

Sunshine Act Meetings

Federal Register

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Tuesday, December 1, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY CREDIT CORPORATION

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 44274, November 18, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m., November 23, 1987.

STATUS: Open.

MATTERS TO BE CONSIDERED:

- Minutes of Special Meeting on 7-23-87.
- Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
- Docket re: BCP-31a, Peanut Loan and Purchase for the 1986 and Subsequent Marketing Years.
- Docket re: CX-308b, Revision 1, Guarantee Arrangements Required By CCC Under Its Short and Intermediate Term Export Credit Guarantee Program.
- Memorandum re: Fiscal Year 1988 Section 416 Commodity Determination and Revised Fiscal Year 1987 Commodity Determination.
- Resolution re: Ratification of Target Export Assistance Funding—Japan.
- Resolution re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1987, CZ-266, Resolution No. 24, Amendment 3.
- Resolution re: Ratification of Commodities Available for Public Law 480 During Fiscal Year 1988, CZ-266, Resolution No. 25.

CONTACT PERSON FOR MORE INFORMATION: James V. Hansen, Secretary, Commodity Credit Corporation, Room 3603 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 475-5490.

Dated: November 25, 1987.

James V. Hansen,
Secretary, Commodity Credit Corporation.
[FR Doc. 87-27588 Filed 11-25-87; 4:37 pm]
BILLING CODE 3410-05-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 8, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE

INFORMATION: Jean A. Webb, 254-6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-27611 Filed 11-27-87; 9:55 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 22, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-27612 Filed 11-27-87; 9:55 am]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., December 22, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.
Jean A. Webb,
Secretary of the Commission.
[FR Doc. 87-27613 Filed 11-27-87; 9:55 am]
BILLING CODE 6351-01-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board;
Regular Meeting

ACTION: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. § 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board). The regular meeting of the Board will be held December 1, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 1, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT:

David A. Hill, Secretary of the Farm Credit Administration Board, 1501 Farm

Credit Drive, McLean, Virginia 22102-5090 (703-883-4003).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

- Summary Prior Approval Items;
- 1988 Review of Farm Credit System Building Association Budget and Assessment response;
- *Certification Under Section 4.28(j) of the Farm Credit Act of 1971, as Amended;
- *4. Examination and Enforcement Matters; and
- *5. Legislative Update.

Date: November 25, 1987.

David A. Hill,
Secretary, Farm Credit Administration Board.
[FR Doc. 87-27601 Filed 11-25-87; 5:10 pm]
BILLING CODE 6705-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

November 25, 1987.

TIME AND DATE: 10:00 a.m., Thursday, December 3, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act on the following:

1. *Southern Ohio Coal Company*, Docket Nos. WEVA 86-35-R, etc. (Issues include whether the Administrative Law Judge erred in not modifying a section 104(d)(2) order to a section 104(a) citation when he deleted the inspector's finding of unwarrantable failure and whether in sustaining another section 104(d)(2) order, the judge erred in finding that the operator violated 30 C.F.R. § 75.200 and whether the violation was the result of the operator's unwarrantable failure.
2. Consideration of possible revisions to Commission Procedural Rules 20-31, 29 CFR 2700.20 through 2700.31.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance

*3. Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4), (8), and (9).

of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-27658 Filed 11-27-87; 1:26 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Wednesday, November 25, 1987.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Further consideration of testimony on banking issues.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date: November 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27624 Filed 11-27-87; 11:39 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 7, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning

at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 27, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-27698 Filed 11-27-87; 3:41 am]

BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, December 8, 1987.

PLACE: Board Room (Room 812A), Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first five items are open to the public. The last item is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Marine Accident Report: Capsizing of the U.S. Charter Fishing Vessel FISH-N-FOOL, Pacific Ocean at Roca Ben Baja California Norte, Mexico, February 5, 1987.
2. Safety Study: Lap/Shoulder Belts
3. Followup Letters to Recipients of Lap Belt Safety Study Recommendations
4. Case Summaries to the Lap/Shoulder Belts Safety Study
5. Highway Summary Report: Collision of Tour Bus with Bridge Overpass on the George Washington Memorial Parkway, Alexandria, Virginia, April 4, 1987
6. Opinion and Order: Administrator v. Nazimek, Docket SE-6759; disposition of appeals of both parties (Calendared by Chairman Burnett)

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382-6525.

Bea Hardesty,

Federal Register Liaison Officer.

November 27, 1987.

[FR Doc. 87-27683 Filed 11-27-87; 3:18 pm]

BILLING CODE 7533-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: (52 FR 44956 November 23, 1987).

STATUS: Closed meeting.

PLACE: 450 5th Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, November 17, 1987.

CHANGES IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting on Tuesday, November 24, 1987, following the 2:00 p.m. open meeting.

Chapter 11 proceeding.

Commissioner Grundfest, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272-2091.

Jonathan G. Katz,

Secretary.

November 25, 1987.

[FR Doc. 87-27585 Filed 11-30-87; 4:37 am]

BILLING CODE 8010-01-M

UNITED STATES INSTITUTE OF PEACE

TIME AND DATE: 9:00 a.m.-5:00 p.m., Thursday, December 3, 1987.

PLACE: National Trust for Historic Preservation, 1785 Massachusetts Avenue, NW., Washington, DC 20036.

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA (TENTATIVE): Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the minutes of the eighteenth meeting. Consideration of grant application matters.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789-5700.

Dated: November 27, 1987.

Samuel W. Lewis,

President, United States Institute of Peace.

[FR Doc. 87-27643 Filed 11-27-87; 12:56 pm]

BILLING CODE 3155-01-M

Test Retest Report

Tuesday
December 1, 1987

Part II

Department of Education

34 CFR Parts 668 and 690
Student Assistance General Provisions
and Pell Grant Program; Final
Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistance General Provisions regulations and the regulations for the Pell Grant Program. These regulations simplify procedures, clarify requirements, reduce administrative burden while maintaining program integrity, and incorporate changes to the Higher Education Act of 1965 (HEA) made by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Higher Education Amendments of 1986, and the Higher Education Technical Amendments Act of 1987. These regulations further incorporate applicable provisions of the Compact of Free Association and consolidate provisions common to all the student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs).

EFFECTIVE DATE: Generally, these regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. Sections 668.8, 668.13, 668.14, 668.15, 668.17, 668.19, 668.22, 668.23, 668.32, 668.34, and 668.96 will become effective after the information collection requirements contained in these sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. These regulations are generally not subject to section 482(c) of the HEA because they do not constitute "additional regulatory changes initiated by the Secretary affecting the general administration of" the title IV, HEA programs. However, the following provisions apply only to award years beginning on or after July 1, 1988:

(1) The new requirements in § 668.7(a) (6) and (7) for a student to certify that he or she does not owe a refund on a grant awarded and is not in default on a loan made under a Title IV, HEA program.

(2) The new provisions in § 668.8(b)(2) governing the eligibility for the Pell Grant Program of courses in English as a second language.

(3) The new requirement in § 668.19(a)(2) that a financial aid transcript be requested before a student may receive any Title IV, HEA program funds.

(4) The new rule in § 668.19(a)(3) (iv) and (v) regarding a school's authority to transmit GSL or SLS proceeds and to certify PLUS applications prior to receipt of a financial aid transcript from the student's previous school.

(5) The new requirement in § 668.19(c)(2) that a financial aid transcript include information on a student's previous treatment as an independent student.

(6) The new provision in § 668.20(c)(2) concerning the educational level of instruction of a noncredit or reduced credit remedial course.

(7) The removal of Subparts C, D, and E of 34 CFR Part 690 with regard to determining a student's student aid index and cost of attendance under the Pell Grant Program.

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

FOR FURTHER INFORMATION CONTACT: John De Cleene or Jeff Andrade, 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) 732-4888.

SUPPLEMENTARY INFORMATION: On December 12, 1984, the Secretary published a notice of proposed rulemaking (NPRM) for the Student Assistance General regulations in the Federal Register (49 FR 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 Title IV, HEA programs. The Title IV, HEA programs include the Pell Grant, Guaranteed Student Loan (GSL), PLUS, Supplemental Loans for Students (SLS) (formerly ALAS), Consolidation Loan, State Student Incentive Grant (SSIG), Robert C. Byrd Honors Scholarship (Byrd Scholarship), Income Contingent Loan (ICL), Perkins Loan (formerly National Direct Student Loan (NDSL)), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. The last three programs are known collectively as "the campus-based programs."

Final regulations revising Subpart C of the Student Assistance General Provisions, concerning the Statement of Educational Purpose and the Statement of Registration Status, were published on June 28, 1985 (50 FR 26950). On November 19, 1986, the Secretary published final regulations revising Subpart A of the Student Assistance

General Provisions regulations (50 FR 41920), which included definitions and provisions common to all the Title IV, HEA programs, so that those definitions and provisions would become effective at the same time that new regulations for the GSL and PLUS programs became effective. The Secretary has reviewed the comments with regard to Subpart B of the Student Assistance General Provisions regulations and has made appropriate changes in response to those comments. A summary of the comments and responses is contained in the Appendix to these regulations.

The Secretary has made certain additional changes to Subparts A, B, and C of the Student Assistance General Provisions regulations to incorporate statutory provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, the Higher Education Amendments of 1986, Pub. L. 99-498, the Compact of Free Association, Pub. L. 99-239, and the Higher Education Technical Amendments Act of 1987, Pub. L. 100-50. The Secretary has also consolidated into a revised § 668.7 and a new § 668.8 student and program eligibility criteria that are applicable to all Title IV, HEA programs. A discussion of these changes follows. These regulations are being coordinated with separate proposed and final regulations that reflect statutory changes in the individual Title IV, HEA programs.

Waiver of Notice of Proposed Rulemaking

The Secretary has added a new § 668.8 and made certain changes to §§ 668.1, 668.2, 668.7, 668.12, 668.14, 668.19, 668.23, 668.24, 668.32, and 668.34 to reflect new statutory provisions contained in the Consolidated Omnibus Budget Reconciliation Act of 1985, the Higher Education Amendments of 1986, the Compact of Free Association, and the Higher Education Technical Amendments Act of 1987. 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, these latter changes merely implement statutory changes contained in Pub. L. 99-272, Pub. L. 99-498, Pub. L. 99-239, and Pub. L. 100-50 and public comment could therefore have no effect on the content of these regulations. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations as to these

changes is unnecessary and contrary to the public interest.

Substantive Changes in Subparts A, C, and G and Significant Revisions to Subpart B of the Notice of Proposed Rulemaking

I. Subpart A—General

Section 668.1 Scope.

The Higher Education Amendments of 1986 added several new student assistance programs to Title IV of the HEA and changed the name of the National Direct Student Loan (NDSL) Program to the Perkins Loan Program. The new programs are the Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program, the Supplemental Loans for Students (SLS) Program (formerly the ALAS Program), the Consolidation Loan Program, and the Income Contingent Loan (ICL) Program. These changes are incorporated into § 668.1.

Section 668.2 General definitions.

A new statutory definition of *Independent student* is found in sections 411F and 480 of the HEA. Therefore, the definition that was found in § 668.7 of these regulations has been removed and a cross-reference to the statute has been placed in § 668.2.

Section 668.7 Eligible student.

The changes made to section 484 of the HEA by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987 increase the number of provisions that are common to a determination of student eligibility for assistance under all Title IV, HEA programs. The Secretary, therefore, has defined "eligible student" in a revised § 668.7 of the Student Assistance General Provisions regulations. The revision of this section reduces the administrative burden on postsecondary educational institutions by consolidating into a single, easily identifiable place common student eligibility provisions that previously have been scattered throughout the various individual program regulations. Section 690.4 of the regulations for the Pell Grant Program is removed, § 690.75 of those regulations is revised, and the sections governing eligibility and selection in the following program regulations will be revised in the near future:

- Perkins Loan Program (§ 674.9).
- CWS Program (§ 675.9).
- SEOG Program (§ 676.9).
- GSL, PLUS, SLS, and Consolidation Loan programs (§ 682.201).
- SSIG Program (§ 692.40).

Eligibility and selection criteria that are specific to each program will be retained in the relevant individual program regulations.

The provisions of § 668.7 do not apply to student eligibility determinations under the Byrd Scholarship Program because the statutory requirements in section 484 of the HEA do not apply to that program. In addition, the provisions of § 668.7 do not apply to borrower eligibility determinations under the Consolidation Loan Program because the borrower eligibility requirements of that program generally do not correspond to the student eligibility requirements of that program generally do not correspond to the student eligibility requirements of the other Title IV, HEA programs.

Regular student (§ 668.7(a)(1)(i)). The requirement of being a regular student in order to qualify as an eligible student has been extended to the GSL, PLUS, SLS, and ILC programs, as a result of a change made to section 484 of the HEA. One exception is provided under section 484(b) of the HEA. The single exception allows students to apply for loans made under the GSL, PLUS, or SLS programs for up to one twelve-month period if they are carrying at least a half-time workload in a program necessary to qualify them for enrollment in a degree or certificate program. This requirement is effective beginning with the 1987–88 award year, or for the GSL, PLUS, and SLS programs for periods of enrollment beginning on or after July 1, 1987.

Enrollment in an elementary or secondary school (§ 668.7(a)(2)). Section 484 of the HEA has been amended to provide that, effective beginning with the 1987–88 award year, or for the GLS, PLUS, and SLS programs for periods of enrollment beginning on or after July 1, 1987, a student who is enrolled in an elementary or secondary school cannot be eligible for assistance under any Title IV, HEA program. These regulations incorporate the new provision. The Secretary does not consider a student to be enrolled in a secondary school if the student is pursuing courses designed to lead to a GED and the student's enrollment in those courses is part of his effort to satisfy the GED requirement under § 668.7(b)(2) of these regulations.

Ability to benefit—remaining eligible for Title IV, HEA program assistance (§ 668.7(a)(3) and (b)). Section 484(d) of the HEA prescribes procedures through which a student who is admitted to an institution on the basis of his or her ability to benefit from the education offered by an institution may remain eligible for assistance under any Title IV, HEA program. These procedures apply to students who are admitted to

an institution beginning with the 1987–88 award year, or for the GSL, PLUS, and SLS programs, to students admitted for periods of enrollment beginning on or after July 1, 1987. Section 668.7(b) of these regulations incorporates those procedures.

Under the first procedure, the student must receive a GED before he or she graduates from or is certified by the institution in which he or she is enrolled, or by the end of the first year of study at that institution, whichever is earlier. An eligible student may receive assistance under the Title IV, HEA programs during this period, although, under § 668.20 (concerning remedial coursework), he or she may not receive Title IV, HEA program assistance for any remedial coursework that is designed to lead to a GED. If a student fails to receive the GED within the period required by these regulations, the student loses eligibility, and an institution may not disburse further Title IV, HEA program funds to that student.

Under the second procedure, the student must be counseled by the institution before admission and must enroll in and successfully complete a remedial or developmental program that does not exceed one academic year. The student's institution must prescribe the program, although the institution does not have to provide that program itself. If an institution does provide the program, an eligible student may receive Title IV, HEA program aid for the remedial education, if that education qualifies under § 668.20. However, if the institution does not provide the program itself, but the program is provided by another institution, the student may receive Title IV, HEA program aid for the remedial education only if the program meets the requirements of § 668.17 (governing written agreements between eligible and ineligible entities) and § 668.20. If a student does not successfully complete the program, he or she loses eligibility, and an institution may not disburse further Title IV, HEA program funds to that student.

