUB FRANK
HRABOUSKY VICTORIA
HRACHOVSKY KATHERINE
HRDLICKA AGNES
HRDLICKA PETER
HRICISAK ANTONIE
HRYSL JOHN W
HUDCOVIC ANTHONY M
HUDCOVIC THERESA
HUDECEK ANNA

HUDECEK PAULINE
ILKOVITZ LENA
ILLE LOUISE
IMRICH EVA
INDRISEK ANNA
JAKES FRANK J
JANECEK MARGARET
JANOS JOHN
JANOS LEOPOLDINA
JELINEK ROSE
JOHNSON MARGARETE
JOZEFEK KATARINA
JURCIK BERTHA SOBAN
JURKULAK AGNES
KAEUFFL LUDWIG W
KAIFER FRANK
KANTOR RICHARD
KARLIK JOHN
KARLIK JOHN JR
KAUFMAN VERNON
KECSKEMETHY HELEN
KESSLER ARTHUR IZYDOR
KISEL STEPHEN
KLAUBARF JACK
KLEIN JOHN
KLEIN NORMAN
KLIMES ALOIS
KLINGER FRANK JOSEPH
KOENIG ANNA
KOESER JOHN WILLIAM
KOHN BERTHA
KOHN ELSA
KOHN EMIL
KOHN HANS
KOHLER JUNE
KOLBERT ERNEST A
KOLIBAS ANNA
KONDRCKA MARTIN
KONTA EMMA MARIA
KOPPER CHRISTEL H
KOSEMPEL PAUL
KOSEMPEL SELMA
KOSEMPEL WILLIAM
KOTES ANNA
KOTZ ILSE H.
KOVAC JOHN
KOVAR ANNA
KOVAR JOHN
KRAMAR FRANCES
KRAMAR LEOPOLD J
KRAUS FRANK ARNOLD
KRAVEC GEORGE
KRCEK JOSEPH
KROUPA ANTONIE
KUBANIK MARTIN
KURUCZ GEORGE
LANDON EDITH DOROTHY
LANGMAJER EMILIE
LASCH JINDRA HANNA
LAWRENCE KENNETH H
LEDERER THERESE
LEE ANNE LIESE
LEE THOMAS FREDERICK
LEHR GENE
LEISCHNER MAX
LEMES ANDRO
LENGHART MICHAL
LERMER AUGUST S
LISI ELLA ROCKWELL
LOEBMANN ANNELIES RUTH
LOEWY JOSEPH
LORBER LAWRENCE
LOW MARGARET
LOWRY FRED
LUMBERDING CHARLES
LUPTAK ANDREW
MAGYAR ANDI
MALA STEPHEN
MARMORSTEIN EUGENE
MARTIN BRADLEY
MARTIN ELIZABETH
MATULA PAUL
MATOVCIK ANN
MATOVCIK MICHAEL
MATUSEK MARY
MATZKO ANNA WABREK
MAY ROZALIA
MAZSAR HERMINE
MEAD HERBERT
MEAD RONALD
MEDACEK GEORGE
MEDITZ HILDA
MEDVECKY MICHAEL
MELICHAREK ELIZABETH
MELICHAREK JOHN
MENTO JOHN
MEYER AUGUST K
MEZDEJ JOSEPH
MICOVSKY JOSEPH
MIFKOVIC MARY
MIHAL JOSEPH
MIHALIK VERONICA
MOLL WILHELM
MOROZ NICK
MUCHA VERA
MUDRY ZUZANNA
MULLER ERNEST
MULLER GERTRUDE E
MURCEK JOHN RUDOLF JR
MURTZ THERESA
MUSKA GEORGE
NEMECEK JOSEPH
NEMECEK MARY
NESENKAR PAUL
NEWMAN ALFONS CHARLES
NOHEJL JOSEPH
NOVAK OTTO E
NOVAKY ADAM J
NOVAKY ANDREW J
NOVAKY FRANK
OLDEN PAUL
ONTL PETER
OPPENHEIM JULIA
OPPENHEIM MAXIMILIAN M
ORGON JULIA A
ORGON STEPHEN
OTEVREL ANTON
OTTE RICHARD
PALENCAR ALZBETA
PALIATKA CYRIL
PAVLUS OSLEJ KRISTINA
PAVLUS VIOLET
PECENANSKY MARGARET
PESEK ROSE
PETCOFF VILMA
PETRILAK MARY
PETRILAK MICHAEL
PETRUS MARGIT PLACID
PICK WILLIAM
PIPES ALICE
POKORNY ANNA
POLACEK JOHN
POLASEK JOHN
POSTEK ANDREW
PRIKAZKSY HELEN
RAFFAC JOHANNA WALLEK
RAFFAC STEPHAN
RAMM KATHERINE
RASTOCKY ADELINE
RAUSCHER CLEMENTINE

