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 Notre, Mexico, February 5, 1987
2. Safety Study: Lap/Shoulder Belts
3. Followup Letters to Receipients 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

federal register

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 trancript from the student's previous school.

(5) The new requirement in § 668.19(c)(2) that a financial aid trancript 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 Departament 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 no 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 progam 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 progam 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 § 688.82(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 § 688.13(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 deteminations. 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

Sec.
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.
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

(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 progams that is discharged in bankruptcy to be in default for purposes of this section.

(Authority: 20 U.S.C. 1070a–1070c–1, 1077, 1078, 078–1–3, 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;

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

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

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

(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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Part III

Department of Education

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

Perkins Loan Program, College Work-Study Program, and Supplemental Educational Opportunity Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Perkins Loan (formerly named the National Direct Student Loan (NDSL)), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. These programs are known collectively as the campus-based programs and are authorized by the Higher Education Act of 1965 (HEA).

These regulations simplify and clarify requirements governing the campus-based programs and incorporate changes made to the HEA by the Higher Education Amendments of 1986, Public Law 99–498, and the Higher Education Technical Amendments Act of 1987, Public Law 100–50.

DATES: *Effective Date:* These regulations become effective either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments, with the exception of §§ 674.10, 675.10, 674.34, 674.35, 674.37, 674.52, 674.58, 675.16, 674.8, 674.16, 674.19, 674.31, 674.38, 675.19, 675.27, 675.34, 675.35, 676.19, and 676.16. Sections 674.10, 675.10, 674.34, 674.35, 674.37, 674.52, 674.58, 675.16, 674.8, 674.16, 674.19, 674.31, 674.38, 675.19, 675.27, 675.34, 675.35, 676.19, and 676.16 will become effective after the information collection requirements contained in those 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. It should be noted, however, that the following provisions apply to the awarding of aid starting with the 1988–89 award year: the provisions governing the application for the allocation and reallocation of funds in §§ .3 and .4; the determination of financial need in accordance with Part F of Title IV of the HEA in § .9; the overaward provisions in § .14, except for the treatment of loans made under the GSL, SLS, and PLUS programs; the coordination with BIA grants in § .15; and the payment of funds under § 674.16. Section 675.23, which allows an institution to use 25 percent of its work-study funds to enter into agreements with for-profit organizations to employ students, was, by statute, effective as of July 1, 1987. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Richard P. Coppage, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, Room 4018, Washington, DC 20202, telephone number (202) 732–4490.

SUPPLEMENTARY INFORMATION: The Secretary published a notice of proposed rulemaking for the campus-based programs in the **Federal Register** of February 27, 1985, 50 FR 8050–8086. Since the publication of that NPRM, the statute authorizing these programs, the Higher Education Act of 1965 (HEA), has been significantly amended by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. The regulations have been revised to conform to the new statutory amendments and have also been revised in accordance with public comment. The following discusses the statutory changes. Changes made as a result of public comment on the proposed regulations will be discussed in the appendix to these final regulations.

Conforming Changes to All Three Program Regulations.

The following is a description of the changes made in all the proposed regulations to conform those regulations to new statutory provisions.

Sections 674.3, 675.3, 676.3 Application and §§ 674.4, 675.4, 676.4 Allocation and reallocation.

The method of allocating funds to institutions under each program has been changed under each program statute. Instead of apportioning funds among the States and then allocating funds to institutions from each State's apportionment, funds are allocated directly to institutions under a statutory formula which makes no provision for appeals. Accordingly, § .3 through § .7 of each proposed regulation have been deleted and replaced with new § .3 and § .4 to reflect these statutory changes.

Section .3 of each regulation notifies institutions in general terms about the information that they must provide when they apply for funds. Section .4 of each regulation refers to the statutory section governing the allocation and reallocation of funds for that program instead of repeating the statutory formula. Those sections are section 462 of the HEA for the Perkins Loan program, section 442 of the HEA for the CWS program and section 413D of the HEA for the SEOG program. In addition each § .4 defines terms that are needed by the Secretary to carry out each program's allocation and reallocation and clearly articulates current and long-standing Department policy regarding the duration of the institution's authority to expend program funds.