Under the third procedure, the student must, before admission, take a test that measures his or her aptitude to complete successfully the educational program in which he or she plans to enroll and demonstrate that aptitude. The test must be either nationally recognized, standardized, or industry-developed. The test also must meet the criteria of the nationally recognized accrediting agency or association that accredits the institution or its eligible programs. The Secretary considers the term "nationally recognized accrediting agency or association" for this purpose to include

State agencies recognized for the approval of public postsecondary vocational education under the procedures of 34 CFR Part 603. The institution to which a student has applied does not need to administer the test itself. If a student does not demonstrate the appropriate aptitude, he or she may nevertheless remain eligible by enrolling in and successfully completing the remedial program described in the above discussion concerning the second procedure. The same provisions concerning remedial education apply here as apply under the second procedure.

Citizenship and residency requirements (§ 668.7(a)(4)). These regulations consolidate into § 668.7(a)(4) the identical citizenship and residency provisions of the student eligibility requirements contained in the current individual Title IV, HEA program regulations. Section 668.7(a)(4) also implements changes made to section 484 of the HEA by the Higher Education Amendments of 1986 and changes required by the Compact of Free Association.

The Compact of Free Association created two new entities that formerly were part of the Trust Territory of the Pacific Islands: The Federated States of Micronesia and the Marshall Islands. The most recent student eligibility sections for the Pell Grant and campus-based program regulations were published on November 19, 1986 (51 FR 41920), and for the GSL and PLUS programs on November 10, 1986 (51 FR 40886), in anticipation of the consequences of the enactment of the Compact, as well as in anticipation of the enactment of a separate pending Compact for the Republic of Palau. Those regulations therefore provided that an otherwise eligible student qualified for Title IV, HEA assistance if he or she were a permanent resident of the Trust Territory of the Pacific Islands or the Northern Mariana Islands, or a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

Under the terms of the Compact and subsequent agreements between the United States and the Marshall Islands and the United States and the Federated States of Micronesia, a citizen of the Marshall Islands or the Federated States of Micronesia who was enrolled in a postsecondary institution on the date preceding the effective date of the respective Compact and who is otherwise eligible qualifies for assistance under the Pell Grant, CWS, and SEOG programs for a maximum of four years from the effective date of the

respective Compact. The effective dates of the Compact are, for the Marshall Islands, October 21, 1986, and for the Federated States of Micronesia, November 3, 1986. Section 668.7(a)(4) of these regulations reflects these changes. Thus, for example, a citizen of the Marshall Islands who was enrolled in a postsecondary institution on October 20, 1986, regardless of whether he or she received Title IV, HEA program assistance, may qualify for assistance under the Pell Grant, CWS, and SEOG programs if he or she meets the other eligibility requirements of the Student Assistance General Provisions and of the specific programs. This person continues to qualify for assistance under these programs at any time during the four-year period ending October 20, 1990, that he or she meets the other relevant student eligibility requirements. This person, however, does not qualify for assistance under the GSL, PLUS, SLS, Consolidation Loan, Perkins Loan, ICL, or SSIG programs unless he or she meets the requirements for eligible noncitizens. This person also does not qualify for the Byrd Scholarship Program.

Implementation of the Compact of Free Association for Palau, which would have established the Republic of Palau, has been delayed. Therefore, the Trust Territory of the Pacific Islands, of which Palau is the only remaining entity, continues to exist, and its permanent residents meet the citizenship and residency requirements of § 668.7(a)(4)(iii). However, in anticipation that the Compact may eventually be ratified, these regulations also include a provision for "citizens of the Republic of Palau."

These regulations remove the previous reference to permanent residents of the Northern Mariana Islands. On November 3, 1986, the Northern Mariana Islands became a Commonwealth of the United States, and most of its residents became United States citizens. The category of "permanent resident of the Northern Mariana Islands" no longer exists.

Satisfactory progress (§ 668.7(a)(5) and (c)). Section 668.7(a)(5) consolidates the identical satisfactory progress provisions of the student eligibility requirements contained in the individual program regulations. Under these provisions, an otherwise eligible student who is enrolled in an institution must, to maintain his or her eligibility, be maintaining satisfactory academic progress in accordance with the standards established by that institution. This section also implements new satisfactory progress provisions

added to the HEA by the Higher Education Amendments of 1986. The new provisions apply only to those students who will receive Title IV, HEA program assistance for the first time beginning with the 1987-88 award year, or for the GSL, PLUS, and SLS programs, for attendance during enrollment periods beginning on or after July 1, 1987.

Under the provisions of § 668.7(c), a student must, at the end of his or her second academic year of attendance at the institution in which he or she is enrolled, have a cumulative grade point average (G.P.A.) of C or its equivalent, or have academic standing consistent with the graduation requirements established by the institution to continue to be eligible for Title IV, HEA program assistance.

In measuring academic standing consistent with its graduation requirements, an institution must consider all of its requirements governing whether a student has academic standing consistent with graduation, including requirements that the student must meet at different points in his or her educational program. Thus, for example, if a degree-granting institution using a 0.0-0.4 grade point scale requires a student who is enrolled in one of its four-year degree programs to have a 2.0 G.P.A. to receive his or her degree but allows the student to have at least a 1.75 G.P.A. at the end of two academic years, then a student with a 1.75 G.P.A. at that point has academic standing consistent with the institution's graduation requirements. The student, therefore, is considered to be maintaining satisfactory progress under § 668.7(c), even though the student does not have a cumulative "C" average.

A student who is required to meet the satisfactory progress standards of § 668.7(c) and fails to do so loses his or her eligibility for Title IV, HEA program assistance, except under the conditions discussed below. The otherwise eligible student may regain his or her eligibility if, at the end of a subsequent grading period, the student achieves academic standing consistent with the institution's graduation requirements and the institution determines that the student meets its own satisfactory progress requirements.

If a student is required to meet the satisfactory progress standards of § 668.7(c) and fails to do so, the institution may still find that the student is maintaining satisfactory progress if it determines that the student failed to meet these standards because he or she experienced an undue hardship that was caused by the death of a relative, his or

her injury or illness, or other special circumstances.

An institution is required to review the academic progress of each student who is subject to § 668.7(c) at the end of each academic year.

The satisfactory progress standards in § 668.7 of these regulations are standards that apply to determinations of student eligibility. In addition, an institution must also have satisfactory progress standards in accordance with § 668.14 of these regulations to demonstrate that it has the administrative capability to participate in Title IV, HEA programs.

Overpayment and default provisions (§ 668.7(a) (6) and (7), (d), (e), and (f)). These regulations consolidate identical provisions from the individual program regulations that condition student eligibility on the fact that a student does not owe a refund on any Pell Grant, SEOG, or SSIG (Title IV, HEA grant) nor is in default on any loan made under the ICL, National Defense/Direct Student Loan, Perkins Loan, GSL, PLUS, SLS, or consolidation Loan programs (Title IV, HEA loan). Sections 668.7(a) (6) and (a) (7) introduce one new requirement, that a student certify that he or she does not owe a refund on any Title IV, HEA grant and is not in default on any Title IV, HEA loan. This provision reduces administrative burden for institutions and reduces delays for students awaiting the disbursement of Title IV, HEA funds. Unless it receives conflicting information, an institution may rely on a student's written assurance that he or she is in compliance with these provisions when the institution follows the disbursement procedures for the Title IV, HEA programs.

Violation of loan limits (§ 668.7(a)(9)). Section 668.7(a)(9) of these regulations provides that a student may only be eligible for assistance under a Title IV, HEA program if that student's institution determines that the student has not borrowed in excess of the annual loan limits under any Title IV, HEA loan program in the academic year for which he or she has applied for that assistance, or the student has not borrowed in excess of the aggregate maximum loan limits under any Title IV, HEA loan program. These conditions are required by changes made to section 484 of the HEA by the Higher Education Amendments of 1986.

Section 668.8 Eligible program.

These regulations apply the concept of "eligible program" to all Title IV, HEA programs except the Byrd Scholarship and Consolidation Loan programs. The underlying concept of an "eligible

program," which is defined currently in the regulations for the Pell Grant and campus-based programs, is that such a program leads to a degree or certificate. The changes made to section 484(a)(1) of the HEA by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987 in effect enact these regulatory eligibility requirements and apply them to all the Title IV, HEA programs except the Byrd Scholarship and Consolidation Loan programs. The new statutory provision excepts for the GSL, PLUS, and SLS programs only that category of student noted in the earlier discussion on § 668.7 (eligible student). The new statutory provision applies to eligible students who receive Title IV, HEA program assistance for the 1987-88 award year or later, or for the GSL, PLUS, and SLS programs, for periods of enrollment beginning on or after July 1, 1987.

To conform these regulations to a new provision in section 411 of the HEA, the term "eligible program," for purposes of the Pell Grant Program, is extended to include programs consisting solely of instruction in English as a second language. Under § 668.8, a student is considered to be enrolled in an eligible program, for purposes of the Pell Grant Program, if the program consists solely of instruction in English as a second language, if the program meets the other requirements for eligibility, and if the institution that offers the program determines that the program is necessary to enable the student to use already existing knowledge, training, or skills. An institution is required to document its determination.

To conform these regulations to a new provision in section 435(b) of the HEA, governing public or private nonprofit institutions of higher education under the GSL, PLUS, and SLS programs, the term "eligible program" also is extended to include a degree or certificate program of at least one year for graduates of accredited health professions programs, if that program is offered by a hospital or health-care facility. As in the case of any eligible program, that program must be offered by an eligible institution.

II. Subpart B—Standards for Participation in Title IV, HEA Programs

Section 668.12 Institutional participation agreement.

The Secretary has revised paragraph (b) to specify that the institution must certify in the program participation agreement that it will comply with the statutory and regulatory requirements applicable to the Title IV, HEA

programs and that it has in operation a drug abuse prevention program that is accessible to any officer, employee, or student at the institution. The requirement that an institution certify that it has a drug abuse prevention program implements a change made in section 487 of the HEA by the Higher Education Amendments of 1986.

The Secretary has also revised paragraph (b) to prohibit an institution from charging any student a fee for processing or handling any application, form, or data required to determine the student's Title IV, HEA program eligibility or the Federal Student Assistance Report required under section 483(f) of the HEA. This prohibition implements a new provision contained in the HEA as amended by the Higher Education Amendments of 1986.

In response to public comment, the Secretary has revised paragraph (e) to clarify how the effective date of a new participation agreement applies to an institution in a situation involving a change in ownership or control. In that case, once the new participation agreement is executed, it is effective beginning with the date on which the ownership change occurred. However, this provision does not apply to an institution whose prior participation agreement was terminated under Subpart G of these regulations (governing fine, limitation, suspension, and termination proceedings), or if, under the Pell Grant and campus-based programs, the change in ownership did not occur in the award year in which the new participation agreement was executed.

Section 668.13 Factors of financial responsibility.

The Secretary has revised §§ 668.13(a) and 668.14(a) to make it clear that an institution must satisfy the standards set forth in each section in order to begin to participate in the Title IV, HEA programs and to continue to participate in those programs.

In the proposed regulations, the Secretary proposed to revise Subpart G, which provides procedures for the fine, limitation, suspension, and termination of institutions from the Title IV, HEA programs. In § 668.72(d) of that subpart, the Secretary proposed that if a person who owns or operates an institution pleads guilty to, or is convicted of, a crime involving the acquisition, use, or expenditure of Title IV, HEA program funds, the institution he or she owns or operates violates its fiduciary duty to administer those programs. As a result, that conviction or guilty plea is an

automatic ground for terminating the institution's eligibility to participate in the Title IV, HEA programs. The Secretary published Subpart G as final regulations in the Federal Register on December 1, 1986, 51 FR 43320-43329. Section 668.72 was renumbered and published as § 668.82.

The Secretary believes that the criterion proposed in § 668.72(d) and used in § 668.82(d) to determine whether an institution can act as a fiduciary of Title IV, HEA program funds applies equally to a determination of whether an institution can be viewed as financially responsible under § 668.13. Moreover, it is obviously anomalous to allow an institution that is owned or operated by an individual who was convicted of, or pled guilty to, a crime involving the Title IV, HEA programs to be considered financially responsible, and thus eligible to participate in the Title IV, HEA programs, when once declared eligible, the institution's eligibility to participate in those programs would be automatically terminated. Accordingly, the Secretary has determined that an institution, under the above circumstances, is not financially responsible and as revised § 668.13 accordingly.

The Secretary, however, believes that it may be appropriate, under certain circumstances, to allow an institution that is owned or operated by an individual who criminally obtains Title IV, HEA program funds to reestablish its eligibility. The Secretary believes that such an institution should be allowed to attempt to reestablish its eligibility after five years have elapsed from the date of the plea or conviction if the funds that were illegally acquired are repaid and the person is no longer incarcerated for that crime. The Secretary has chosen five years since that is the maximum sentence for each count of illegally obtaining Federal funds under section 490 of the HEA as well as 18 U.S.C. 1001 of the Federal Criminal Code. The Secretary has included the other conditions since the satisfaction of those conditions returns the individual and the United States, which is the victim of the crime, to the position each was in before the person engaged in the criminal act.

In order to adopt this provision, it is necessary to make a conforming change to § 668.82(d) since an institution that would be considered eligible under § 668.13(d)(2) would otherwise be terminated under § 668.82(d).

As a result of comments, the Secretary has determined that the action of acquiring Federal funds in a criminal or fraudulent manner, rather than criminally acquiring Title IV, HEA program funds, is the critical measure

with regard to determining an institution's fiduciary capacity or financial responsibility. Accordingly, proposed § 668.13(c)(3) has been amended and conforming changes have been made in §§ 668.82(d) and 668.96.

Those changes establish that an institution cannot be trusted to act in accordance with the highest standards of a fiduciary of public funds, nor is an institution financially responsible, if it is owned or operated by an individual, or if it employs an individual in a capacity of administering Title IV, HEA program funds, who has pled *nolo contendere* or guilty to, or was convicted of, a crime involving the acquisition, use, or expenditure of Federal funds, or who was judicially determined to have fraudulently obtained Federal funds.

In connection with a judicial determination that an individual fraudulently obtained Federal funds, the Secretary considers that a final determination made under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812, constitutes a judicial determination.

The Secretary has revised §§ 668.13(e) and 668.15(b) of the final regulations to correct an error in those provisions. The NPRM stated that a financial audit of an institution must be performed in accordance with general standards contained in the U.S. General Accounting Office (GAO) publication entitled *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*. However, these GAO standards apply to audits of the Title IV, HEA programs, not to institutional audits. Therefore, the Secretary has corrected this provision to require that institutional audits be carried out in accordance with generally accepted auditing standards.

The Secretary has revised § 668.13(d)(1) of the final regulations to clarify that, in almost all cases, in order for the Secretary to determine that the institution is financially responsible, if it is not otherwise so considered under § 668.13(b) or (c)(1) through (c)(3), the institution must provide the Secretary with performance bonds or letters of credit payable to the Secretary.

Section 668.14 Standards of administrative capability.

Section 668.14(g) of the proposed regulations stated that, to be considered administratively capable, an institution must refer to State and local law enforcement agencies any instance in which it has evidence that an applicant had applied for Title IV, HEA assistance under false pretenses. Many commenters believed that the proposed requirement did not adequately explain

what constitutes application under false pretenses. Other commenters were concerned that State and local law enforcement agencies may not have jurisdiction over cases involving Federal funds.