RAUSCHER JULIA
RAWNER HERMINE
REICHER MARGARET
RINDOS ANDREW
RING ALBERT
ROBERT JOHN
ROESLER ANTHONY
ROLAND PAUL
ROLINC CHARLES
ROLINC LILLIAN
ROSENBAUM MAX
ROSENBERG JOSEPHINE
ROSENWASSER ADOLF
ROSENWASSER ISIDORE
ROSENWASSER SAMUEL
RUSNAK JOSEF
RUSNAK MARY
SALIVAR JOSEPHINE L
SALZ MARTHA
SALZ OSCAR
SAMKO BELLA
SANDER ELSE
SASKE ELEANOR
SCHAEFER EVA M
SCHAFER ROSE
SCHATTEN ANNA MARIA
SCHMEGNER JOHN
SCHMEGNER MARY
SCHMID ADOLF L
SCHULLER JOSEPHINE
SCHULLER JULIA
SCHUSTER KURT
SCHUSTER SOPHIE
SCHWARTZ PHYLLIS
SCHWARZKOPF OTTO
SEDIVY GUSTAV
SEDLAK MARIA
SEFCIF JOHN
SEFCIF KRISTINA
SEMAK MARY HODOVANEC
SENKAR JUDITA BOOR
SIEBERT HERBERT A
SIEGEL FUERST KATHERINA
SILADY ELIZABETH
SILADY FRANK
SINGER FRED
SKODACHEK MARIA DARULA
SLADKY JOSEPH
SLADKY MARIE
SLINTAK JOHN
SLINTAK ZUZANA
SLOBODNIK STEFAN
SMOLIK ALBIA
SMOLIK FRANK
SMOLIK JOSEF
SMOLIK STEFAN
SOBEK RUDOLF
SOFFER MARGARET
SOLTESZ JOSEPH
SOLTIS GEORGE
SOLTIS HELEN
SOLTIS JOHN
SOLTIS JOHN B
SOLTIS ROSE
SORDAN VICTOR
SOTAK JOSEPH
SOUCEK ANTOINE F
SOYKA FRANCIS
SPICKA GEORGE
SPISAK GEORGE
STANEK JOHN
STEPANIK JOHN
STEPHAN M MAGDA
STEVENSON MARTHA
STORA JOHN
STRBA KATHERINA
SUDOVSKY JOHANNA
SUPLAT JOHN
SVARIN MAGDELINA
SVEC THOMAS
SVETZ TEREZIA
SYKORA CLEMENT
SZCZESNIAK JAN
TAUBER KAROLINE
TESARIK VLASTA KLIMES
THEBNER LEAH
THUMIN MAX
TIMFELD JOSEPH
TOMAN FRANK
TOMAN JULIA
TOMASOVIC STEFAN
TOTH JULIUS
TOTKA MARIE
TREMBA JOHN
UHLIAR ANNA
UHLIAR MARTIN
UKROPEC THERESA HEREGA
ULACCO ANNA SOLTIS
USIAK JOHN
VACENDAK ANNA
VADOVIC JOSEPH
VALYO MARY
VARADY ANNA PETRIK
VASS HELEN
VESECKY RUDOLPH
VITANYI ELIZABETH
VNUK ANNA
VNUK JOHN
VODVARKA AGNES
VOLCSKO ANDREW
VOLCSKO HELEN
VOLEK FRANK
VON HOHENLANGEN JOSEPHINE
WALDER ERIC
WASICEK JOHN
WEIGARTEN BERTHA GLUCK
WEINMANN GRETE
WEISHUT FREDERIC T
WEISS SYLVIA
WICHE ANNIE
WILSON EMILIA CATHERINE
WINDSOR VICTORIA
WINKLER CAMILLA
WINKLER MAX
WINTER CHARLES
WINTER SOBOTKA PETER
WISSOW CHARLOTTE
WITTMAN MARGARET
WOLF CHAIM
WOLF HAROLD
WOLF JOSEPH
WOLF KAREL
WONISCH HEDWIG
WRABEL PAUL
YUREK ZUZANNA
ZDRAVECKY ANNA
ZDRAVECKY STEPHEN
ZENTER HEDY
ZITNEY ANNA
ZORKOCY JOHN JOSEPH

BILLING CODE 4810-35-C

BENES CLAIMS

DANIEL, EDITH
KLINGER, ANTHONY J
SOBEK, RUDOLF

CZECHOSLOVAKIAN II CLAIMS PROGRAM

BLESKAN KRESTINA
BLESKAN MARGARET
BLESKAN PETER J
MERVA JOHN
SZABO WILLIAM

W.E. Douglas,
Commissioner, Financial Management Service.

FR Doc. 86-26956 Filed 11-28-86; 8:45 am]
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federal register

Monday
December 1, 1986

Part V

Department of Education

34 CFR Part 668
Student Assistance General Provisions; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 668

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: As a result of the Secretary's review of current regulations, the Secretary amends Subparts D, F, and G of the Student Assistance General Provisions regulations to simplify procedures, clarify requirements, and reduce administrative burden 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. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Fred Sellers or Joyce Coates, U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue SW. (Regional Office Building 3, Room 4318), Washington, DC 20202. Telephone number: (202) 472-4300.

SUPPLEMENTARY INFORMATION: A notice of Proposed Rulemaking (NPRM) for the Student Assistance General Provisions regulations was published in the **Federal Register** of December 22, 1984, 49 CFR 48494. These regulations were proposed to clarify requirements, reduce administrative burden on institutions of higher education and vocational schools, and consolidate provisions and definitions common to all the programs authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs). The Title IV, HEA programs include the Pell Grant, Guaranteed Student Loan (GSL), PLUS, State Student Incentive Grant (SSIG), Perkins Loan (formerly National Direct Student Loan (NDSL)), College Work-Study (CWS) and Supplemental Educational Opportunity Grant (SEOG) programs. The latter three programs are known collectively as the campus-based programs.

In the **Federal Register** of November 19, 1986, 51 FR 41920, the Secretary published Subpart A of the Student Assistance General Provisions regulations, which included definitions and provisions common to all the Title IV, HEA programs, so those definitions and provisions would become effective at the same time that regulations for the GSL Program became effective. The Secretary has reviewed the comments with regard to Subparts D, F, and G of the Student Assistance General Provisions regulations, has determined his response to those comments, and is therefore publishing Subparts D, F, and G as final regulations at this time.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made to Subparts D, F, and G based on public comment on the notice of proposed rulemaking, the Secretary has amended § 668.44 to incorporate a new requirement contained in the Higher Education Amendments of 1986, Pub. L. 99-498.

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on the proposed regulations. However, this change does not implement substantive policy, but merely implements the terms of the Higher Education Amendments of 1986, Pub. L. 99-498. Therefore, the Secretary finds that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B)

Revisions to the Notice of Proposed Rulemaking

Subpart D—Student Consumer Information Services

Section 668.44 Institutional information. The Secretary has incorporated in this section a new requirement that an institution which advertises its job placement rates must provide to prospective students the most recent available data that substantiates the truthfulness of the advertisements. This requirement is contained in the Higher Education Amendments of 1986, Pub. L. 99-498.

Subpart F—Misrepresentation

The section numbers of Subpart F have been redesignated to accommodate Subpart E, "Verification of Student Aid Application Information," which was published in the **Federal Register** of March 14, 1986, 51 FR 8946.

Subpart G—Fine, Limitation, Suspension and Termination

The section numbers of Subpart G have been redesignated to accommodate the addition of Subpart E and the redesignation of Subpart F.