Sections 462, 442, and 413D of HEA apply to the allocation of funds starting with the 1988–89 award year. Therefore, the Secretary has allocated funds to institutions under these programs for the 1987–88 award year in accordance with the procedures required for those allocations by Pub. L. 99–500, the Continuing Resolution for Fiscal Year 1987.

Sections 674.9, 675.9, 676.9 Student eligibility.

These sections were reorganized to contain only provisions specific to each program. Provisions common to all the Title IV HEA programs are now contained in the Student Assistance General Provisions regulations, 34 CFR Part 668.

Sections 674.10, 675.10, 676.10 Selection of Students for Loans, Selection of Students for CWS Employment, Selection of Students for SEOG Awards.

If an institution's allocation of funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution must award a reasonable proportion of its allocation to those students. This requirement applies to all institutions that permit students to enroll on less than a full-time basis.

Sections 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 of the proposed regulations. Allowable costs of attendance, Calculation of expected family contributions, Need analysis systems.

Beginning with the 1988–89 award year, a student's financial need, reflecting his or her expected family contribution (EFC) and cost of attendance for each of the campus-based programs, must be calculated in accordance with Part F of Title IV of the HEA. Therefore, the provisions dealing with a student's cost of attendance, the calculation of an expected family contribution, and need analysis systems that were included as §§ 674.11, 675.11, 676.11, 674.12, 675.12, 676.12, and 674.13, 675.13, 676.13 in the proposed regulations, have been deleted. Because Part F of Title IV of the HEA is so

specific, the Secretary has not republished those statutory provisions in these regulations. However, § 674.12 provides the Perkins Loan program maximum loan limits and § 674.13 describes the condition under which an institution must reimburse its Fund.

For the 1987–88 award year, under the Student Financial Assistance Technical Amendments Act of 1982, as amended, institutions must continue to calculate a student's expected family contribution using one of the 32 need analysis systems that the Secretary has approved for that purpose in the notices published in the **Federal Register** of January 30, 1987, 52 FR 3091, and the **Federal Register** of February 26, 1987, 52 FR 5816. Similarly, in accordance with the Student Financial Assistance Technical Amendments of 1982, as amended, the cost of attendance provisions that were in effect for the 1986–87 award year will continue to apply in the 1987–88 award year.

Sections 674.14, 675.14, 676.14 Overaward.

The proposed rule would have permitted the individual to exclude certain portions of Guaranteed Student Loans (GSL) and PLUS loans from the resources that must be considered by the institution. The GSL program statute, as amended, now provides that an applicant for a subsidized GSL qualifies for that loan only if the applicant's cost of attendance exceeds his or her expected family contribution (EFC). However, the amended statute permits an applicant to use a PLUS, SLS, or a loan made under a State-sponsored or private loan program to meet this EFC requirement. The Secretary has therefore revised the proposed rule accordingly: the institution must now consider all GSL loans as resources and may substitute only these enumerated loans for the applicant's EFC. Further, to clarify the resources to be considered, this section has been revised to articulate current policy that all Title IV assistance, including Pell Grants, SEOG and other governmental grants and scholarships, are to be counted as resources.

In addition, §§ 674.14 and 676.14 provide that when an institution makes an overaward for which it is not responsible to repay, it must make a reasonable effort to recover that amount from the recipient. The Secretary regards a reasonable effort to include a written demand for repayment in which the institution notifies the recipient that he or she owes a refund of the overawarded aid and that failure to repay that amount will render the individual ineligible for further Title IV aid by virtue of section 484 of the HEA.

Conforming Changes to the CWS and SEOG Program Regulations

Sections 675.20 and 676.20 Maintenance of effort.

The maintenance of effort requirement contained in section 487 of the HEA governing the CWS and SEOG programs was eliminated when the HEA was amended by the Higher Education Amendments of 1986. Therefore, those provisions have been deleted from the regulations for both programs.