In response to these comments, the Secretary has revised § 668.14(g). The Secretary does not regard simple errors of omission or errors that might result from a misunderstanding of the program requirements as evidence that an applicant engaged in fraud or other criminal misconduct to increase his or her eligibility. The Secretary has included in this section examples of areas in which an applicant may engage in fraud or other criminal misconduct. The examples include false claims of independent student status or citizenship, the use of false identities, the forgery of official signatures or certifications, and false statements of income. For instance, if an institution becomes aware that a student is applying for Title IV, HEA assistance under a different name and social security number from those used on previous aid applications or other documents (such as the student's birth certificate, driver's license, or high school or financial aid transcript), the institution is required under § 668.14(f) to resolve this conflicting information. If in the course of resolving the conflicting information, the institution can find no legitimate reason that explains the conflict but finds that the use of a false identity increased the student's eligibility for Title IV, HEA assistance, the institution must make a referral to the appropriate investigative agency, as discussed below. Section 668.14(g) only requires the institution to refer the matter for investigation, not that it reach firm conclusions about the propriety of the student's conduct.

The Secretary does not agree with the commenters who expressed concern that State and local law enforcement agencies may not have jurisdiction over cases involving Federal funds. Fraud and other criminal misconduct are within the jurisdiction of those agencies. In cases of suspected fraud or other criminal misconduct, a financial aid administrator should first contact the institution's campus police department, if the institution has its own campus police, to determine if the campus police department has jurisdiction in the matter. In addition, legal counsel at an institution (if available) may be of assistance in deciding which State or local agency should be the recipient of a referral. If the institution does not have a campus police force, it should contact an appropriate State or local law

enforcement agency (these include a State attorney general, the State police, a State Bureau of Investigation, a sheriff, and city, county, and town police).

However, the Secretary believes that a few State or local enforcement agencies may not have jurisdiction in cases of suspected fraud or other criminal misconduct concerning applications for assistance under the Title IV, HEA programs. Some other State or local agencies might experience an additional burden by the unexpected referral of a large number of instances of possible fraud or other criminal misconduct. Therefore, the Secretary has further revised § 668.14(g) to allow an institution to refer those instances either to the Office of Inspector General of the Department of Education or, if more appropriate, to a State or local authority.

Section 668.14(f) requires, and has required since 1979, that an institution develop and apply an adequate system to identify and resolve discrepancies in information it receives from different sources with respect to a student's application for financial aid under the Title IV, HEA programs. If, as a result of the review called for under § 668.14(f), the institution discovers any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application, it must refer that information either to a State or local law enforcement agency with jurisdiction to investigate the information or to the Office of Inspector General. In this regard, an institution should refer all cases where it finds information that indicates that the student included information on his or her application that the student knew to be false for the purpose of obtaining more Title IV, HEA assistance than he or she would otherwise be entitled to receive.

Section 668.15 Additional factors for evaluating administrative capability.

In response to public comment, the Secretary has revised paragraph (a) to include as a factor for evaluating an institution's administrative capability the default rate on loans made to students at the institution under the GSL, PLUS, SLS, or Perkins Loan programs. Under the proposed regulations, only the default rate on loans made under the Perkins Loan Program would have been treated as an indication of an institution's impaired capability to administer Title IV, HEA programs. Unlike an institution participating in the Perkins Loan Program, an institution may not necessarily be a lender under the GSL,

PLUS, or SLS programs and therefore may not be directly responsible for servicing loans under those programs. However, the Secretary believes that a high default rate under the latter programs at an institution may indicate other administrative or financial problems at the institution.

Section 668.19 Financial aid transcript.

The Secretary has revised § 668.19 of the final regulations to accommodate the change made to section 484(a)(3) of the HEA by section 16032(a)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 and by section 407(a) of the Higher Education Amendments of 1986. As amended, section 484(a)(3) provides that in order for a student to be eligible to receive financial assistance under any Title IV, HEA program at any institution, the student must not be in default on any Title IV, HEA loan and must not owe a refund on a Title IV, HEA grant received for attendance at any institution. Prior to the amendment, these conditions for student eligibility referred only to attendance at the institution to which the student was applying for Title IV, HEA program funds, and not to attendance at any other institution. In keeping with the principle enunciated in the NPRM and adopted in these final regulations that a school must provide critical information regarding a student's Title IV, HEA program eligibility to a subsequent school attended by the student, these regulations require a school to indicate on the financial aid transcript whether the student is in default or owes a repayment under a Title IV, HEA program.

In keeping with this same principle, these regulations add another item to the information that an institution must include when it provides to another institution a financial aid transcript pertaining to an eligible student who attended the former institution. Under the provisions of § 668.19(c)(2), the financial aid transcript must indicate whether the student was treated as an independent student in the preceding award year. This provision is necessitated by the changes made by the Higher Education Amendments of 1986 in the definition of "independent student" contained in sections 411F and 480 of the HEA. Those changes provide that an individual may not be treated as an independent student under three of the seven categories that determine independent status if the financial aid administrator determines that the individual was treated as an independent student during the preceding award year, but was claimed as a dependent by another individual

(other than a spouse) for income tax purposes for the first calendar year of that previous award year.

Under § 668.19(a) of the final regulations, an institution must determine whether a student applying for Title IV, HEA program funds has previously attended another eligible institution. Once the institution determines that the student attended another eligible institution, § 668.19(a) requires it to request from the other eligible institution a financial aid transcript for the student. Under the proposed regulations, an institution had to request a financial aid transcript only if it became aware that a student attended another eligible institution as at least a half-time student.

An institution is responsible for exercising diligence in its eligibility determinations. A student who is in default on a Title IV, HEA loan or owes a refund on a Title IV, HEA grant is ineligible for further Title IV, HEA assistance. An institution must, therefore, make an active effort to determine whether a student previously attended another eligible institution. It may not simply fail to act because it is unaware of the student's previous educational record. The Secretary does not believe that these changes in § 668.19(a) will significantly affect most institutions, since they generally are aware of the academic background of the students that they enroll, including whether the students attended other eligible institutions. However, the changes are necessary to ensure effective implementation of the change in section 484(a)(3) of the HEA. The removal of the half-time student limitation is needed because less-than-half-time students may have previously received assistance under the CWS or SEOG programs.

In response to public comment, the Secretary has revised § 668.19(a) in the final regulations to allow an institution to certify the institutional portion of a GSL or SLS application prior to receiving the financial aid transcript from the institution previously attended by the student. However, the institution may not release GSL or SLS proceeds for the student or certify the institutional portion of a PLUS application until the institution receives the financial aid transcript.

Under § 668.19(a) of the final regulations, an institution may not, with certain exceptions, disburse any Title IV, HEA program funds to a student until it receives the requested transcript from the institution that the student previously attended. The proposed regulations permitted an institution to

disburse Title IV, HEA program funds unconditionally for one payment period. The disbursement exceptions in the final regulations are the same as those which, under the proposed regulations, permitted an institution to disburse Title IV, HEA funds for more than one payment period: (1) If the institution that the student previously attended is not in a State, (2) if the institution has closed and the information requested is not available, or (3) if the institution indicates in writing that it is not required to provide a transcript. These changes were made because the Secretary recognizes, in the concerns expressed from commenters, the need for stricter controls to avoid disbursements of amounts for which students are ineligible.

Under § 668.19(b) of the final regulations, an institution must provide to another institution information in its possession regarding whether the student for which information was requested attended another eligible institution. The proposed regulations did not include this requirement. Also, under the proposed regulations, an institution was not required to provide a financial aid transcript to the requesting institution if the student for which the information was requested was in default on a Title IV, HEA loan or owed a refund on a Title IV, HEA grant received for attendance at the former institution. However, § 668.19(b) of the final regulations eliminates this provision. These changes conform to the principle that an institution must provide critical information on a student's Title IV, HEA program eligibility to a subsequent institution attended by the student.

Finally, under § 668.19(c)(9), a financial aid transcript must include information on whether the student for whom the transcript is requested owes an outstanding balance on either a National Direct Student Loan (Direct loan) or a National Defense Student Loan (Defense loan). This information is needed for an institution to determine the applicable benefits and responsibilities for a student seeking a loan under the Perkins Loan Program. Under the statutory changes in the Perkins Loan Program, a Perkins loan is a loan made under Title IV-E of the HEA to a student for an enrollment period beginning on or after July 1, 1987, if the student does not owe a balance on a Direct loan or a Defense loan. A Perkins Loan carries different terms and conditions from a Direct or Defense loan. For a student who does owe such a balance, the student may qualify for further Direct or Defense loans, under

the terms and conditions applicable to those loans.

Section 668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for noninstitutional costs.

A definition of "institutional refund" was added in the NPRM as paragraph (a)(2) in response to requests from the postsecondary educational community to clarify the term "refund." "Institutional refund" was defined in the NPRM as the amount paid for institutional charges by financial aid, cash payments, or both minus the amount retained by the institution for a student's actual period of enrollment. Comments received on the NPRM suggested that this definition should be revised to take into account situations in which an institution requires payment for institutional charges for an entire academic year at the beginning of the year. For example, the institution charges the students \$6,000 at the beginning of the academic year (\$3,000 for the first semester and \$3,000 for the second semester) payable at registration. The student withdraws in the third week of the first semester after having paid the full tuition and fee charge for both semesters. Under the institution's refund policy, the student is due a 50 percent refund of the first semester charges (\$1,500) and the entire amount paid for the second semester (\$3,000). However, the student only received Title IV, HEA assistance to pay the institutional charges of the first payment period. The institutional charges for the second payment period were paid by the student or by non-Title IV, HEA assistance.

The Secretary agrees that it would not be reasonable to include in the refund formula the refund for a payment period other than the one in which the student withdrew. Therefore, the Secretary is limiting the "amount paid for institutional charges" and the "amount retained by the institution" to the amounts for the payment period in which the student withdrew.

Several commenters pointed out that an institution may be unable to return allocated portions of Title IV, HEA program funds to the appropriate program accounts within 30 days of the date that a student ceases enrollment if the student does not officially notify the institution. In response to these comments, the Secretary has rephrased paragraph (e)(5) to require the institution to return the funds within 30 days of the date that the student officially withdraws or is expelled or the institution determines that the student has unofficially withdrawn. The

institution is responsible for maintaining a system to ensure the return of Title IV program funds in a timely manner.

Section 668.23 Audits, records, and examination.

The Secretary has revised paragraph (c)(4) to correspond to new procedures for submitting audit reports to the local regional office of the Department's Office of Inspector General. The final regulations require the submission of audit reports by March 31 following the end of the award year (which ends June 30) for those institutions that receive campus-based funds. If the institution does not receive campus-based funds, the audit reports are due by January 31 of the year following the last award year covered by the audit.

The Secretary has added a new paragraph (d) that states that the audit requirement contained in paragraph (c) is considered satisfied by an audit of the institution that is conducted in accordance with the Single Audit Act. This paragraph reflects a new provision of the HEA made by the Higher Education Amendments of 1986.

Section 668.24 Audit exceptions and repayments.

The Secretary has amended this section to correspond to new procedures contained in Subpart H of these regulations, which were published on August 12, 1987, (52 FR 30114). The Secretary has changed the number of days in which an institution must repay funds based on an audit exception from 30 days to 45 days, to correspond to the 45-day period in which an institution may request a hearing on the record under § 668.111.

Section 668.25 Loss of institutional eligibility.

The NPRM for the Student Assistance General Provisions defined the term "commitment" for the Pell Grant and campus-based programs in this section. In response to several comments, the definition of "commitment" for the GSL and PLUS programs that was given in § 668.84 of the NPRM (§ 668.94 in the final regulations) has been incorporated in this section.

III. Subpart C—Statement of Educational Purpose and Selective Service Registration Status

Section 668.32 Statement of Educational Purpose.

Section 668.32 has been amended to add the new statutory requirement that a student's Statement of Educational Purpose include his or her social security number, or, if the student does

not have a social security number, his or her student identification number.

Section 668.34 Model Statement of Educational Purpose and Registration Status.

The Model Statement of Educational Purpose and Registration Status has been revised to conform it to the statutory change that requires the inclusion of a student's social security number or student identification number. It also reflects the changes in the Selective Service registration requirements for persons whose citizenship or residency status was affected by the Compact of Free Association and the fact that the Northern Mariana Islands have become a Commonwealth of the United States. The category of persons who were not required to register with Selective Service because they were permanent residents of the Northern Mariana Islands has been removed from the Model Statement. A new category has been added to the Model Statement for persons who, because they are citizens of the newly created entities of the Marshall Islands and the Federated States of Micronesia, are not required to register with Selective Service. That category also anticipates the consequences of eventual implementation of the Compact of Free Association on the inhabitants of Palau, the only remaining entity of the Trust Territory of the Pacific Islands.

IV. Subpart G—Fine, Limitation, Suspension and Termination Proceedings

Section 668.82 Standard of conduct.

Section 668.82 has been amended to provide that an institution violates its fiduciary duty if it is owned by, employs as chief executive officer, or employs in a capacity involving the administration of Title IV, HEA programs or funds, any individual who has been convicted of, or pled guilty or *nolo contendere* to, a crime involving Federal funds, or who has been judicially determined to have committed fraud involving Federal funds. An institution also violates its fiduciary duty if it uses any individual, agency, or organization that has been, or whose officers or employees have been, criminally or fraudulently involved with Federal funds. These changes conform § 668.82 to the changes in § 668.13.

Section 668.96 Reinstatement after termination.

Paragraph (a) of this section has been amended to conform this section to the changes made in Subpart B and § 668.82(d).

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.

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 response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Paperwork Reduction Act of 1980

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

List of Subjects

34 CFR Part 668

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

34 CFR Part 690

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

Dated: November 24, 1987.
(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; Perkins Loan Program, 84.038; Income Contingent Loan Program, 84.038; Pell Grant Program, 84.063; State Student Incentive Grant Program, 84.069)

William J. Bennett,

Secretary of Education.

Appendix—Summary of Comments and Responses

Note.—This appendix is not to be codified in the Code of Federal Regulations.

Section 668.12 Institutional participation agreement.

Comment: One commenter asked what is meant by the statement that a participation agreement becomes effective on the date executed by the Secretary. Three commenters suggested that when a participation agreement has expired, the effective date of a new participation agreement should be retroactive to the expiration date of the previous agreement, especially when there is a change in ownership. These commenters also expressed the opinion that because an institution undergoing an ownership change may not disburse Title IV, HEA funds after its agreement expires, the lack of a retroactive feature is unfair to students enrolled in that institution.

Response: A change has been made. The procedure under which an institution becomes eligible to participate in the Title IV, HEA programs is a two-step procedure. Under the first step, the Department of Education determines whether the applicant institution satisfies the applicable statutory and regulatory definitions of an eligible postsecondary institution. Under the second step, the Department determines whether the institution is administratively capable and financially responsible under §§ 668.13 and 668.14. If the Department determines that the institution qualifies under both steps, it sends the institution a participation agreement signed by the Secretary or the Secretary's designee. The institution had previously signed the agreement as part of the application process. While the date that the Secretary signs the agreement is the effective date of the agreement, as a practical matter that date only controls the disbursement of funds to students attending that institution. Thus, an institution may begin to disburse title IV, HEA program funds to its eligible students only on or after that date. However, the students may receive financial aid for the entire payment period in which the Secretary signed the participation agreement, even if the payment period began before the date of the Secretary's signature.

The circumstances surrounding the eligibility of an institution that changes ownership resulting in a change of control require special treatment. The Secretary has revised § 668.12 to clarify how the effective date of a new participation agreement applies to an institution in that situation.

The participation agreement signed by an institutions previous owner expires on the date that the change of ownership

resulting in a change in control takes place. To continue to participate in the Title IV, HEA programs, that institution must take steps to reaffirm its eligibility and its certification in order to be considered the same institution after the change. If the institution under its new ownership satisfies the Secretary regarding its eligibility to participate in the Title IV, HEA programs, the Secretary enters into a new participation agreement with the new owners of the institution.