Section 668.71 (Proposed rule); § 668.81 (Final rule) Scope and special definitions. The Secretary has added a definition of the term "otherwise eligible institution" in § 668.81(a)(2) and has revised § 668.81(c)(1) and (2) to make even clearer that the procedures set forth in Subpart G, which are, in turn, required by sections 487(b)(1)(D) and 487(b)(2) of the Higher Education Act of 1965, as amended (HFA), do not apply to ED determinations regarding whether an institution or vocational school initially satisfies, or continues to satisfy, the appropriate statutory definition of that institution or school.

Section 668.72 (Proposed rule); § 668.82 (Final rule) Standards of conduct. The Secretary has revised § 668.82(c) to clarify that a violation of an institution's fiduciary duty with respect to its administration of the Title IV, HEA programs may warrant sanctions other than termination including fine, limitation or suspension.

The Secretary has revised § 668.82(d) to specify that an institution violates its fiduciary duty with respect to its administration of the Title IV, HEA programs if the institution itself, its owner or its chief executive officer pleads guilty to, or is convicted of, a crime involving the unlawful acquisiton, use or expenditure of Title IV, HEA program funds.

Section 668.73 (Proposed rule); § 668.83 (Final rule) Emergency action. The Secretary has revised § 668.83(b) to make explicit that the notice initiating an emergency action must inform the institution or school that it is entitled to a show cause hearing that the emergency action is unwarranted.

Section 668.74 (Proposed rule); § 668.84 (Final rule) Fine. Section 668.75 (Proposed rule); § 6651.85 (Final rule) Suspension. Section 668.76 (Proposed rule); § 668.86 (Final rule) Termination. The Secretary has amended §§ 668.84(b), 668.85(b) and 668.86(b) to provide that an institution's written submissions contesting a fine, suspension, limitation or termination action, or a written request for a hearing on the record to contest that action, must be received by the designated ED official by the effective date of the proposed sanction rather than five days before that date.

Section 668.78 (Proposed rule); § 668.88 (Final rule) Hearing on the record. In order to facilitate settlement of administrative proceedings, the Secretary has revised § 668.83(c)(1) to specify that settlement discussions between parties, or the terms of a proposed settlement agreement, are not admissible in an administrative proceeding.

Section 668.80 (Proposed rule); § 668.90 (Final rule) Initial and final decisions. The Secretary has revised § 668.90(a) to limit the discretion of the administrative law judge in determining the appropriate sanction in two instances. In the first instance, consistent with the provisions of § 668.82(d), if the administrative law judge finds that the institution itself, its owner or its chief executive officer has pled guilty to, or has been convicted of, a crime involving the acquisition, use or expenditure of Title IV, HEA program funds, the administrative law judge must find that the termination of the institution's eligiblity to participate in the Title IV, HEA programs is warranted.

In the second instance, if the action brought against an institution involves its failure to demonstrate its financial responsibility because it failed to provide a letter of credit or performance bond in the amount established by the Secretary, the administrative law judge must find that the amount established by the Secretary is appropriate unless the institution can demonstrate that the amount was unreasonable. The Secretary has clarified the authority of the administrative law judge in this matter for the following reasons.

In the usual termination proceeding, where an institution has violated program statutes or regulations, the administrative law judge is called upon to decide whether the sanction proposed by the designated ED official, some other sanction or no sanction is appropriate. The administrative law judge would base his decision on the number, duration and seriousness of the institution's violations. However, when determining the appropriate amount of a letter of credit or performance bond, the administrative law judge would be substituting his judgment for the judgment of program administrators in a specialized area of program administration. Under those circumstances, the Secretary believes it is appropriate for the administrative law judge to defer to the experience and expertise of program administrators unless the institution can demonstrate that the amount of the performance bond or letter of credit requested was unreasonable.

Miscellaneous

Subpart D—Student Consumer Information Services

Section 668.44 Institutional information. In the preamble to the NPRM, the Secretary proposed deleting the requirement that an institution provide a discussion of whether its instructional or other facilities are accessible to the handicapped in its student consumer information material. However, the proposed regulations included that requirement in § 668.44(a)(6), and the Secretary has decided to keep that requirement. This was supported by the comments received.

Comments and Responses

The following is a summary of the comments received on Subparts D, F, and G and the Secretary's response to those comments.

Subpart D—Student Consumer Information Services

Comment: One commenter questioned the difference between "disseminate" and "make readily available" when referring to the information an institution must provide to a student.

Response: For the purpose of Subpart D, the terms "disseminate" and "make readily available" have the same meaning. Both terms are used in the statute.

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

Section 668.72 (Proposed rule); § 668.82 (Final rule) Standard of conduct.—Comment: One commenter stated that the violations of an institution's fiduciary duty, that form the grounds for its termination, should also serve as grounds for other sanctions such as fine, limitation and suspension.

Response: A change has been made. The Secretary partially agrees with the commenter and has revised § 668.82(c) accordingly. However, the Secretary has not revised § 668.82(d) because the Secretary wishes to put institutions on notice in § 668.82(d), and in § 668.90(a)(3)(i), that termination is the consequence for criminally mishandling Title IV, HEA program funds.

Comment: One commenter asked what constituted an "owner" of an institution for the purpose of § 668.82(d) and suggested that the Secretary provide a definition of an "owner" in the regulations.

Response: A change has been made. When the Secretary used the term "owner" of an institution in the NPRM, he meant to include those individuals who operate and control the institution as well as those individuals who have an ownership interest in the institution. The Secretary has revised § 668.82(d) to make this intent explicit. The term "owner" is now used in § 668.82(d) in its ordinary dictionary meaning, *i.e.*, one who has an ownership interest in the institution.

Comment: One commenter asked what the Secretary meant when he indicated that conviction of a crime involving the acquisition, use or expenditure of Title IV, HEA program funds constituted an automatic ground for terminating the eligibility of an institution to participate in the Title IV, HEA programs.