When a new participation agreement is signed by the Secretary, the new owner may begin disbursing Title IV, HEA program funds. Since the Secretary considers that institution to be the same institution, the new owner ordinarily may disburse funds to students who were enrolled beginning with the payment period in which the change of ownership took place, even if that payment period ended before the Secretary signed the new agreement.

There is one exception to this disbursement procedure under the Pell Grant and campus-based programs, however. If the change of ownership that results in a change in control occurs in one award year and the Secretary signs the new participation agreement in another award year, the new owner may not make Pell Grant and campus-based disbursements for any payment period that does not occur at least partially in the award year in which the Secretary signs the agreement.

If a new institution is created by separating a part of an existing participating institution, but the new institution remains under the same ownership as the existing participating institution, students at the new institution may continue to receive financial aid under the participation agreement with the existing participating institution until the new institution enters into its own participation agreement with the Secretary. If, however, the new institution changes its ownership resulting in a change in control when it separates from the existing participating institution, the existing participation agreement ceases to apply to the new institution on the date that the ownership change takes place. The conditions that apply to other institutions undergoing ownership changes also apply to this new institution. This retroactive payment feature does not apply to an institution under new ownership if the institution's participation under its previous owner was terminated by the Secretary under the provisions of Subpart G of these regulations, since an institution so

terminated may not reapply to participate in the Title IV, HEA programs for 18 months. The new owner of such an institution may only disburse funds for payment periods beginning with the payment period in which the new participation agreement is signed by the Secretary.

Section 668.14 Standards of administrative capability.

Comment: Many commenters felt that the proposal in the NPRM that institutions refer any instance of suspected fraud by a Title IV, HEA applicant to State or local law enforcement agencies for investigation was unclear. Several commenters were unsure what constituted application for aid under "false pretenses."

Response: A change has been made. Based on the concerns of the postsecondary educational community, including numerous comments received regarding a cross-reference to this requirement contained in the NPRM for Subpart E of the Student Assistance General Provisions published in the Federal Register on July 26, 1985, 50 FR 30674, the Secretary has clarified this requirement. Section 668.14(f) requires, and has required since 1979, that an institution develop and apply an adequate system to identify and resolve discrepancies in information it receives from different sources with respect to a student's application for financial aid under the Title IV, HEA programs. If, as a result of the review called for under § 668.14(f), the institution discovers any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application, it must refer that information either to the Office of Inspector General of the Department of Education or, if more appropriate, to a State or local law enforcement agency with jurisdiction to investigate the information. In this regard, an institution should refer all cases where it finds information that indicates that the student included information on his or her application that the student knew to be false for the purpose of obtaining more Title IV, HEA assistance than he or she would otherwise be entitled to receive. The Secretary has also included in these regulations several examples of possible areas in which an applicant may engage in fraud or other criminal misconduct: False claims of independent student status or citizenship, the use of false identities, the forgery of signatures or certifications, and false statements of income.

Comment: Several commenters stated that it would be impossible to define the

circumstances under which the institution has clear evidence that an applicant's intent in reporting false information was fraudulent. For this reason, these commenters recommended that the requirement that institutions report instances of suspected fraud to law enforcement agencies be deleted.

Response: No change has been made. The Secretary recognizes that applicants often misreport information without having any intent to deceive. However, there are identifiable circumstances in which the institution would have reason to believe that an applicant has deliberately misreported information to increase his or her eligibility for Title IV, HEA assistance. For instance, when an applicant uses a false identity to apply for assistance or alters official documents such as transcripts or the Student Aid Report, the institution would have reason to believe that these actions were intentional. The institution is not required to reach a firm conclusion as to the propriety of the applicant's actions but is required to refer the matter to the appropriate law enforcement agency or the Inspector General for investigation.

Comment: Many commenters noted that the NPRM did not specify the types of law enforcement agencies to which a referral should be made and questions whether State or local agencies were even aware of their possible involvement in and responsibility for those investigations. Several commenters suggested that the investigation of fraudulent applications for Federal student aid should properly be the concern of Federal enforcement agencies.

Response: A change has been made. Because of the different structure and responsibilities of law enforcement agencies within each State, it is not possible to specify any one type of organization to which referrals must be made in all States. Many institutions have an independent campus police force that is authorized to conduct investigations concerning the misuse of Federal funds. At the local level, the county police department or sheriff's office generally has jurisdiction in the case of misuse of Federal funds. In keeping with its responsibility to establish and coordinate relations with State and local law enforcement agencies, the Office of Inspector General for the Department of Education has conducted numerous training programs for State and local law enforcement officers on the Federal student financial assistance programs. However, in light of the differences among law enforcement agencies at the State and

local level, the Secretary recognizes that there may be some cases in which no State or local agency has jurisdiction. The Secretary also recognizes that some State or local agencies might experience an additional burden by the unexpected referral of a large number of instances of possible fraud or other criminal misconduct. Therefore, the Secretary has revised the section to permit an institution to make a referral either to the Office of Inspector General of the Department of Education or, if more appropriate, to State or local authorities.

Comment: Several commenters were concerned that an additional administrative burden would be placed upon institutions by the requirement that institutions must refer instances of fraudulent applications for Title IV, HEA aid. The commenters cited increased paperwork and litigation cost to the institutions.

Response: No change has been made. The Secretary believes that the administrative burden associated with this requirement will be minimal. Institutions are required to identify and resolve instances in which there are discrepancies in information received from various sources. Institutions are not required to investigate or litigate cases of suspected fraud. Institutions are merely required to refer instances when their actions under § 668.14(f) reveal possible fraud or criminal misconduct. There should be relatively few of these instances at any single institution.

Comment: Several commenters were concerned that referring student information to law enforcement agencies would deny the applicant due process. Three commenters believed that under this provision students would receive unequal treatment based on the personal views of the financial aid administrator. Two commenters believed that referral of student information conflicted with the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, 34 CFR Part 99.

Response: No change has been made. A school's referral of instances of suspected fraud to law enforcement agencies or the Office of Inspector General does not deny the student due process. Section 99.31 of the Department of Education's FERPA regulations specifically authorizes the release of student information as necessary "to enforce the terms and conditions of student aid." In addition, an institution is authorized to release information to the Secretary for audit, evaluation, and enforcement of Federal legal requirements that apply to federally supported programs (see 34 CFR 99.31(a)(3) and (4); 99.35).

Comment: Many commenters were concerned with the requirement in § 668.14(c) that an institution must use an adequate number of qualified persons to administer the Title IV, HEA programs. Many commenters asked if the Secretary used a formula to determine what is an adequate number of qualified persons. One commenter stated that due to the diversity of institutions it would be impossible for the Secretary to make a determination.

Response: No change has been made. The Secretary does not use a formula in making this determination. What may be an adequate number of qualified persons to administer the Title IV, HEA programs at one institution may be insufficient at another. For instance, the number of individuals required at an institution to ensure proper and prudent administration of the student assistance programs will vary depending upon such factors as the amount of aid disbursed, the number of recipients, and the use of automated data processing equipment or a centralized award and disbursement system.

Comment: Several commenters argued that an institution should only have to evaluate academic periods during which a student received Title IV, HEA aid when determining if the student is making satisfactory progress in his or her course of study for purposes of § 668.14(e).

Response: No change has been made. The purpose of the satisfactory progress rule is to ensure that limited Title IV, HEA program funds are given to students who are likely to complete their educational programs in a timely manner. Whether a student received aid during an academic period is irrelevant to that determination.

Section 668.15 Additional factors for evaluating administrative capability.

Comment: Several commenters disagreed with the proposed elimination of GSL and PLUS program default rates as indicators of an institution's administrative capability. They were of the opinion that postsecondary institutions may be indirectly responsible for default rates and should be required to assist lenders and State agencies in collection efforts. Other commenters were pleased with the proposal because they felt that GSL and PLUS program default rates are not related to an institution's administrative capability.

Response: A change has been made. The Secretary recognizes that an institution does not have the responsibility (unless it is also the lender) for collecting GSL, PLUS, and SLS program loans received for

attendance at an institution and thus lacks direct responsibility for and control over that aspect of loan administration. However, under the changes made to the HEA by the Higher Education Amendments of 1986, an institution, even if it is not a lender, is required to provide to each borrower exit counseling concerning indebtedness and debt management strategies. Further, a high default rate on loans made under the GSL, PLUS, and SLS programs may indicate other problems at an institution. Therefore, the Secretary has included default rates on loans made under those programs as indicators of an institution's impaired administrative capability.

Comment: A few commenters questioned the relationship between an institution's student withdrawal rate and its capability to administer Title IV, HEA programs. The same commenters questioned the rationale for using 33 percent as a benchmark figure to indicate possible impaired capability of administering Title IV, HEA program funds by an institution if this percentage of students withdrew during an eight-month period. One commenter asked what the submission of a balance sheet, financial audit, or profit and loss statement might have to do with student withdrawal rates and rates of default.

Response: A change has been made. Simply because an institution fits into one of the categories in this section does not automatically mean that adverse action will be taken against the institution. However, the Secretary believes that a high withdrawal rate at the institution or a high default rate for loans made under the GSL, PLUS, SLS, or Perkins Loan programs may be symptomatic of other administrative and financial problems at the institution that would be reflected in the institution's balance sheet, profit and loss statement, or financial audit. In addition, those rates may justify requiring the institution to take reasonable and appropriate measures to reduce those rates. The documents requested by the Secretary will enable the Secretary to determine the best available measures to take to reduce those rates.

The Secretary will allow an institution every opportunity to describe and justify the reasons for its high withdrawal rate or high default rate. The Secretary chose a benchmark withdrawal rate of 33 percent after extensive public comment on the Student Assistance General Provisions regulations published in the *Federal Register* on September 28, 1979 (see 44 FR 56278). The Secretary believes that a withdrawal rate of 33 percent or greater is an indication of

possible administrative or financial problems at the institution that may cast doubt on the institution's administrative capability.

Section 668.16 Federal interest in Title IV, HEA program funds.

Comment: One commenter was concerned that the language in this section, which states that an institution may not use or hypothecate Title IV, HEA program funds for any purpose other than for the intended student beneficiaries, excludes the investment of cash from the Perkins Loan fund which would increase the fund account.

Response: A change has been made. The prohibition against using or hypothecating Title IV, HEA program funds does not preclude the institution from investing cash from its Perkins Loan fund. Institutions are reminded that all earnings on such investments must be deposited into their Perkins Loan Program revolving funds (see sections 463(a)(2)(E) and 487(a)(1) of the HEA). However, the Secretary has revised this section to indicate that the institution acts in the capacity of a fiduciary of Federal funds to protect the interest of the Secretary as well as the intended student beneficiaries in those funds.

Section 668.17 Change in ownership resulting in a change in control.

Comment: Two commenters asked what constitutes a "controlling interest" in an institution. One commenter noted the elimination of the reference to the transfer of the liabilities of an institution to its parent corporation and asked whether such a transfer no longer constitutes a change in ownership. One commenter thought that a definition of "change of ownership" should be included in this section.

Response: No change has been made. In most cases, a controlling interest in an institution means an interest greater than 50 percent of ownership. The Secretary no longer considers the transfer of liabilities of an institution to its parent corporation to be a change in ownership that results in a change in control, hence the deletion from the regulations. The Secretary does not believe that a definition of the term "change of ownership" is needed in the regulations. Further, this section will be deleted from this part when the institutional eligibility regulations, 34 CFR Part 600, are published as final regulations.

Section 668.19 Financial aid transcript.

Comment: Over one hundred commenters were opposed to the change in the regulations that would prohibit

institutions from certifying the institutional portion of a borrower's application under the GSL or PLUS programs until the institution receives the requested financial aid transcript. Many of these commenters stated that this proposal expands the time during which a borrower waits for his or her aid. They said that the additional delay would impose a burden on financial aid officers and a particular hardship on students enrolled in community colleges and proprietary institutions, where transfers are frequent and enrollment periods shorter than at traditional four-year institutions. Several commenters claimed that that delay might be as long as 4 to 6 weeks.

Several commenters suggested alternatives to this proposal. One alternative included allowing an institution to certify one GSL or PLUS application and deliver the first disbursement to the borrower, but not permitting an institution to deliver subsequent disbursements to the borrower without the financial aid transcript. Another alternative included (1) requiring all GSL and PLUS checks either to be sent to the educational institution for distribution or to be made jointly payable to the borrower and the institution and (2) making the release of the checks contingent on receipt of the financial aid transcript. Another commenter suggested that an institution should return the check to the lender if a financial aid transcript has not been received in a timely manner. Several commenters supported the proposed changes in principle.

Response: A change has been made. The Secretary agrees that withholding certification of a GSL, PLUS, or SLS application may delay the processing of the application. Therefore, the Secretary has revised § 668.19 to permit an institution to certify a GSL or SLS application (but not a PLUS application) prior to receiving the financial aid transcript from the institution the borrower previously attended. However, the institution may not release the GSL or SLS proceeds until it receives the financial aid transcript. Under the requirements of the HEA as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Higher Education Amendments of 1986, these proceeds are delivered directly to the institution, but PLUS proceeds go directly to the borrower. Therefore, since the institution has no control over the release of PLUS proceeds, the Secretary is retaining the requirement that the institution may not certify a PLUS application until it receives the financial aid transcript.

Comment: Several commenters felt that it would be impossible for institutions to provide accurate information on the financial aid transcript as to the amount of and period covered by each GSL or PLUS program loan received by a borrower. The commenters suggested rewording this section to read "approved" instead of "received" since financial aid officers only know the amount authorized and amount approved by the lender but not the actual amount received by the student.

Response: No change has been made. These comments were received before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 and the Higher Education Amendments of 1986, which require that except in the case of loans made to parent borrowers under the PLUS Program, proceeds must be sent to the institution. Therefore, in most cases an institution will be able to report the exact amount that a borrower received for any period after the implementation of the statutory change. The Secretary is aware that for periods before implementation of the statutory change, an institution may not know the exact amount received by a borrower unless the institution is the lender. If the institution did not receive the proceeds, the amount that the institution must report on the financial aid transcript is the loan amount that the institution certified.

Comment: Several commenters were of the opinion that requiring a financial aid transcript to be signed by an official authorized by the institution to disclose information in connection with Title IV, HEA programs is too restrictive. One commenter asked whether this requirement excluded the use of automated methods.

Response: No change has been made. The Secretary does not intend to limit the use of automated methods for preparing financial aid transcripts. However, if a computer-generated transcript is used, it must have the signature of someone who is knowledgeable about the information reported and authorized to disclose that information. It is important that the information provided be accurate and that the person attesting to the accuracy of the information be a reliable and responsible officer of the institution.

Comment: Several commenters asked whether the reference to "State" in § 668.19(a)(2)(iii) of the proposed regulations refers to a State of the Union, a State in which the institution is located, or a foreign country for foreign institutions. One commenter asked

whether this term includes Washington, DC.

Response: No change has been made. The definition of the term "State" appears in § 668.2 (General definitions). The exclusion, therefore, refers to eligible institutions located in foreign countries.

Comment: A number of commenters stated that the wording in § 668.19(a)(2) of the proposed regulations suggests that an institution may make one payment regardless of whether a transcript has been requested.

Response: A change has been made. The Secretary agrees that clarification is needed. An institution or student must request a financial aid transcript before the one payment is disbursed in accordance with the regulations.