Response: The Secretary has determined that if an institution, its owner or its chief executive officer pleads guilty to, or is convicted of, a crime involving the acquisition, use or expenditure of Title IV, HEA program funds, the appropriate sanction in every case is termination of the institution's eligibility to participate in the Title IV, HEA programs. Accordingly, the Secretary has revised §§ 668.82(d), 668.90(a)(3) and 668.90(f)(3) of the final regulations to require termination as a remedy in such instances. Thus, if the designated ED official begins a termination action against an institution alleging that the institution, its owner or its chief executive officer has pled guilty to, or has been convicted of, a crime involving the acquisition, use or expenditure of Title IV, HEA program funds, the hearing on the record will determine, as a factual matter, whether the designated ED official's allegation is accurate. If it is, the administrative law judge must determine that termination of the institution's eligibility to participate in the Title IV, HEA programs is warranted and the Secretary must affirm that decision.

Comment: One commenter asked whether a person is considered "convicted of a crime" if the person pleads guilty to a crime or is indicted for that crime, or if the person's conviction is being appealed. This commenter further asked whether a plea bargain is considered a conviction.

Response: A change has been made. The Secretary has amended §§ 668.82(d), 668.90(a), and 668.90(f) of the final regulation to clarify that it includes guilty pleas as well as convictions.

An indictment is not a conviction, and the Secretary will not consider a person convicted until the normal appeal process is exhausted with regard to that person. As for plea bargaining, what is relevant is the result of the plea bargain, namely, whether an individual has agreed to plead guilty to a crime involving the acquisition, use, or expenditure of Title IV, HEA program funds.

The designated ED official is not precluded from seeking the termination of an institution based on the allegations that make up an indictment or the facts established during a trial of a person whose conviction is on appeal. However, the administrative law judge under these circumstances has the discretion to determine that another sanction, or no sanction, rather than termination is appropriate.

Comment: One commenter asked whether the provisions of § 668.82(d) (and § 668.90(a)(3)) will be applied against an institution if the conviction occurred before those sections go into effect.

Response: The Secretary believes that a person convicted of a crime involving the acquisition, use or expenditure of Title IV, HEA program funds cannot be trusted to act in accordance with the high standards required of a fiduciary of public funds. The fact that such a conviction took place before the regulations setting forth this belief became effective is irrelevant with regard to that determination.

Comment: One commenter asked if the conviction of an owner of more than one institution of a crime involving the acquisition, use or expenditure of Title IV, HEA program funds at one of his institutions could result in the termination of all his institutions.

Response: If an owner of more than one institution is convicted of a crime involving the acquisition, use or expenditure of Title IV, HEA program funds at one of his institutions, his other institutions will be subject to termination as a result of that conviction.

Comment: One commenter objected to the limited time available to an institution that receives a notice concerning a fine, limitation, suspension or termination action to decide whether to contest that action. The commenter pointed out that under §§ 668.74(b), 668.75(b) and 668.76(b) in the NPRM, a fine, suspension, limitation or termination goes into effect 20 days from the date the notice was mailed unless the designated ED official receives, at least five days from the effective date, the institution's written submissions contesting the action or a written request for a hearing on the record. The commenter noted that if it took the institution five days to receive the notice from ED and an additional five days for ED to receive the institution's response, the institution would only have five days to decide on its course of action. This commenter also felt that the procedures resulted in persons being considered guilty as the first step and thereby placing the burden on the institution to prove itself innocent.

Response: A change has been made. The Secretary believes that an institution does not need a great deal of time to decide whether to contest an administrative action. However, the Secretary agrees with the commenter that five days is too short a period. The Secretary has therefore amended §§ 668.84(b), 668.85(b), and 668.86(b) to provide that the institution's written submissions contesting the action or a written request for a hearing on the record must be received by the designated ED official by the effective date of the proposed sanction. Further, the Secretary believes that the commenter did not properly characterize the notification process. The institution's burden under the notification procedures is merely to notify the designated ED official in a timely manner of its challenge to the designated ED official's action.

The Department is reviewing its various sets of hearing regulations with an eye towards simplification and consolidation, to the extent consistent with applicable statutory provisions and the nature of the various proceedings involved. Any new procedures developed will be published for public comment as a notice of proposed rulemaking.

Comment: One commenter asked whether § 668.84(a) (§ 668.74(a) in the NPRM) would permit the Secretary to fine an institution $25,000 for each violation of program statutes and regulations and for each substantial misrepresentation.

Response: Section 668.84(a) would permit the Secretary to fine an institution $25,000 for each violation of program statutes and regulations and for each substantial misrepresentation. However, under § 668.92 (§ 668.82 in the NPRM), the administrative law judge and the Secretary, in determining the amount of a fine, must take into account the gravity of the violation or misrepresentation and the size of the institution.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the Order.

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 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan 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 regulations.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; Guaranteed Student Loan Program, 84.032; PLUS Program, 84.032; College Work-Study Program, 84.033; National Direct Student Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

Dated: November 25, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 668 as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. The Table of Contents for Subparts D, F, and G of Part 668 is revised to read as follows:

Subpart D—Student Consumer Information Services

Subpart F—Misrepresentation

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

3. Part 668 is amended by revising Subparts D, F, and G to read as follows:

Subpart D—Student Consumer Information Services

§ 668.41 Scope and special definition.

(a) Each institution participating in any Title IV, HEA program shall disseminate to all enrolled students, and to prospective students upon request, through appropriate publications and mailing, information concerning—

(1) The institution (see § 668.44); and

(2) Any student financial assistance available to students enrolled in the institution (see § 668.43).

(b) The following definition applies to this subpart: *Prospective student:* An individual who has contacted an institution participating in any Title IV, HEA program for the purpose of requesting information concerning admission to the institution.

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

§ 668.42 Preparation and dissemination of materials.

For each award year in which it participates in any Title IV, HEA program, an institution shall—

(a) If necessary, prepare and publish materials covering the topics set forth in § 668.43 and § 668.44; and

(b) Make those materials available through appropriate publications and mailings to—

(1) All currently enrolled students; and

(2) Any prospective student, upon request of that student.

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

§ 668.43 Financial assistance information.

(a)(1) Information on financial assistance that the institution must publish and make readily available to current and prospective student's under this subpart includes, but is not limited to, a description of all the Federal, State, local, private and institutional student financial assistance programs available to students who enroll at that institution.

(2) These programs include both need-based and non-need-based programs.