Section 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

Comment: Many commenters requested an exception to the one-year restriction on noncredit remedial work in determining enrollment status for students receiving a Pell Grant. They claimed that it would be difficult for an institution to monitor when a student had completed an academic year of remedial work. A few commenters contended that this restriction would disproportionately affect low-income and nontraditional students who are the very students the Pell Grant Program is designed to help. Many of these commenters felt that any limits on remedial work should be determined by the institution. Other commenters suggested that an institution's satisfactory progress standards should form the basis for any limitation on remedial work. Some commenters thought that the Secretary does not have the statutory authority to limit Pell Grant payments for remedial work.

Response: No change has been made. The purpose of Title IV, HEA programs is to assist students who are enrolled in postsecondary education. The Secretary is not excluding remedial courses from eligibility but rather is setting a limit on the duration of remedial coursework that can reasonably be viewed as a part of a postsecondary program of study. The Secretary does not consider a student who enrolls in the equivalent of more than one year of remedial work to be enrolled in postsecondary education.

Comment: A few commenters asked if the equivalent of a year of remedial work has to be completed within one academic year or if it could be taken over several academic years within the program of study.

Response: No change has been made. The hours that equal one academic year do not have to be taken within a single academic year. Based on individual needs, a student could spread the academic year of work (30 semester hours, 45 quarter hours, or 900 clock hours) throughout his or her program of study, if permitted by the institution.

Comment: One commenter disagreed with the exception to the one-year limit for students enrolled in courses in English as a second language.

Response: No change has been made. Although students enrolled in courses in English as a second language are exempt from the one-year limitation, these students are still subject to the one-year limitation for any other courses that are remedial in nature. The Secretary believes that these students usually have the knowledge and skills of high school graduates but need to learn a second language as part of their postsecondary program.

Section 668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for noninstitutional costs.

Comment: Many commenters felt that, for the most part, § 668.22 of the proposed regulations clarified the difference between refunds and repayments. However, many commenters were confused on how the concept of a "payment period" would be applied to GSL and PLUS program loans. Several commenters, writing before enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, expressed concern over the fact that a typical GSL or PLUS program loan was disbursed in a single payment that covered expenses for the entire period of enrollment.

Response: No change has been made. The calculation of the refund distribution formula in § 668.22 is based on the concept of "payment period" as that term is used in most of the Title IV, HEA programs. In the context of the GSL, PLUS, and SLS programs, however, that concept is different, and it generally refers to the period of enrollment for which a loan is made. For consistency in the application of the formula, therefore, an institution is to consider that enrollment period to be divided into portions that correspond to the payment periods used for the other Title IV, HEA programs.

For purposes of the refund distribution fraction, the amount of the GSL, PLUS, or SLS proceeds considered to be awarded for a payment period is determined by dividing the whole loan amount by the number of institutionally defined payment periods in the period of

enrollment for which the loan is made. For example, if the enrollment period for which the GSL, PLUS, or SLS program loan is made equals three academic quarters and the student was awarded a GSL of \$1,500, one-third of the total loan, i.e., \$500, is considered to have been awarded for each payment period.

It should be noted that the changes in the HEA made by the Consolidated Omnibus Budget Reconciliation Act of 1985, the Higher Education Amendments of 1986, and the Higher Education Technical Amendments Act of 1987, which were enacted after these comments were received, require multiple disbursements for GSL, PLUS, or SLS proceeds for periods of instruction greater than six months if the loan amount is \$1,000 or more. However, for a student who is awarded a multiple disbursement loan, the amount of the loan proceeds actually disbursed is not necessarily the same as the amount that is considered to have been disbursed in each payment period. For example, an institution uses an academic calendar divided into quarters and the enrollment period for which a loan is made consists of three quarters. A student receives a \$1,500 GSL in two disbursements of \$750 each. However, for purposes of the refund formula, the student is considered to have received a disbursement of \$500 in each of the three quarters (payment periods).

Comment: Several commenters suggested that simplicity and consistency in the refund concept for all Title IV, HEA programs, could be enhanced by changing the word "awarded," which is used in the numerator and denominator of the formula, to "disbursed."

Response: No change has been made. During the development of the refund formula that first appeared in the Student Assistance General Provisions regulations in 1979, the Secretary determined that it would be easier for an institution to use the term "amount awarded" in the refund and repayment formula. The institution may not know the amount the student has actually received, particularly in the case of a PLUS Program loan or other assistance provided by organizations outside the institution.

Comment: Many commenters agreed that in refund cases, Title IV, HEA program funds should be returned to respective accounts in a timely manner, but stated that 30 days was an insufficient amount of time for doing so.

Response: A change has been made. In an effort to reduce potential abuse of Title IV, HEA program funds and allow for prompt reawarding of returned

SEOG and Perkins Loan funds, the Secretary is keeping the 30-day repayment rule. However, the Secretary has revised the regulations so that the 30-day repayment period for unofficial withdrawals will not commence until an institution determines that a student has withdrawn. An institution must have a method for promptly determining when a student has unofficially withdrawn, because the institution is responsible for maintaining a system to ensure the timely return of Title IV, HEA program funds.

Comment: Four commenters stated that § 668.22(a)(3) of the proposed regulations is ambiguous in referring to "institutions which do not receive funds under the Alternate Disbursement System (ADS)" rather than simply stating that the procedure applies to institutions using the Regular Disbursement System.

Response: A change has been made. The Alternate Disbursement System ceased operation after the 1986-87 award year. Therefore, references to both the Alternate Disbursement System and the Regular Disbursement System have been removed from the regulations.

Section 668.24—Audit exceptions and repayments.

Comment: Several commenters questioned the reasoning behind the proposed change from 60 to 30 days on the time allowed for audit exception repayments.

Response: A change has been made. In the proposed regulations, the time in which an institution must repay improperly spent funds would have changed from 60 days to 30 days to conform to the instructions in the revised Office of Management and Budget (OMB) Circular A-50 issued on September 29, 1982. In these final regulations, the Secretary has changed that number of days from 30 to 45. This change corresponds to the change in the HEA made by the Higher Education Amendments of 1986, which allows an institution to request a hearing on the record regarding an audit exception within 45 days.

Section 668.25—Loss of institutional eligibility.

Comment: Several commenters wanted a definition of "commitment" for the GSL and PLUS programs, such as the one in § 668.94(c)(2) of Subpart G (originally published as § 668.84(c)(2) of the proposed regulations). These commenters recommended that language be included in this section to prohibit an institution from certifying a student's eligibility on a GSL or PLUS

application during the loss of institutional eligibility.

Response: A change has been made. The Secretary agrees with the commenters that a definition of "commitment" under the GSL, PLUS, and SLS programs is needed in this section for clarity. Language similar to that in § 668.94(c)(2) of Subpart G has therefore been added to § 668.25(b). The revised § 668.25(b) provides that a commitment under the GSL, PLUS, or SLS programs takes place when the Secretary or the guarantee agency advises the lender that a loan is guaranteed. Section 682.603 of the regulations implementing the GSL Program permits an institution to distribute proceeds to a student, pursuant to 34 CFR 682.604, if the GSL, PLUS, or SLS application was certified by the institution prior to the institution's loss of eligibility. The regulations implementing the GSL Program prohibit an institution from certifying an application after the loss of eligibility.

The Secretary amends Parts 668 and 690 of Title 34 of the Code of Federal Regulations 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. Subpart A of the Table of Contents of Part 668 is amended by revising § 668.7 and adding § 668.8 to read as follows:

Subpart A—General

- * * * * *
- 668.7 Eligible student.
- 668.8 Eligible program.
- * * * * *

3. Subpart B of the Table of Contents of Part 668 is revised to read as follows:

Subpart B—Standards for Participation in Title IV, HEA Programs

- 668.11 Scope.
- 668.12 Institutional participation agreement.
- 668.13 Factors of financial responsibility.
- 668.14 Standards of administrative capability.
- 668.15 Additional factors for evaluating administrative capability.
- 668.16 Federal interest in Title IV, HEA program funds.
- 668.17 Change in ownership resulting in a change in control.
- 668.18 Written agreements between an eligible institution and an ineligible entity.
- 668.19 Financial aid transcript.
- 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

Sec.

668.21 Treatment of Pell Grant, SEOG, ICL, and Perkins Loan program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

668.22 Distribution formula for institutional refunds and for repayments of disbursements made to the student for noninstitutional costs.

668.23 Audits, records, and examination.

668.24 Audit exceptions and repayments.

668.25 Loss of institutional eligibility.

4. Section 668.1 is revised to read as follows:

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program).

(b) As used in this part, an "institution" includes—

(1) A public or private nonprofit institution of higher education as defined in § 668.3;

(2) A proprietary institution of higher education as defined in § 668.4;

(3) A postsecondary vocational institution as defined in § 668.5; and

(4) A vocational school as defined in § 668.6.

(c) The Title IV, HEA programs include—

(1) The Pell Grant Program (20 U.S.C. 1070a *et seq.*; 34 CFR Part 690);

(2) The Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070b *et seq.*; 34 CFR Part 676);

(3) The State Student Incentive Grant (SSIG) Program (20 U.S.C. 1070c *et seq.*; 34 CFR Part 692);

(4) The Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program (20 U.S.C. 1070d-31 *et seq.*; 34 CFR Part 654);

(5) The Guaranteed Student Loan (GSL) Program (20 U.S.C. 1071 *et seq.*; 34 CFR Part 682);

(6) The Supplemental Loans for Students (SLS) Program (20 U.S.C. 1078-1; 34 CFR Part 682);

(7) The PLUS Program (20 U.S.C. 1078-2; 34 CFR Part 682);

(8) The Consolidation Loan Program (20 U.S.C. 1078-3; 34 CFR Part 682);

(9) The College Work-Study (CWS) Program (42 U.S.C. 2751 *et seq.*; 34 CFR Part 675);

(10) The Income Contingent Loan (ICL) Program (20 U.S.C. 1087aa *et seq.*; 34 CFR Part 673); and

(11) The Perkins Loan Program (20 U.S.C. 1087a *et seq.*; 34 CFR Part 674).

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

5. Section 668.2 is amended by adding, in alphabetical order, the definitions of

Consolidation Loan Program, Income Contingent Loan (ICL) Program; Independent student, Perkins loan, Perkins Loan Program, Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program, Supplemental Loans for Students (SLS) Program, and by revising paragraph (a) of the definition of Campus-based programs and the definitions of Dependent student, Direct loan, National Direct Student Loan (NDSL) Program, Regular student, and State to read as follows:

§ 668.2 General definitions.

Campus-based programs: (a) The Perkins Loan Program (34 CFR Part 674);

Consolidation Loan Program: The loan program authorized by Title IV-B of the HEA.

(Authority: 20 U.S.C. 1078-3)

Dependent student: Any student who does not qualify as an independent student (see independent student).

Direct loan: A loan made under Title IV-E of the HEA after June 30, 1972, which does not satisfy the definition of "Perkins loan."

(Authority: 20 U.S.C. 1087aa et seq.)

Income Contingent Loan (ICL) Program: The student loan program authorized by Title IV-D of the HEA.

(Authority: 20 U.S.C. 1087a et seq.)

Independent student: A student who qualifies as an independent student under section 411F(12) of the HEA for the Pell Grant Program and section 480(d) of the HEA for all the other Title IV, HEA programs.

(Authority: 20 U.S.C. 1070a-6; 20 U.S.C. 1087vv)

National Direct Student Loan (NDSL) Program: The student loan program authorized by Title VI-E of the HEA between July 1, 1972, and October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

Perkins loan: A loan made under Title IV-E of the HEA to cover the cost of attendance for a period of enrollment beginning on or after July 1, 1987, to an individual who on July 1, 1987, had no outstanding balance of principal or interest owing on any loan previously made under Title IV-E of the HEA.

(Authority: 20 U.S.C. 1087aa et seq.)

Perkins Loan Program: The student loan program authorized by Title IV-E of the HEA after October 16, 1986.

(Authority: 20 U.S.C. 1087aa-1087ii)

Regular student: A person who is enrolled or accepted for enrollment at an institution for the purpose of obtaining a degree, certificate, or other recognized educational credential offered by that institution.

Robert C. Byrd Honors Scholarship (Byrd Scholarship) Program: The scholarship program authorized by Title IV-A-6 of the HEA.

(Authority: 20 U.S.C. 1070-31 et seq.)

State: Each State of the Union, the Commonwealth of Puerto Rico, the District of Columbia, and, except for the Byrd Scholarship Program, American Samoa, Guam, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Authority: 20 U.S.C. 1141(b); 20 U.S.C. 1088(a); 20 U.S.C. 1070d-32)

Supplemental Loans for Students (SLS) Program: The loan program authorized by Title IV-B of the HEA and formerly called the ALAS Program.

(Authority: 20 U.S.C. 1078-1)

6. Section 668.7 is revised to read as follows:

§ 668.7 Eligible student.

(a) *Eligibility.* A student is eligible to receive assistance under the Pell Grant, SEOG, SSIG, GSL, PLUS, SLS, CWS, ICL, and Perkins Loan programs if the student—

(1) Is—

(i) A regular student enrolled or accepted for enrollment in an eligible program; or

(ii) For purposes of the GSL, PLUS, or SLS programs, enrolled as at least a half-time student in a course of study necessary for enrollment in an eligible program for no longer than one twelve-month period;

(2) Is not enrolled in either an elementary or secondary school;

(3)(i) Has a high school diploma or its recognized equivalent;

(ii) If enrolled at a public or private nonprofit institution of higher education—

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Except for the GSL, PLUS, or SLS programs, has the ability to benefit from the education or training offered by that institution, according to the requirements of paragraph (b) of this section;

(iii) If enrolled at a proprietary institution of higher education or postsecondary vocational institution—

(A) Is above the age of compulsory school attendance in the State in which the institution he or she is attending is located; and

(B) Has the ability to benefit from the training offered by that institution, according to the requirements of paragraph (b) of this section; or

(iv) If enrolled at a vocational school, has the ability to benefit from the training offered, according to the requirements of paragraph (b) of this section;

(4)(i) Is a U.S. citizen or national;

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

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

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

(iii) Is a permanent resident of the Trust Territory of the Pacific Islands; or

(iv) For purposes of the Pell Grant, SEOG, and CWS programs—

(A) Is a citizen of the Federated States of Micronesia who was enrolled in an institution on November 2, 1986;

(B) Is a citizen of the Marshall Islands who was enrolled in an institution on October 20, 1986; or

(C) Is a citizen of the Republic of Palau who was enrolled in an institution on the day preceding the effective date of the Compact of Free Association;

(5) If currently enrolled, is maintaining satisfactory progress in his or her course of study according to the institution's standards of satisfactory progress and, if applicable, the requirements of paragraph (c) of this section;

(6) Except as provided in paragraph (d) of this section, does not owe, and certifies that he or she does not owe, a refund on a grant awarded under the Pell Grant, SEOG, or SSIG programs. A student owes a refund on a grant if the student receives a grant overpayment. A student receives a grant overpayment if the student's grant payments exceed the amount he or she is eligible to receive or use;

(7) Except as provided in paragraph (e) of this section, is not in default, and certifies that he or she is not in default, on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, GSL, PLUS, SLS, or Consolidation Loan programs;

(8) Has filed a Statement of Educational Purpose and Selective Service Registration Status in

accordance with the requirements of Subpart C:

(9) As determined by the institution that he or she attends, has not borrowed—

(i) In excess of the annual loan limits under the ICL, GSL, PLUS, or SLS programs in the same academic year for which he or she has applied for assistance under any Title IV, HEA program; and

(ii) In excess of the aggregate maximum loan limits under the ICL, Perkins Loan, GSL, PLUS, SLS, or Consolidation Loan programs;

(10) Has financial need, if applicable, in accordance with the requirements of the Title IV, HEA program under which he or she has applied for assistance; and

(11) Meets the requirements of—

(i) For purposes of the ICL Program, 34 CFR 673.22;

(ii) For purposes of the Perkins Loan Program, 34 CFR 674.9;

(iii) For purposes of the CWS Program, 34 CFR 675.9;

(iv) For purposes of the SEOG Program, 34 CFR 676.9;

(v) For purposes of the GSL, PLUS, or SLS programs, 34 CFR 682.201;

(vi) For purposes of the Pell Grant Program, 34 CFR 690.75; or

(vii) For purposes of the SSIG Program, 34 CFR 692.40.

(b) *Ability to benefit.* A student who is admitted to an institution as a regular student on the basis of that student's ability to benefit from the institution's education or training program remains eligible for any assistance under a Title IV, HEA program only if the student—

(1) Before admission—

(i) Is administered a nationally recognized, standardized, or industry-developed test, subject to criteria developed by the institution's nationally recognized accrediting agency or association, that measures the student's aptitude to complete successfully the educational program to which he or she has applied; and

(ii) Demonstrates that aptitude on that test;

(2) Receives a GED before the earlier of—

(i) The student's certification or graduation from his or her program of study; or

(ii) The completion of the student's first academic year of that program of study; or

(3) Enrolls in and successfully completes a remedial or developmental educational program of not more than one academic year that is prescribed by the institution, if the student—

(i) Is counseled before admission; or

(ii) Does not demonstrate the aptitude necessary to complete successfully the

educational program to which he or she has applied on the test described in paragraph (b)(1) of this section.

(c) *Satisfactory progress.* In order for a student who has not received assistance under any Title IV, HEA program during an award year beginning before July 1, 1987, or for the GSL, PLUS, and SLS programs a period of enrollment beginning before July 1, 1987, to be eligible to receive assistance under any of those programs, an institution shall—

(1) Review the student's academic progress at the end of each academic year;

(2) Determine that the student is making satisfactory academic progress at the end of that student's second academic year of attendance at the institution on the basis of a finding that—

(i) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or

(ii) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by—

(A) The death of a relative of the student;

(B) An injury or illness of the student; or

(C) Other special circumstances; and

(3) Determine, in the case of a student who was not making satisfactory academic progress in accordance with paragraph (c)(2) of this section at the end of that student's second academic year of attendance at the institution, that the student is making satisfactory academic progress if that student subsequently obtains academic standing consistent with the institution's requirements for graduation at the end of a grading period.

(d) *Refund of a grant or scholarship overpayment.* Notwithstanding paragraph (a)(6) of this section, a student who owes a refund on a Pell Grant, SEOG, or SSIG due to an overpayment is eligible to receive assistance under a Title IV, HEA program under the following conditions:

(1) *Pell Grant overpayment.*

(i) If an institution makes a Pell Grant overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(A) The Student is otherwise eligible; and

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

(ii) If an institution makes a Pell Grant overpayment to a student as a result of its own error and cannot eliminate the overpayment under paragraph (d)(1)(i)(B) of this section, the student is eligible to receive assistance under a Title IV, HEA program if the student—

(A) Is otherwise eligible; and

(B) Acknowledges the overpayment and agrees, in writing, to repay it within six months.

(2) *SEOG or SSIG overpayment.* If an institution makes an SEOG or SSIG overpayment to a student, that student is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

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

(e) *Default on a loan.* Notwithstanding paragraph (a)(7) of this section, a student who is in default on any loan made under the National Defense/Direct Student Loan, Perkins Loan, ICL, GSL, PLUS, SLS, or Consolidation Loan programs is eligible to receive assistance under a Title IV, HEA program under the following conditions

(1) *GSL, PLUS, SLS, or Consolidation Loan programs.* A student who is in default on a loan made under the GSL, PLUS, SLS, or Consolidation Loan programs is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The Secretary, for a federally insured loan, or a guarantee agency, for a loan insured by that guarantee agency, determines that the student has made satisfactory arrangements to repay the defaulted loan.

(2) *Defense/Direct Loan, Perkins Loan, and Income Contingent Loan programs.* A student who is in default on a loan made under the National Defense/Direct Student Loan, Perkins Loan, or Income Contingent Loan programs is eligible to receive assistance under a Title IV, HEA program if—

(i) The student is otherwise eligible; and

(ii) The institution that made the loan or the Secretary, if the loan has been assigned to the Department of Education, certifies that the student has made satisfactory arrangements to repay that loan.

(f) *Bankruptcy.* The Secretary does not consider a loan made under the ICL, National Defense/Direct Student Loan, Perkins Loan, Guaranteed Student Loan,

PLUS, SLS, or Consolidation Loan programs that is discharged in bankruptcy to be in default for purposes of this section.

(Authority: 20 U.S.C. 1070a-1070c-1, 1077, 1078, 1078-1-3, 1082, 1085, 1087a, 1087cc, and 1091; 42 U.S.C. 2753)

7. Section 668.8 is added to read as follows:

§ 668.8 Eligible program.

(a) *General.* An eligible program is a program of education or training that—

- (1) Admits as regular students only persons who—
 - (i) Have a high school diploma;
 - (ii) Have the recognized equivalent of a high school diploma;
 - (iii) Are beyond the age of compulsory school attendance in the State in which the institution is located, and, except for the GSL, PLUS, or SLS programs, have the ability to benefit from the education or training offered; or
 - (iv) For a program at a vocational school, have completed or left elementary or secondary school and have the ability to benefit from the education or training offered;
- (2)(i) Leads to a bachelor's associate, graduate, or professional degree;
- (ii) Is at least a two-year program that is acceptable for full credit toward a bachelor's degree;
- (iii) Is at least a one-year training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;
- (iv) Is, for a proprietary institution of higher education or a post-secondary vocational institution, at least a six-month training program leading to a certificate, degree, or other recognized educational credential that prepares a student for gainful employment in a recognized occupation;
- (v) Is, for a vocational school, a program of postsecondary vocational or technical education leading to a degree, certificate, or other recognized educational credential that—

(A) Is designed to provide occupational skills more advanced than those generally offered at the high school level and to fit individuals for useful employment in recognized occupations;

(B) In the case of an institution using clock hours to measure academic progress, is no less than 300 clock hours of supervised training;

(C) In the case of an institution using credit hours or units to measure academic progress, is no less than eight semester or trimester hours or units or 12 quarter hours or units;

(D) In the case of a program of study by correspondence, requires not less than an average of 12 hours of preparation per week over each 12-week period and completion in not less than six months; and

(E) In the case of a flight school program, maintains current valid certification by the Federal Aviation Administration; or

(vi) Is, for purposes of the GSL, PLUS, or SLS programs, at least a one-year training program for graduates of accredited health-professions programs that—

(A) Is provided by a hospital or health-care facility; and

(B) Leads to a degree or certificate; or

(3) For purposes of the Pell Grant, ICL, and SEOG programs, is an undergraduate program; and

(4) For the purposes of the Pell Grant Program, may consist of instruction in English as a second language (ESL) in accordance with paragraph (b)(2) of this section.

(b) *Pell Grant Program—*(1) *Study by correspondence.* For purposes of the Pell Grant Program, an eligible program of study by correspondence is an undergraduate program of education or training that meets the criteria for an eligible program in paragraph (a) of this section and that is designed to require at least 12 hours of preparation per week.

(2) *English as a second language (ESL).* (i) The Secretary considers a program that consists solely of instruction in ESL to be an eligible program if the program meets the requirements of paragraph (a) of this section and admits only students who the institution determines to need to ESL instruction to use already existing knowledge, training, or skills.

(ii) An institution shall document its determination that the instruction in ESL described in paragraph (b)(2)(i) of this section is necessary to enable each student whom it admitted to use already existing knowledge, training, or skills.

(Authority: 20 U.S.C. 1070a, 1070b, 1070c-1070c-2, 1085, 1087aa-1087hh, 1088, 1091, and 1141; 42 U.S.C. 2753)

8. Subpart B is revised to read as follows:

Subpart B—Standards for Participation in Title IV, HEA Programs

§ 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program may subject the institution to

proceedings under Subpart G. These proceedings may lead to a fine, or a limitation, suspension, or termination of the institution's eligibility to participate in any or all of the Title IV, HEA programs.

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

§ 668.12 Institutional participation agreement.

(a) An institution may participate in any Title IV, HEA program, other than the SSIG Program, only if—

(1) The Secretary determines that the institution meets the standards established in this subpart; and

(2) The institution enters into a written participation agreement with the Secretary, on a form approved by the Secretary.

(b)(1) A participation agreement conditions the initial and continued eligibility of the institution to participate in any Title IV, HEA program upon compliance with the provisions of this part and the individual program regulations.

(2) In the participation agreement, the institution agrees—

(i) That it will comply with the statutory and regulatory requirements applicable to the Title IV, HEA programs, including the requirement that it will use funds it receives under any Title IV, HEA program and any interest or other earnings thereon, solely for the purposes specified in and in accordance with that program;

(ii) That it has in operation a drug abuse prevention program that the institution has determined to be accessible to any officer, employee, or student at that institution; and

(iii) That it will not request from or charge any student a fee for processing or handling—

(A) Any application, form, or data required to determine a student's eligibility for, and amount of, Title IV, HEA program assistance; or

(B) The Federal Student Assistance Report required under section 483(f) of the HEA.

(c)(1) Except as provided under paragraph (c)(3) of this section, a participation agreement becomes effective on the date executed by the Secretary.

(2) A participation agreement supersedes any prior participation agreement between the Secretary and the institution.

(3) The new participation agreement of an institution that changed its ownership resulting in a change in control is effective on the date that the institution changed its ownership if—

(i) The institution's prior participation agreement was not terminated through procedures contained in Subpart G; and

(ii) Under the Pell Grant and campus-based programs, the date that the institution changed ownership that resulted in a change in control and the date on which the Secretary executed the new agreement took place in the same award year.

(d)(1) Except as provided in paragraph (e) of this section, the Secretary terminates a participation agreement through the procedures set forth in Subpart G.

(2) An institution may terminate a participation agreement.

(3) If the Secretary or the institution terminates a participation agreement under this paragraph, the Secretary establishes the termination date.

(e) An institution's participation agreement automatically terminates on the date the institution changes ownership that results in a change in control.

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

§ 668.13 Factors of financial responsibility.

(a) To begin and to continue participation in any Title IV, HEA program, an institution must demonstrate to the Secretary that it is financially responsible under the standards established in this section.

(b) In general, the Secretary considers an institution to be financially responsible if it is able to—

(1) Provide the services described in its official publications and statements;

(2) Provide the administrative resources necessary to comply with the requirements of this subpart; and

(3) Meet all of its financial obligations, including, but not limited to—

(i) Refunds of institutional charges; and

(ii) Repayments to the Secretary for liabilities and debts incurred in programs administered by the Secretary.

(c) Notwithstanding paragraph (b) of this section, the Secretary considers an institution not to be financially responsible if—

(1) Under its basis of accounting, it—

(i) Has had operating losses over at least its two most recent fiscal years; or

(ii) Had, for its latest fiscal year, a deficit net worth. A deficit net worth occurs when the institution's liabilities exceed its assets;

(2) Under an accrual basis of accounting, it had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1:1;

(3) Under a fund accounting system, its unrestricted current or operating fund reflects sustained material deficits over

at least its two most recent fiscal years; or

(4)(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds; or

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA program, or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds.

(d)(1) The Secretary may determine an institution to be financially responsible, even if the institution is considered not to be financially responsible under paragraphs (b), or (c)(1) through (c)(3) of this section, if the institution submits to the Secretary a letter of credit payable to the Secretary in an amount established by the Secretary, a performance bond in an amount established by the Secretary, or any other document requested by the Secretary that demonstrates that the institution has sufficient financial responsibility to begin or to continue to participate in any Title IV, HEA program.

(2) The Secretary may determine that an institution is financially responsible even if it would otherwise be considered not to be financially responsible under paragraph (c)(4) of this section if—

(i) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(ii) The individuals who were convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(iii) At least five years have elapsed from the date of the conviction, *nolo*

contendere plea, guilty plea, or judicial determination.

(e) The Secretary determines whether an institution is financially responsible in accordance with paragraphs (b), (c), and (d) of this section by evaluating documents submitted by the institution and information obtained from other sources, including outside sources of credit information. To enable the Secretary to make this determination, an institution shall, to the extent requested by the Secretary, submit for its latest complete fiscal year and its current fiscal year—

(1) A profit and loss statement and a balance sheet that are based on the same basis of accounting used by the institution for financial reporting; or

(2) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards.

(f)(1) The Secretary may require that the documents referred to in paragraph (e)(1) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(2) If the Secretary requires an institution to submit a profit and loss statement, a balance sheet, or an audit report under paragraph (e) of this section, the Secretary may also require the institution to submit the accountant's or auditor's work papers.

(g)(1) An otherwise eligible institution shall obtain and keep current adequate fidelity bond coverage in order to protect the Government's interest in the Title IV, HEA program funds the institution received as a trustee. A fidelity bond indemnifies the holder against losses resulting from fraud or lack of integrity, honesty, or fidelity of its employees or officers.

(2) A public institution that is bonded by the State against the type of losses described in paragraph (g)(1) of this section does not have to obtain additional fidelity bond coverage.

(3) Any bond required under this paragraph must be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

(Authority: 20 U.S.C. 1094 and Section 4 of Pub. L. 95-452)

§ 668.14 Standards of administrative capability.

To begin and to continue participation in any Title IV, HEA program, an institution shall demonstrate to the

Secretary that it is capable of adequately administering that program under the standards established in this section. Except as provided in § 668.15, the Secretary considers an institution to have that administrative capability if it establishes and maintains student and financial records required under § 668.23 and the individual Title IV, HEA program regulations and if it—

(a) Designates a capable individual to be responsible for—

(1) Administering all the Title IV, HEA programs in which it participates; and

(2) Coordinating the Title IV, HEA programs with the institution's other Federal and non-Federal programs of student financial assistance;

(b) Communicates to the individual designated to be responsible for administering Title IV, HEA programs, all the information received by any institutional office that bears on a student's eligibility for Title IV, HEA program assistance;

(c) Uses an adequate number of qualified persons to administer the Title IV, HEA program. In determining whether an institution uses an adequate number of qualified persons, the Secretary considers the number of students aided, the number and types of programs in which the institution participates, the number of applications evaluated, the amount of funds administered, and the financial aid delivery system used by the institution;

(d)(1) Administers Title IV, HEA programs with adequate checks and balances in its system of internal controls; and

(2) Divides the functions of authorizing payments and disbursing funds so that no office has responsibility for both functions with respect to any particular student aided under the programs;

(e) Establishes, publishes, and applies reasonable standards for measuring whether a student, who is otherwise eligible for aid under any Title IV, HEA program, is maintaining satisfactory progress in his or her course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution, if the institution is accredited by such an agency, and if the agency has those standards;

(2) For a student enrolled in an eligible program who is to receive assistance under a Title IV, HEA program, are the same as or stricter than the institution's standards for a student enrolled in the same academic program

who is not receiving assistance under a Title IV, HEA program; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum time frame in which the student must complete his or her educational objective, degree, or certificate. The time frame must be—

(A) Determined by the institution;

(B) Based on the student's enrollment status; and

(C) Divided into increments, not to exceed one academic year.

(iii) A schedule established by the institution designating the minimum percentage or amount of work that a student must successfully complete at the end of each increment in order to complete the educational objective, degree, or certificate within the maximum time frame.

(iv) A determination at the end of each increment by the institution whether the student has successfully completed the appropriate percentage or amount of work according to the established schedule.

(v) Consistent application of standards to all students within categories of students, e.g., full-time, part-time, undergraduate, and graduate students, and programs established by the institution.