(3) The institution may describe its own financial assistance programs by listing them in general categories.

(b) For each program referred to in paragraph (a) of this section, the information provided by the institution must describe—

(1) The procedures and forms by which students apply for assistance;

(2) The student eligibility requirements;

(3) The criteria for selecting recipients from the group of eligible applicants; and

(4) The criteria for determining the amount of a student's award.

(c) The institution shall describe the rights and responsibilities of students receiving financial assistance and, specifically, assistance under the title IV, HEA programs. This description must include specific information regarding—

(1) Criteria for continued student eligibility under each program;

(2)(i) Standards which the student must maintain in order to be considered to be making satisfactory progress in his or her course of study for the purpose of receiving financial assistance; and

(ii) Criteria by which the student who has failed to maintain satisfactory progress may re-establish his or her eligibility for financial assistance;

(3) The method by which financial assistance disbursements will be made to the students and the frequency of those disbursements;

(4) The terms of any loan received by a student as part of the student's financial assistance package, a sample loan repayment schedule for sample loans and the necessity for repaying loans; and

(5) The general conditions and terms applicable to any employment provided to a student as part of the student's financial assistance package.

(Approved under OMB Control Number 1840–0537)

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

§ 668.44 Institutional information.

(a) Institutional information that the institution must publish and make readily available to current and prospective students under this subpart includes, but is not limited to—

(1) The cost of attending the institution, including—

(i) Tuition and fees charged to full-time and part-time students;

(ii) Estimates of necessary books and supplies;

(iii) Estimates of typical charges for room and board;

(iv) Transportation costs for commuting students or for students living on or off-campus; and

(v) Any additional cost of a program in which the student is enrolled or expresses a specific interest;

(2) A statement of the refund policy of the institution for the return of unearned tuition and fees or other refundable portion of costs paid to the institution;

(3) A statement of the institution's policies regarding the distribution of any refund due to the Title IV, HEA programs as required by § 668.21;

(4) The academic program of the institution, including—

(i) The current degree programs and other educational and training programs;

(ii) The instructional, laboratory, and other physical facilities which relate to the academic program; and

(iii) The institution's faculty and other instructional personnel;

(5) The names of associations, agencies or governmental bodies which accredit, approve or license the institution and its programs and the procedures by which documents describing that activity may be reviewed under paragraph (b) of this section;

(6) A description of any special facilities and services available to handicapped students; and

(7) The titles of persons designated under § 668.45 and information regarding how and where those persons may be contacted.

(b) The institution shall make available for review to any enrolled or prospective student, upon request, a copy of the documents describing the institution's accreditation, approval or licensing.

(c) If the institution advertises job placement rates as means of attracting students to enroll in the institution, the institution must make available to prospective students, at or before the time of application, the most recent available data concerning—

(1) Employment statistics for students who have attended that institution;

(2) Graduation statistics for students who have attended that institution; and

(3) Any other information that is necessary to substantiate the truthfulness of the advertisements.

(Approved under OMB Control Number 1840–0537)

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

§ 668.45 Availability of employees for information dissemination purposes.

(a) *Availability.* (1) Except as provided in paragraph (b) of this section each institution shall designate an employee or group of employees who shall be available on a full-time basis to assist enrolled or prospective students in obtaining the information specified in §§ 668.43 and 668.44.

(2) If the institution designates one person, that person shall be available, upon reasonable notice, to any enrolled or prospective student throughout the normal administrative working hours of that institution.

(3) If more than one person is designated, their combined work schedules must be arranged so that at least one of them is available, upon reasonable notice, throughout the normal administrative working hours of that institution.

(b) *Waiver.* (1) the Secretary may waive the requirement that the employee or group of employees designated under paragraph (a) of this section be available on a full-time basis if the institution's total enrollment, or the portion of the enrollment participating in the Title IV, HEA programs, is too small to necessitate an employee or group of employees being available on a full-time basis.

(2) In determining whether an institution's total enrollment or the number of Title IV, HEA program recipients is too small, the Secretary considers whether there will be an insufficient demand for information dissemination services among its enrolled or prospective students to necessitate the full-time availability of an employee or group of employees.

(3) To receive a waiver, the institution shall apply to the Secretary at the time and in the manner prescribed by the Secretary.

(c) The granting of a waiver under paragraph (b) of this section does not exempt an institution from designating a specific employee or group of employees to carry out on a part-time basis the information dissemination requirements.

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

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Subpart F—Misrepresentation

§ 668.71 Scope and special definitions.

(a) This subpart establishes the standards and rules by which the Secretary may initiate a proceeding under Subpart G against an otherwise eligible institution for any substantial misrepresentation made by that institution regarding the nature of its educational program, its financial charges or the employability of its graduates.

(b) The following definitions apply to this subpart:

Misrepresentation: Any false, erroneous or misleading statement an eligible institution makes to a student enrolled at the institution, to any prospective student, to the family of an enrolled or prospective student, or to the Secretary. Misrepresentation includes the dissemination of endorsements and testimonials that are given under duress.

Prospective student: Any individual who has contacted an eligible institution for the purpose of requesting information about enrolling at the institution or who has been contacted directly by the institution or indirectly through general advertising about enrolling at the institution.

Substantial misrepresentation: Any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment.

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

§ 668.72 Nature of educational program.

Misrepresentation by an institution of the nature of its educational program includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) The particular type(s), specific source(s), nature and extent of its accreditation;

(b) Whether a student may transfer course credits earned at the institution to any other institution;

(c) Whether successful completion of a course of instruction qualifies a student for—

(1) Acceptance into a labor union or similar organization; or

(2) Receipt of a local, State or Federal license or a non-governmental certification required as a precondition for employment or to perform certain functions;

(d) Whether its courses are recommended by—

(1) Vocational counselors, high schools or employment agencies; or

(2) Governmental officials for governmental employment;

(e) Its size, location, facilities or equipment;

(f) The availability, frequency and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet;

(g) The nature, age and availability of its training devices or equipment and their appropriateness to the employment objectives that it states its programs and courses are designed to meet;

(h) The number, availability and qualifications, including the training and experience, of its faculty and other personnel;

(i) The availability of part-time employment or other forms of financial assistance;

(j) The nature and availability of any tutorial or specialized instruction, guidance and counseling, or other supplementary assistance it will provide its students before, during or after the completion of a course; or

(k) The nature of extent of any prerequisites established for enrollment in any course.

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

§ 668.73 Nature of financial charges.

Misrepresentation by an institution of the nature of its financial charges includes, but is not limited to, false, erroneous or misleading statements concerning—

(a) Offers of scholarships to pay all or part of a course charge, unless a scholarship is actually used to reduce tuition charges made known to the student in advance. The charges made known to the student in advance are the charges applied to all students not receiving a scholarship; or

(b) Whether a particular charge is the customary charge at the institution for a course.

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

§ 668.74 Employability of graduates.

Misrepresentation by an institution regarding the employability of its graduates includes, but is not limited to, false, erroneous or misleading statements—

(a) That the institution is connected with any organization or is an employment agency or other agency providing authorized training leading directly to employment.

(b) That the institution maintains a placement service for graduates or will otherwise secure or assist its graduates to obtain employment, unless it provides the student with a clear and accurate description of the extent and nature of this service or assistance; or

(c) Concerning government job market statistics in relation to the potential placement of its graduates.

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

§ 668.75 Procedures.

(a) On receipt of a written allegation or compliant from a student enrolled at the institution, a prospective student, the family of a student or prospective student, or a governmental official, the designated department official as defined in § 668.81 reviews the allegation or compliant to determine its factual base and seriousness.

(b) If the misrepresentation is minor and can be readily corrected, the designated department official informs the institution and endeavors to obtain an informal, voluntary correction.

(c) If the designated department official finds that the complaint or allegation is a substantial misrepresentation as to the nature of the educational programs, the financial charges of the institution or the employability of its graduates, the official—

(1) Initiates action to fine or to limit, suspend or terminate the institution's eligibility to participate in the Title IV,

HEA programs according to the procedures set forth in Subpart G, or

(2) Take other appropriate action.

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

Subpart G—Fine, Limitation, Suspension and Termination Proceedings

§ 668.81 Scope and special definitions.

(a)(1) This subpart establishes rules for the imposition of a fine upon, or for the suspension, limitation or termination of an otherwise eligible institution's participation in any or all of the Title IV, HEA programs.

(2) An "otherwise eligible institution" is an institution that the Secretary has determined—

(i) Satisfies the appropriate definition of the term "public or private nonprofit institution of higher education," "proprietary institution of higher education," "postsecondary vocational institution" or "vocational school" set forth in Subpart A of this part; and

(ii) Initially satisfies the factors of financial responsibility and standards of administrative capability set forth in Subpart B of this part.

(b) This subpart applies to an institution which violates any Title IV, HEA program statute, regulation, special arrangement, agreement or limitation prescribed under authority of Title IV of the HEA;

(c) This subpart does not apply to a determination that—

(1) An institution of higher education fails at any time to meet the statutory definition set forth in section 435, 481 or 1201 of the HEA;

(2) A vocational school fails at any time to meet the statutory definition set forth in section 435(c) of the HEA; or

(3) An institution fails to qualify for initial certification to participate in any Title IV, HEA program because it does not meet the fiscal and administrative standards set forth in Subpart B of this part.

(d) This subpart does not apply to a determination by the Secretary of the system to be used to disburse Title IV, HEA program funds to an institution (*i.e.*, advance payments and payments by way of reimbursements) participating under any Title IV, HEA program.

(e) This subpart does not apply to administrative action by the Department of Education based on any alleged violation of—

Subject	Statute	Regulation
Discrimination on the basis of race, color, or natural origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4).	34 CFR Part 100.
Discrimination on the basis of sex.	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	34 CFR Part 106.
Discrimination on the basis of handicap.	Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794).	34 CFR Part 104.
Discrimination on the basis of age.	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*).	45 CFR Part 90.

(f) The following definitions apply to this subpart:

Designated department official: An official of the Education Department to whom the Secretary has delegated responsibilities indicated in this subpart.

Funds: Any money, commitments to provide money and commitments of insurance or reinsurance provided under any or all Title IV, HEA programs to an institution or to or on behalf of students enrolled and attending an institution.

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

§ 668.82 Standard of conduct.

(a) A participating institution acts in the nature of a fiduciary in its administration of the Title IV, HEA programs.

(b) In the capacity of a fiduciary, the institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs.

(c) An institution's failure to administer the Title IV, HEA programs, or to account for the funds it receives under those programs, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for a fine, or the suspension, limitation or termination of the eligibility of the institution to participate in those programs.

(d) If the owner of an institution, the institution itself or the chief executive officer of the institution is convicted of or pleads guilty to a crime involving the unlawful acquisition, use, or expenditure of Title IV, HEA program funds, that conviction or guilty plea is a violation of the institution's fiduciary duty and is an automatic ground for terminating the institution's eligibility to participate in any Title IV, HEA program.

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

§ 668.83 Emergency action.

(a) *Scope and consequences.* The Secretary, may take an emergency action against an institution under which the Secretary withholds funds from the institution or its students and withdraws the authority of the institution to obligate funds under any or all Title IV, HEA programs if the Secretary—

(1) Receives information, determined by the official to be reliable, that the institution is violating applicable laws, regulations, special arrangements, agreements or limitations.

(2) Determines that immediate action is necessary to prevent misuse of Federal funds; and

(3) Determines that the likelihood of loss outweights the importance of following the procedures set forth in this subpart for suspension, limitation or termination.

(b) *Procedures.* A designated department official begins an emergency action by notifying the institution, by certified mail with return receipt requested, of the emergency action and the basis on which the action is taken. The notice also states that the institution has an opportunity to show cause that the emergency action is unwarranted. The effective date of the action is the date on which the notice is received by the institution.

(c) *Duration.* An emergency action may not exceed 30 days unless a suspension, limitation or termination proceeding is begun under this subpart before the expiration of that period. In such case, the period may be extended until the completion of that proceeding, including any appeal to the Secretary.

(d) *Opportunity to show cause.* The Secretary provides the institution, if it so requests, an opportunity to show cause that the emergency action is unwarranted.