(vi) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(vii) Specific procedures under which a student may appeal a determination that the student is not making satisfactory progress.

(viii) Specific procedures for reinstatement of aid; and

(4) Meet or exceed the requirements of § 668.7(c);

(f) Develops and applies an adequate system to identify and resolve discrepancies in the information it receives from different sources with respect to a student's application for financial aid under Title IV, HEA programs. In determining whether the institution's system is adequate, the Secretary considers whether the institution obtains and reviews—

(1) All student aid applications, need analysis documents, Statements of Educational Purposes, Statements of Registration Status, and eligibility notification documents presented by or on behalf of each applicant;

(2) Any documents, including any copies of State and Federal income tax returns, that are normally collected by the institution to verify information

received from the student or other sources; and

(3) Any other information normally available to the institution regarding a student's citizenship, previous educational experience, or other factors relating to the student's eligibility for Title IV, HEA program funds;

(g)(1) After conducting the review of an application provided for under paragraph (f) of this section, refers for investigation any information indicating that an applicant for Title IV, HEA program assistance may have engaged in fraud or other criminal misconduct in connection with his or her application. The type of information that an institution must refer is that which is relevant to the eligibility of the applicant for Title IV, HEA program assistance, or the amount of the assistance. Examples of this type of information are:

(i) False claims of independent student status;

(ii) False claims of citizenship;

(iii) Use of false identities;

(iv) Forgery of signatures or certifications; and

(v) False statements of income;

(2) Makes the referrals described in paragraph (g)(1) of this section to the Office of Inspector General of the Department of Education, or, if more appropriate, to a State or local law enforcement agency with jurisdiction to investigate the matter; and

(3) Reports to the Office of Inspector General for each calendar year all referrals made to State or local law enforcement agencies under this paragraph for that calendar year;

(h) Provides adequate financial aid counseling to eligible students who apply for Title IV, HEA program assistance. In determining whether an institution provides adequate counseling, the Secretary considers whether its counseling includes information regarding—

(1) The source and amount of each type of aid offered;

(2) The method by which aid is determined and disbursed or applied to a student's account; and

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, its standards of satisfactory progress, and other conditions that may alter the student's aid package; and

(i) Does not otherwise appear to lack the ability to administer the Title IV HEA programs competently.

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

§ 668.15 Additional factors for evaluating administrative capability.

(a) The Secretary considers it an indication of an institution's impaired capability of properly administering Title IV, HEA programs if—

(1) The default rate on loans made under the GSL, PLUS, SLS, or Perkins Loan programs to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period;

(2) For an institution that has a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during the academic year; or

(3) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled on the first day of classes of any eight-month period withdraw during that period.

(b)(1) If the default or withdrawal rate for an institution is as high or higher than the rates set forth in paragraph (a) of this section, the Secretary may require the institution to submit for its latest complete fiscal year—

(i) A profit and loss statement and a balance sheet that are based on the same basis of accounting used by the institution for financial reporting;

(ii) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards; or

(iii) Other information required by the Secretary to determine the cause of the high default or withdrawal rate and the best measures for alleviating those conditions.

(2) The date of the statement's preparation of the documents referred to in paragraph (b)(1)(i) of this section must be within 12 months of the date of the Secretary's request.

(c) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (b)(1)(i) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(d)(1) If the default or withdrawal rate for an institution indicates an impaired capability to administer any Title IV, HEA program, the Secretary requires the institution to take reasonable and appropriate measures to alleviate those conditions as a requirement for its continued participation in those programs.

(2) Before initiating that action, the Secretary informs the institution of the findings and provides it at least 35 days to respond.

[Authority: 20 U.S.C. 1094 and section 4 of Pub. L. 94-452]

§ 668.16 Federal interest in Title IV, HEA program funds.

Funds received under the Pell Grant SEOG, CWS, ICL, and Perkins Loan programs, except those funds received for the administrative cost allowance, are held in trust for the intended student beneficiaries and the Secretary. The institution, as a trustee of Federal funds, may not use or hypothecate (*i.e.* use as collateral) Title IV, HEA program funds for any other purpose.

[Authority: 20 U.S.C. 1070 *et seq.*]

§ 668.17 Change in ownership resulting in a change in control.

(a) An eligible institution, or a previously eligible institution that participated in any Title IV, HEA program, that changes ownership resulting in a change in control is not considered by the Secretary to be the same institution unless—

(1) The new owner agrees to be liable, or the old and new owners agree to be jointly and severally liable, for all improperly spent Title IV, HEA program funds provided to the institution before the effective date of the change;

(2) The new owner agrees—

(i) To abide by the institution's refund policy in effect before the effective date of the change for students who are enrolled before the effective date; and

(ii) To honor all student enrollment contracts that were signed by the institution before the effective date of the change;

(3) The institution submits individual statements for both new and former owners listing their assets, liabilities, and net worth, and either—

(i) A profit and loss statement and balance sheet for the institution's latest complete fiscal year; or

(ii) An audit report for the institution's latest complete fiscal year prepared by a certified or licensed public accountant; and

(4) The institution submits additional financial documents if requested by the Secretary because the financial information provided in paragraph (a)(3) of this section is insufficient.

(b) The Secretary may require that the statements provided in paragraph (a)(3) of this section be audited and certified by a certified public accountant.

(c) If the Secretary considers the institution to be the same institution, the new owner must enter into a new participation agreement with the

Secretary, to participate in the Title IV, HEA programs.

(d) For purposes of this part, a change in ownership of an institution that results in a change in control means any action by which a person or corporation obtains authority to control the actions of that institution. These actions may include, but are not limited to—

(1) The sale of the institutions;

(2) The transfer of the controlling interest of stock of an institution to its parent corporation;

(3) The merger of two or more institutions;

(4) The division of one institution into two or more institutions; or

(5) The transfer of the assets of an institution to its parent corporation.

[Authority: 20 U.S.C. 1088(b) and 1094]

§ 668.18 Written agreements between an eligible institution and an ineligible entity.

(a) An institution may, without losing its eligibility to participate in any Title IV, HEA program, enter into a written agreement to have a portion of its educational program(s) provided for some or all of its students by an institution, school, or organization that is not eligible to participate in Title IV, HEA programs.

(b)(1) An eligible student may receive Title IV, HEA program assistance under such an agreement if the eligible institution gives credit to students in the portion of the program provided by the ineligible institution(s), school(s), or organization(s) on the same basis as if it provided the portion of the program itself; and

(2)(i) The portion of the program provided by the ineligible institution(s), school(s), or organization(s) does not exceed 25 percent of the student's total program of study; or

(iii) The eligible institution's nationally recognized accrediting agency, or State agency for the approval of public postsecondary vocational education, determines that its agreement meets the agency's standards for contracting for educational services.

(c) The eligible institution shall take into account all courses taken by the student at the eligible institution and ineligible institution(s), school(s), or organization(s) that are covered by the written agreement when determining the student's enrollment status and cost of attendance.

(d) The eligible institution shall maintain all records regarding the student's eligibility for and receipt of the Title IV, HEA program assistance.

[Authority: 20 U.S.C. 1094]

§ 668.19 Financial aid transcript.

(a)(1) An institution shall determine whether a student who is applying for assistance under any Title IV, HEA program has previously attended another eligible institution.

(2) Before a student who previously attended another eligible institution may receive any Title IV, HEA program funds, the institution or the student shall request each institution the student previously attended to provide a financial aid transcript to the institution the student is or will be attending.

(3) Except as provided in paragraph (a)(5) of this section, until an institution receives a financial aid transcript from each eligible institution the student previously attended, the institution—

(i) May withhold payment of Pell Grant, campus-based, and ICL funds to the student;

(ii) May disburse Pell Grant, campus-based, or ICL funds to the student for one payment period only;

(iii) May decline to certify the student's GSL or SLS application;

(iv) Shall not release GSL or SLS proceeds to a student; and

(v) Shall not certify an application for a PLUS Program loan sought on behalf of the student.

(4)(i) An institution may not hold GSL or SLS proceeds under paragraph (a)(3) of this section for more than 45 days. If an institution does not receive all required financial aid transcripts for a student within 45 days of the receipt of those proceeds, the institution shall return the loan proceeds to the appropriate lender.

(ii) An institution that certifies a GSL or SLS application before receiving all required financial aid transcripts shall return to the lender any GSL or SLS proceeds for the student if it receives a financial aid transcript indicating that—

(A) The amount of the loan proceeds would cause the student to exceed a loan limit under the GSL or SLS programs;

(B) The student is in default on any loan made under the GSL, PLUS, SLS, Consolidation Loan, ICL, National Defense/Direct Student Loan, or Perkins Loan programs; or

(C) The student owes a repayment on a grant received under the Pell Grant, SEOG, or SSIG programs.

(5) The institution may disburse Title IV, HEA program funds to the student without receiving a financial aid transcript from an eligible institution the student previously attended if the institution the student previously attended—

(i) Has closed, and information concerning the student's receipt of Title IV, HEA program assistance for

attendance at that institution is not available;

(ii) Is not located in a State; or

(iii) Provides the disbursing institution with the written certification described in paragraph (b)(2)(ii) of this section.

(b) Upon request, each institution located in a State shall promptly provide to the institution for which a financial aid transcript is requested—

(1) All information in its possession concerning whether a student attended institutions other than itself and the institution for which the transcript is requested; and

(2)(i) A financial aid transcript for that student, if the student received or benefited from any Title IV, HEA program assistance while attending the institution providing the transcript; or

(ii) A written certification that—

(A) The student did not receive or benefit from any Title IV, HEA program assistance while attending the institution from which the transcript was requested; or

(B) The transcript pertains solely to years for which the institution no longer has and is no longer required to keep records under the applicable Title IV, HEA program recordkeeping requirements.

(c) A financial aid transcript must be signed by an official authorized by the institution providing the transcript to disclose information in connection with Title IV, HEA programs and must include, for any award year for which that institution has or is required to keep records—

(1) The student's name and social security number;

(2) Whether the student was treated as an independent student under any Title IV, HEA program in the award year preceding the award year for which a financial aid transcript is requested;

(3) Whether the student is in default on any loan made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs for attendance at the institution providing the transcript;

(4) To the extent that the institution is aware, whether the student is in default on any loan made under the GSL, PLUS, SLS, or Consolidation Loan programs, or any other loan made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs;

(5) Whether the student owes a refund on any grant made under the Pell Grant or SEOG programs and, to the extent that the institution is aware, the SSIG Program, for attendance at the institution providing the transcript;

(6) To the extent that the institution is aware, whether the student owes a refund on any grant made under the Pell

Grant, SEOG, or SSIG programs for attendance at any other institution;

(7) For the award year for which a financial aid transcript is requested, the student's Scheduled Pell Grant and the amount of Pell Grant funds disbursed to the student;

(8) The total amount of loans made under the ICL, National Defense/Direct Student Loan, or Perkins Loan programs to the student for attendance at the institution providing the transcript, and, to the extent that the institution is aware, the amount of loans made to the student for attendance at other institutions;

(9) Whether the student owes an outstanding balance on either a Defense loan or a Direct loan made for attendance at the institution providing the transcript;

(10) The amount of and period covered by each loan made to the student under the GSL, PLUS, or SLS programs for attendance at the institution providing the transcript;

(11) To the extent that the institution is aware, the amount of and period covered by any loan made to the student under the GSL, PLUS, or SLS programs for attendance at any other institution;

(12) The amount of and period covered by each loan made under the PLUS Program on behalf of the student for attendance at the institution providing the transcript; and

(13) To the extent that the institution is aware, the amount of and period covered by any loan made under the PLUS Program on behalf of the student for attendance at any other institution.

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

§ 668.20 Limitation on the amount of remedial coursework that is eligible for Title IV, HEA program assistance.

(d) A noncredit or reduced credit remedial course is a course of study designed to increase the ability of a student to pursue a course of study leading to a certificate or degree.

(1) A noncredit remedial course is one for which no credit is given toward a certificate or degree; and

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

(b) Except as provided in paragraphs (c) and (d) of this section, in determining a student's enrollment status and cost of attendance, an institution shall include any noncredit or reduced credit remedial course in which the student is enrolled. The institution shall attribute the number of credit or clock hours to a noncredit or reduced credit remedial course by—

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

(2) Comparing those hours with the hours required for nonremedial courses in a similar subject; and

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

(c) In determining a student's enrollment status under the Title IV, HEA programs or a student's cost of attendance under the campus-based, GSL, PLUS, and SLS programs, an institution may not take into account any noncredit or reduced credit remedial course if—

(1) That course is part of a program of instruction leading to a high school diploma or the recognized equivalent of a high school diploma, even if the course is necessary to enable the student to complete a degree or certificate program; or

(2) The educational level of instruction provided in the noncredit or reduced credit remedial course is below the level needed to pursue successfully the degree or certificate program offered by that institution after one year in that remedial course.

(d) Except as set forth in paragraph (f) of this section, an institution may not take into account more than one academic year's worth of noncredit or reduced credit remedial coursework in determining—

(1) A student's enrollment status under the Title IV, HEA programs; and

(2) A student's cost of attendance under the campus-based, GSL, PLUS, and SLS programs.

(e) One academic year's worth of noncredit or reduced credit remedial coursework is equivalent to—

(1) Thirty semester or 45 quarter hours; or

(2) Nine hundred clock hours.

(f) Courses in English as a second language do not count against the one-year academic limitation contained in paragraph (d) of this section.

[Authority: 20 U.S.C. 1094]

§ 668.21 Treatment of Pell Grant, SEOG, ICL, and Perkins Loan program funds if the recipient withdraws, drops out, or is expelled before his or her first day of class.

(a)(1) If a student officially withdraws, drops out, or is expelled before his or her first day of class of a payment period, all funds paid to the student for that payment period for institutional or noninstitutional costs under the Pell Grant, SEOG, ICL, and Perkins Loan programs are an overpayment.

(2) The institution shall return that overpayment to the respective Title IV, HEA programs in the amount that the student received from each program.

(b) For purposes of this section, the Secretary considers that a student drops out before his or her first day of class of a payment period if the institution is unable to document the student's attendance at any class during the payment period.

[Authority: 20 U.S.C. 1094]

§ 668.22 Distribution formula for institutional refund and for repayments of disbursements made to the student for noninstitutional costs.

(a) *Repayment of institutional refunds to Title IV, HEA programs.* (1) An institution shall return a portion of a refund owed to a student to the Title IV, HEA programs if—

(i) The student officially withdraws, drops out, or is expelled from the institution on or after his or her first day of class of a payment period; and

(ii) The student received assistance under any Title IV, HEA program other than the CWS Program.

(2) For purposes of this section, an institutional refund means the amount paid for institutional charges for a payment period by financial aid and/or cash payments minus the amount retained by the institution for the portion of the payment period that the student was actually enrolled at the institution. The amount retained by the institution for the student's actual period of enrollment is calculated according to the institution's refund policy.

(3) The portion of the refund that the institution shall return to the Title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than under the CWS Program for the payment period; or

(ii) The amount obtained by multiplying the institutional refund by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of CWS Program earnings) awarded for the payment period

Total amount of assistance (exclusive of all work earnings) awarded for the payment period.

(b) *Repayments to Title IV, HEA programs of disbursements made to the student for noninstitutional costs.* (1) If a student officially withdraws, drops out, or is expelled on or after his or her first day of class of a payment period, the institution shall determine what portion, if any, of the Title IV, HEA program assistance (other than from the CWS, GSL, PLUS, or SLS program received for

that payment period by the student for non-institutional costs is an overpayment that must be repaid by the student. The institution shall make every reasonable effort to contact the student and recover the overpayment in accordance with program regulations (34 CFR Parts 673, 674, 675, 676, and 690).