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

§ 668.84 Fine proceedings.

(a) *Scope and consequences.* The Secretary may impose a fine of up to $25,000 per violation on an institution that—

(1) Violates any provision of Title IV of the HEA or any regulation or agreement implementing that title; or

(2) Substantially misrepresents the nature of its educational program, its financial charges or the employability of its graduates.

(b) *Procedures.* (1) A designated department official begins a fine proceeding by sending the institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the Secretary's intent to fine the institution and the amount of the fine and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the fine, which must be at least 20 days from mailing of the notice of intent;

(iii) Inform the institution that the fine will not be effective on the date specified in the notice if the designated department official receives by that date, a written request for a hearing or written material indicating why the fine should not be imposed.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.88.

(c) *Expedited hearings.* With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

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

§ 668.85 Suspension proceedings.

(a)(1) *Scope and consequences.* The Secretary may suspend the eligibility of an institution to participate in any or all of the Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any provision of any regulation or agreement implementing that Title.

(2) The suspension may not exceed 60 days unless—

(i) The institution and the Secretary agree to an extension if the institution has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under § 668.86.

(b) *Procedures.* A designated department official begins a suspension proceeding by sending a notice to an institution by certified mail with return receipt requested. The notice must—

(i) Inform the institution of the intent of the Secretary to suspend the institution's eligibility to participate, cite the consequences of that action and identify the alleged violations which constitute the basis for the action;

(ii) Specify the proposed effective date of the suspension, which shall be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the suspension will not be effective on the date specified in the notice if the designated department official receives by that date, a request for a hearing or written material indicating why the suspension should not take place.

(2) If the institution does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No suspension takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.88.

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

§ 668.86 Limitation or termination proceedings.

(a) *Scope and consequences.* The Secretary may terminate or limit the eligibility of an institution to participate in any or all Title IV, HEA programs if the institution violates any provision of Title IV of the HEA or any regulation or agreement implementing that Title. The consequences of the Secretary limiting or terminating the eligibility of an institution to participate in any Title IV, HEA program are set forth in §§ 668.93 and 668.94, respectively.

(b) *Procedures.* (1) A designated department official begins a limitation or termination proceeding by sending an institution a notice by certified mail with return receipt requested. This notice must—

(i) Inform the institution of the intent of the Secretary to limit or terminate the institution's eligibility to participate, cite the consequences of that action, and identify the alleged violations which constitute the basis for the action, and, in the case of a limitation proceeding, state the limits to be imposed;

(ii) Specify the proposed effective date of the limitation or termination, which must be at least 20 days after the date of mailing of the notice of intent; and

(iii) Inform the institution that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives by that date, a request for a hearing or written material indicating why the limitation or termination should not take place.

(2) If the institution does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. No limitation or termination takes place until after a hearing is held.

(4) An administrative law judge conducts a hearing on the record in accordance with § 668.88.

(c) *Expedited hearing.* With the approval of the administrative law judge and the consent of the designated department official and the institution, any time schedule specified in this section may be shortened.

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

§ 668.87 Pre-hearing conference.

(a)(1) A pre-hearing conference be convened by the administrative law judge if he or she thinks that such a conference would be useful, or if requested by—

(i) The designated department official; or

(ii) The institution.

(2) The purpose of a pre-hearing conference is to allow the parties to settle or narrow the dispute.

(b) If agreed to by the administrative law judge, the designated department official and the institution, a pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

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

§ 668.88 Hearing on the record.

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an administrative law judge.

(b) The hearing process may be expedited as agreed by the administrative law judge, the designated department official and the institution. Procedures to expedite may include, but are not limited to, the following—

(1) A restriction on the number or length of submissions;

(2) The conduct of the hearing by telephone conference call;

(3) A review limited to the written record; or

(4) A certification by the parties to facts and legal authorities not in dispute.

(c)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable. However, discussions of settlement between the parties or the terms of settlement offers are not admissible.

(2) The designated department official has the burden of persuasion in any fine, suspension, limitation or termination proceeding under this subpart.

(3) Discovery, as provided for under the Federal Rules of Civil Procedure, is not permitted.

(4) The administrative law judge accepts only evidence that is relevant and material to the proceeding and is not unduly repetitious.

(d) The designated department official shall make a transcribed record of the proceeding and shall make the record available to the institution upon its request and upon its payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

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

§ 668.89 Authority and responsibilities of the administrtive law judge.

(a) The administrative law judge regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b)(1) The administrative law judge is not authorized to issue subpoenas.

(2) If requested by the administrative law judge, the Secretary and the institution shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The administrative law judge shall take whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to, the following—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

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

§ 668.90 Initial and final decisions—Appeals.

(a)(1) The administrative law judge shall issue a written initial decision to the institution and the designated department official by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing, if the administrative law judge does not request the parties to submit briefs; or

(iii) The date on which the administrative law judge terminates the hearing in accordance with § 668.89(c)(3).

(2) The administrative law judge's decision must state whether the imposition of the fine, limitation, suspension or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution, the administrative law judge may, if appropriate, issue a decision to fine the institution or impose one or more limitations on the institution rather than terminating its eligibility to participate.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the administrative law judge finds that the owner of the institution, the institution itself or the chief executive officer of the institution was convicted of, or pled guilty to, a crime involving the unlawful acquisition, use, or expenditure of Title IV, HEA program funds, the administrative law judge must find that termination of the institution's eligibility to participate in the Title IV, HEA programs is warranted; or

(ii) If the action brought against an institution involves its failure to provide a letter of credit or performance bond in the amount specified by the Secretary under § 668.15, the administrative law judge must find that the amount of the performance bond or letter of credit established by the Secretary was appropriate unless the institution can demonstrate that the amount was unreasonable.

(4) The administrative law judge shall base findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted by written submissions, findings of fact must be agreed to by the parties.

(b)(1) In a suspension proceeding, the Secretary reviews the administrative law judge's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) A suspension takes effect upon either the date on which notice of the suspension is received by the institution or the original proposed effective date stated in the designated department official's notice of intent to suspend, whichever is later.

(3) A suspension may not exceed 60 days unless a limitation or termination proceeding is begun under this subpart before the expiration of that period. In that case, the period may be extended until the completion of that proceeding including any appeal to the Secretary.

(c)(1) In a fine, limitation or termination proceeding, the administrative law judge's initial decision automatically becomes the Secretary's final decision 20 day after it is issued and received by both parties unless, within that 20 days period, the institution or the designated department official appeals the decision to the Secretary.

(2) An appeal is made by sending a written notice of appeal to the Secretary. This notice must be received by the Secretary within twenty days of the appealing party's receipt of the administrative law judge's initial decision. (The appealing party shall send a copy of its appeal notice to the other party.)

(d)(1) Within a period specified by the Secretary, the party that appeals shall submit a brief or written materials to the Secretary explaining why the initial decision of the administrative law judge should be overturned or modified.

(2) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(i) The evidence introduced into the record at hearing;

(ii) Stipulations of the parties if the hearing consisted of written submissions; or

(iii) Matters that may be judicially noticed.

(3) The opposing party shall respond within the time period specified by the Secretary.

(4) Neither party may introduce new evidence on appeal.

(5) Each party shall provide a copy of its brief to the other party when it submits its brief to the Secretary.

(e) The initial decision of the administrative law judge imposing a fine or limiting or terminating the eligibility of the institution to participate does not take effect pending the appeal.

(f)(1) The Secretary renders a final decision.

(2) In rendering that decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted of only written submissions and matters that may be judicially noticed.

(3) The Secretary's decision may affirm, modify or reverse the administrative law judge's initial decsion and includes a statement of the reasons for the decision, except that if the administrative law judge finds that

the termination is warranted pursuant to § 668.90 (a)(3)(i), the Secretary affirms that decision.

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

§ 668.91 Verification of mailing and receipt dates.

(a) Verification of the Department of Education's mailing dates and receipt dates referred to in this subpart is evidenced by the original receipt from the U.S. Postal Service.

(b) If an institution refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution refuses to accept the notice.

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

§ 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, administrative law judge and Secretary shall take into account—

(1)(i) The gravity of the institution's violation or failure to carry out the relevant statute, regulation or agreement; or

(ii) The gravity of its misrepresentation; and

(2) The size of the institution.

(b) Upon the request of the institution, the Secretary may compromise the fine.

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

§ 668.93 Limitation.

A limitation may include, as appropriate to the program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A requirement that an institution obtain a bond, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds; or

(d) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

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

§ 668.94 Termination.

(a) A termination—

(1) Ends an institution's eligibility to participate in any or all of the Title IV, HEA programs;

(2) Prohibits an institution or the Secretary from making or increasing Title IV, HEA program awards;

(3) Prohibits an institution from making any other new obligations against Title IV, HEA program funds; and

(4) Prohibits further guarantee commitments by the Secretary under the Guaranteed Student Loan or PLUS programs for loans to students to attend that institution, and prohibits further disbursements by an institution which is a lender under the Guaranteed Student Loan or PLUS programs (whether or not guarantee commitments have been issued by the Secretary or a guarantee agency for such disbursements):

(b) If an institution is terminated during a payment period, any student at the institution who has received an award or to whom a commitment has been made before the effective date of the termination may receive a payment for that payment period.

(c) For purposes of this section, a commitment—

(1) Under the Pell Grant and Campus-based programs, is defined in § 668.25 and

(2) Under the Guaranteed Student Loan and PLUS programs, occurs when the Secretary or a guarantee agency advises the lender that the loan will be guaranteed.

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

§ 668.95 Reimbursements, refunds and offsets.

(a) The designated department official, administrative law judge or Secretary may require an institution to take reasonable and appropriate corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements or limitations.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, which the institution improperly received, withheld, disbursed or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Guaranteed Student Loan or PLUS programs—

(i) Ineligible interest benefits, special allowances or other claims paid by the Secretary; and

(ii) Discounts, premiums or excess interest paid in violations of Part 682 or 683 of Title 34 of the Code of Federal Regulations; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds due to students under program regulations; and

(ii) Any grants, work-study assistance or loans made in violation of program regulations.

(c) If any final decision requires an institution to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution.

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

§ 668.96 Reinstatement after termination.

(a)(1) An institution whose eligibility to participate in any or all of the Title IV, HEA programs has been terminated may file a request for reinstatement as a participating eligible institution.

(2) Except for an institution that has been terminated for engaging in substantial misrepresentation concerning the nature of its educational program, the nature of its financial charges or the employability of its graduates, a request for reinstatement may not be made before the expiration of 18 months after the effective date of the termination.

(3) An institution whose eligibility to participate was terminated because the institution engaged in substantial misrepresentation may not request reinstatement before the expiration of three months after the effective date of the termination.

(b)(1) The reinstatement request must be in writing and must show that the institution has corrected the violation(s) on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution had improperly received, withheld, disbursed or caused to be disbursed.

(2) The institution must meet all the qualifications for participation in Title IV, HEA programs, as provided in Subpart B of this part, and enter into a new participation agreement with the Secretary.

(c) The Secretary does not grant reinstatement to an institution if it—

(1) Is owned, in whole or in part, by a person who has been convicted of a crime involving the abuse of Title IV, HEA programs; or

(2) Continues to employ an individual in a capacity that involves the administration of Title IV, HEA programs or receipt of funds under Title IV, HEA programs who was shown to be an incompetent administrator during the termination proceedings or who was convicted of a crime involving the abuse of Title IV, HEA programs.

(d) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to limitation(s).

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

§ 668.97 Removal of limitation.

(a) An institution whose eligibility to participate in any or all Title IV, HEA programs has been limited may not apply for removal of the limitation of its eligibility to participate before the expiration of 12 months from the effective date of the limitation.

(b) After the minimum limitation period, the institution may request removal of the limitation. The request must be in writing and show that the institution has corrected the violations on which the limitation was based.

(c) No later than 60 days after the receipt of the request, the Secretary responds to the institution—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation(s).

(d) If the Secretary denies the request or establishes other limitation(s), the institution, upon request, is granted an opportunity to show cause why its eligibility to participate should be fully reinstated.

(e) The institution's request for a show cause meeting does not waive its right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation(s) pending the outcome of the meeting.

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

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