(2)(i) To determine if any of the Title IV, HEA program assistance received by the student for noninstitutional costs constitutes an overpayment, the institution shall subtract the noninstitutional costs incurred by the student for that portion of the payment period during which the student was enrolled from the amount of assistance disbursed to the student.

(ii) Noninstitutional costs may include, but are not limited to, room and board for which the student does not contract with the institution, books, supplies, transportation, and miscellaneous expenses.

(3) The portion of the overpayment as determined according to paragraph (b)(2) of this section that the institution shall return to the Title IV, HEA program(s) is the lesser of—

(i) The amount of assistance received under the Title IV, HEA programs other than the CWS, GSL, PLUS, or SLS programs for the payment period; or

(ii) The amount obtained by multiplying the overpayment by the following fraction:

Total amount of Title IV, HEA program assistance (exclusive of College Work Study and GSL, PLUS, and SLS loans) awarded for the payment period.

Total amount of assistance (exclusive of all work earnings and GSL, PLUS, and SLS loans awarded for the payment period.

(c) *Payment period.* For purposes of this section—

(1) A payment period under the GSL, PLUS, and SLS programs is a semester, trimester or quarter. At an institution not using those academic periods, it is the period between the beginning and the midpoint or between the midpoint and the end of the academic year; and

(2) The amount of a loan made under GSL, PLUS, or SLS program is considered to be awarded in proportionate amounts corresponding to the number of payment periods calculated according to paragraph (c)(1) of this section.

(d) *Drop out date.* For purposes of this section, a student is considered to have dropped out on the last recorded date of class attendance by the student as documented by the institution.

(3) *Distribution among the Title IV, HEA programs.* An institution shall

develop a written policy allocating the Title IV, HEA program portion of the refund determined under paragraph (a) of this section of the Title IV, HEA program portion of the overpayment determined under paragraph (b) of this section among the Title IV, HEA program(s) from which the student received aid. This allocation policy must be applied consistently to all students who have received Title IV, HEA program assistance and must conform to the following:

(1) No amount of the Title IV, HEA program portion of the refund or of the overpayment may be allocated to the CWS Program.

(2) No amount of Title IV, HEA program portion of the overpayment may be allocated to the GSL, PLUS or SLS program.

(3) The amount of the Title IV, HEA program portion of the refund or of the overpayment allocated to a specific Title IV, HEA program may not exceed the amount that the student received from that program.

(4) The amount of the Title IV, HEA program portion of the refund allocated to the GSL, PLUS, and SLS programs must be returned to the borrower's lender by the institution in accordance with program regulations (34 CFR Part 682).

(5) The amount of the Title IV, HEA program portion of the refund allocated to the Title IV, HEA programs other than the CWS, GSL, PLUS and SLS programs must be returned to the appropriate program account(s) by the institution within 30 days of the date that the student officially withdraws or is expelled or the institution determines that a student has unofficially withdrawn.

(6) The amount of the Title IV, HEA program portion of the overpayment allocated to the Title IV, HEA programs other than the CWS, GSL, PLUS, and SLS programs must be returned to the appropriate program account(s) within 30 days of the date that the student makes the repayment.

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

§ 668.23 Audits, records, and examination.

(a) An institution which participates in the ICL (34 CFR Part 673), Perkins Loan (34 CFR Part 674), CWS (34 CFR Part 675), SEOG (34 CFR Part 676), GSL (34 CFR Part 682), PLUS (34 CFR Part 682), SLS, or Pell Grant (34 CFR Part 690) programs shall comply with the regulations for those programs concerning—

- (1) Fiscal and accounting systems;
- (2) Program and fiscal recordkeeping; and
- (3) Record retention.

(b) For purposes of audit and examination, an institution which participates in any Title IV, HEA program shall give the Secretary, the Comptroller General of the United States, or their duly authorized representatives access to the records required by the program regulations and this part and to any other pertinent books, documents, papers, and records.

(c)(1) An institution which participates in the ICL, Perkins Loan, CWS, SEOG, GSL, PLUS, SLS, or Pell Grant programs shall have performed a financial and compliance audit of its Title IV, HEA programs. The audit shall be conducted by an independent auditor in accordance with the general standards and the standards for financial and compliance audits in the U.S. General Accounting Office's (GAO's) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*.

(2) Procedures for audits are contained in audit guides developed by, and available from, the Education Department's Office of the Inspector General. These audit guides do not impose any requirements beyond those imposed under applicable statutes and regulations, and GAO's *Standards*.

(3) The institution shall have an audit performed at least once every two years. Each audit must cover the institution's activities for the entire period of time since the preceding audit.

(4)(i) If the institution receives campus-based funds, the institution shall submit the audit report to the Inspector General by March 31 of the year following the last award year covered by the audit.

(ii) If the institution does not receive campus-based funds, the institution shall submit the audit report to the Inspector General by January 31 of the year following the last year covered by the audit.

(5) The institution shall—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(ii) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(d) The Secretary considers the audit requirement in paragraph (c) of this section to be satisfied by an audit conducted in accordance with the Single Audit Act (Chapter 75 of Title 31, United States Code).

(e) Upon written request, an institution shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which it deposits or has deposited any Title IV, HEA program funds.

(f)(1) In addition to the records required under the applicable program regulations and this part, for each recipient of Title IV, HEA program assistance, the institution shall establish and maintain, on a current basis, records regarding—

(i) The student's admission to, and enrollment status at, the institution;

(ii) The program and courses in which the student is enrolled;

(iii) Whether the student is maintaining satisfactory progress in his or her course of study;

(iv) Any refunds due or paid to the student, the Title IV, HEA program account(s) and the student's lender under the GSL, PLUS, and SLS programs;

(v) The student's placement by the institution in a job if the institution provides a placement service and the student uses that service;

(vi) The student's prior receipt of financial aid (see § 668.19); and

(vii) The verification of student aid application data.

(2)(i) An institution shall establish and maintain records regarding the educational qualifications of each regular student it admits, whether or not the student receives Title IV, HEA assistance, which are relevant to the institution's admission standards.

(ii) An institution at which only certain programs have been determined eligible shall establish and maintain records regarding the admissions requirements and educational qualifications of each regular student enrolled in the eligible program(s), whether or not the student received Title IV, HEA assistance.

(3) Records shall be—

(i) Systematically organized; and

(ii) Readily available for review by the Secretary at the geographical location where the student will receive his or her degree or certificate of program or course completion.

(Authority: 20 U.S.C. 1088, 1094, 1141 and section 4 of Pub. L. 95-452)

§ 668.24 Audit exceptions and repayments.

(a)(1) If, as a result of a Federal audit or an audit performed at the direction of the institution, the Education Department's Inspector General questions an expenditure or the

institution's compliance with an applicable requirement (including the lack of proper documentation), the Inspector General notifies the Secretary and the institution of the questioned expenditure or procedure.

(2) If the institution believes that the questioned expenditure or procedure was proper, it shall notify the Secretary in writing of its position and the reasons for its position.

(3) The institution's response must be received by the Secretary within 35 days of the date of the Inspector General's notification to the institution.

(b)(1) Based on the audit finding and the institution's response, the Secretary determines the amount of funds improperly spent, if any, and instructs the institution as to the manner of repayment.

(2) The institution shall repay those funds within 45 days of the date of the Secretary's notification, unless—

(i) The institution files an appeal under the procedures established in Subpart H; or

(ii) The Secretary permits a longer repayment period.

(3) If the institution is found to have expended funds improperly under the proceedings established in Subpart H, the institution shall repay those funds within 30 days of a final determination under Subpart H unless the Secretary permits a longer repayment period.

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

§ 668.25 Loss of institutionalized eligibility.

(a) When an institution loses its eligibility or ceases to provide educational instruction, it shall—

(1) Immediately notify the Secretary of that fact;

(2) Refund to the Federal government, or otherwise dispose of under instructions from the Secretary, any unobligated Title IV, HEA program funds and any GSL, PLUS, or SLS proceeds it has received, except—

(i) Those funds for which it has made a commitment but not yet paid to students in that payment period; and

(ii) Its administrative allowance, if applicable;

(3) Submit to the Secretary within 45 days after the effective date of closing or loss of eligibility—

(i) All financial, performance, and other reports required by each appropriate Title IV, HEA program regulation; and

(ii) A letter of engagement for an audit or an audit report of all Title IV, HEA program funds it received;

(4) Inform the Secretary of the arrangements it has made for the proper

retention and storage for a minimum of five years of all records concerning the administration of the Title IV, HEA programs;

(5) Inform the Secretary of how it will provide for the collection of any outstanding Title IV, HEA loans; and

(6) Distribute refunds of unearned tuition and fees according to § 668.21.

(b) For the purposes of this section—

(1) A commitment under the Pell Grant Program occurs after a student is enrolled and attending the institution and has submitted a valid student aid report to the institution;

(2) A commitment under the campus-based and ICL programs occurs when the student is enrolled and attending the institution and has received an award letter from the institution; and

(3) A commitment under the GSL, PLUS, and SLS programs occurs when the Secretary or a guarantee agency advises the lender that the loan is guaranteed.

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

9. Sections 669.32(a) and (d) are revised to read as follows:

§ 668.32 Statement of Educational Purpose.

(a) Before receiving any funds under any Title IV, HEA program, a student shall file a Statement of Educational Purpose for each award year with the institution, or under the GSL, PLUS, or SLS programs, with the lender. In this statement the student shall—

(1) Include his or her social security number or if he or she does not have a social security number, his or her student identification number; and

(2) Certify that he or she will use any funds received under these programs solely for educational expenses connected with attendance at the institution at which the student is enrolled or accepted for enrollment, or, for the purposes of the GSL, PLUS, or SLS programs, at the institution named on the student's loan application.

(d) Until a student who is applying for Title IV, HEA program assistance under the Pell Grant, campus-based, SSIG or ICL programs files a Statement of Educational Purpose with the institution, an institution may not, for any period of instruction, disburse funds to the student under any Title IV, HEA program.

10. Section 668.34 is revised to read as follows:

§ 668.34 Model Statement of Educational Purpose and Registration Status.

The Secretary considers the following statement to satisfy the requirements of §§ 668.32 and 668.33(a) and the notification requirement of § 668.35(a):

Statement of Educational Purpose

I certify that I will use any money I receive under a Title IV, HEA loan, grant, work study, or scholarship program only for expenses related to my study at (Name of Institution)

Statement of Registration Status

— I certify that I am not required to be registered with Selective Service because:

— I am female.

— I am in the armed services on active duty. (Note: Does not apply to members for the Reserves and National Guard who are not on active duty.)

— I have not reached my 18th birthday.

— I was born before 1960.

— I am a permanent resident of the Trust Territory of the Pacific Islands.

— I am a citizen of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

— I certify that I am registered with Selective Service.

Signature: _____

Date: _____

Social Security Number (or Student Identification Number only if you have no Social Security Number): _____

11. In § 668.82, paragraph (d) is revised to read as follows:

§ 668.82 Standard of conduct.

(d)(1) An institution violates its fiduciary duty if—

(i) The institution, its owner, or its chief executive officer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or has been judicially determined to have committed fraud involving Federal funds;

(ii) The institution employs an individual in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds, or who has been judicially determined to have

committed fraud involving Federal funds; or

(iii) The institution uses any individual, agency, or organization that has been, or whose officers or employees have been—

(A) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal funds; or

(B) Judicially determined to have committed fraud involving Federal funds.

(2) A violation for a reason contained in paragraph (d)(1) of this section of an institution's fiduciary duty is an automatic ground for terminating the institution's eligibility to participate in any Title IV, HEA program.

12. Section 668.96 is revised to read as follows:

§ 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) In order to be reinstated, an institution must—

(1) Demonstrate to the Secretary's satisfaction that it 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 has improperly received, withheld, disbursed or caused to be disbursed;

(2) Meet all the requirements for participation included in Subpart B; and

(3) Enter into a new participation agreement with the Secretary.

(c) 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)

§ 668.90 [Amended]

13. In § 668.90(a)(3)(ii), the cross-reference to "§ 668.15" is revised to read "§ 668.13".

PART 690—PELL GRANT PROGRAM

14. The authority citation for Part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a through 1070a-6, unless otherwise noted.

15. Subpart A of the Table of Contents of Part 690 is amended by removing and reserving §§ 690.4 and 690.5 and revising § 690.8 to read as follows:

Subpart A—Scope, Purpose and General Definitions

* * * * *

690.4—690.5 [Reserved]

* * * * *

690.8 Enrollment status for students taking regular and correspondence courses.

* * * * *

16. Subparts C, D, and E of the Table of Contents of Part 690 are removed and reserved.

* * * * *

Subparts C-E—[Reserved]

* * * * *

§ 690.2 [Amended]

17. In the list of definitions in 34 CFR 690.2(a), remove the terms *Guaranteed Student Loan Program*, *National Direct Student Loan Program*, *National Defense Student Loan Program*, *National of the United States, PLUS Loan Program*, and *State Student Incentive Grant Program*, and add, in alphabetical order, the terms *Dependent student*, *Eligible program*, *Eligible student*, *Income Contingent Loan (ICL) Program*, *Independent student*, *Parent*, and *Perkins Loan Program*.

18. In § 690.2(b), the terms *Disbursement Schedule* and *Payment Schedule* are revised to read as follows:

§ 690.2 General definitions.

* * * * *

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

(1) A student's Effective Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

(2) A student's attendance costs as defined in section 411F(5) of the HEA; and

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

* * * * *

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

(1) The student's Expected Family Contribution, as determined in accordance with sections 411B, 411C, and 411D of the HEA;

(2) The student's cost of attendance as defined in section 411F(5) of the HEA; and

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

* * * * *

§§ 690.4 and 690.5 [Removed and Reserved]

19. Sections 690.4 and 690.5 are removed and reserved.

20. Section 690.8 is revised to read as follows:

§ 690.8 Enrollment status for students taking regular and correspondence courses.

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

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

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

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

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

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

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

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

(Authority: 20 U.S.C. 1070a)

§ 690.10 [Amended]

21. In § 690.10(b), revise "and National Direct Student Loan" to read "Perkins Loan, and ICL".

§§ 690.31-690.39 (Subpart C)—[Removed]

22. Subpart C, consisting of §§ 690.31-690.39, is removed and reserved.

§§ 690.41-690.48 (Subpart D)—[Removed]

23. Subpart D, consisting of §§ 690.41-690.48, is removed and reserved.

§§ 690.51-690.57 (Subpart E)—[Removed]

24. Subpart E, consisting of §§ 690.51-690.57, is removed and reserved.

§ 690.61 [Amended]

25. In § 690.61(a)(3), revise "§§ 668.16(f)" to read "668.14(f)".

§ 690.65 [Amended]

26. In § 690.65(a), revise "34 CFR 668.14" to read "34 CFR 668.19".

27. Section 690.75 is revised to read as follows:

§ 690.75 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a Pell Grant to an eligible student only after it determines that the financial aid transcript requirements of 34 CFR 668.19 have been met, and the student—

(1) Qualifies as an eligible student under 34 CFR 668.7;

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

(3) Has completed required clock hours for which he or she has been paid a Pell Grant, if the student is enrolled in an eligible program that is measured in clock hours.

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

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but reverses that determination before the end of the

payment period, the institution may pay a Pell Grant to the student for the entire payment period.

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

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

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

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

(Authority: 20 U.S.C. 1070a)

§ 690.82 [Amended]

28. In § 690.82(a) introductory text, revise "34 CFR 668.20" to read "34 CFR 668.23".

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