Conforming Changes to the Perkins Loan Program Regulations—Perkins Loans and Direct Loans

Changes made to Title IV–E of the HEA by the Higher Education Amendments of 1986 included changing the name of the program from the National Direct Student Loan Program to the Perkins Loan program. In addition, section 405(b) of the Higher Education Amendments of 1986 made certain provisions in the Perkins Loan program applicable only to loans made on or after July 1, 1987 to "new" borrowers. The Secretary refers to these loans in the regulations as Perkins loans and has defined a "Perkins loan" as follows:

> 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 July1, 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.

Loans made under the Perkins Loan program to other than new borrowers will continue to be known as Direct loans. The Secretary has defined a "Direct loan" as follows:

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

These definitions will be found in 34 CFR Part 668, and are therefore not included in these regulations.

Section 674.2 Definitions.

Section 464 of the HEA has been amended to provide a nine-month initial grace period for Perkins loans, and the regulatory definition of grace period has been revised. An initial grace period is a period which immediately precedes the date of first required repayment on a loan. A post-deferment grace period is a period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Section 674.9 Student eligibility.

Section 484(b) of the HEA has been amended to require each undergraduate applicant for a loan under the Perkins Loan program to secure at least a preliminary determination of his or her eligibility for a Pell Grant. Section 674.9 has been amended to include this requirement.

Section 674.10 Selection of students for loans.

Section 463 of the HEA has been amended to require that institutions agree to provide loans on a priority basis to students with exceptional needs.

Section 674.12 Loan maximums.

The maximum cumulative amounts a student may borrow have been increased under revisions to section 464(a) of the HEA and these new limits have been included in § 674.12. The maximum amount an eligible student may borrow is increased to $4,500 for a student who has not completed two academic years of study toward a baccalaureate degree, $9,000 for a student who has completed two academic years of study for a baccalaureate degree but has not received the degree, and $18,000 for study toward a professional or graduate degree, including loans borrowed for undergraduate study.

Section 674.16 Making and disbursing loans.

Section 463A of the HEA has been revised to require disclosure, at the time of disbursement, of the total cumulative balance owed by the borrower to that lender, and an estimate of the projected monthly payment for such a cumulative balance. These requirements have been added to § 674.16.

Section 674.17 Federal interest in allocated funds—transfer of Fund.

The Secretary is considering developing the capability of collecting loans directly in the event that an institution closes or no longer wants to participate in the program.

Section 674.19 Fiscal procedures and records.

The Secretary has expanded this section to clarify the manner in which Perkins Loan funds must be deposited. These funds must be invested in insured or collateralized interest-bearing bank accounts or in low-risk income-producing securities such as obligations issued or guaranteed by the United States, and the institution must exercise the level of care in making these

investments required of a fiduciary. Any bank charges incurred from depositing these funds into interest-bearing accounts may be paid from the interest earnings on these funds.

Section 674.31 Promissory note.

Section 464 of the HEA has been revised to provide for a late charge of up to 20 percent of the installment payment for costs incurred during the billing cycle for Title IV–E loans made for periods of enrollment on or after January 1, 1986 and this change has been included in § 674.31.

Section 674.32 Special terms—loans to less than half-time student borrowers.

Section 484(a) revised the limitation that a student must be enrolled on at least a half-time basis to be eligible for Title IV aid, and new § 674.32 incorporates the terms of loans to borrowers who enroll for less than half-time study. The statute has provided a specific grace period before the borrower must begin repayment on Perkins loans so that the borrower may have an opportunity to find or resume employment before bearing the burden of repayment. The Secretary has determined that borrowers who receive loans while enrolled on a less than half-time basis should receive this same benefit, and therefore, the repayment period on a loan to a borrower enrolled on a less than half-time basis begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(a) Nine months from the date the loan was made, or

(b) The end of a nine-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a half-time student at an institution of higher education or comparable institution outside the United States approved for this purpose by the Secretary.

Section 674.34 Deferment of repayment—Perkins loans.

Section 464 has been revised to add new deferments for a Perkins loan borrower:

- For a period of up to 3 years during which time the borrower is a member of the National Oceanic and Atmospheric Administration Corps;
- For a period of up to six months while the borrower is on parental leave; and
- For a period of up to 12 months for a borrower who is a mother with preschool age children and is just entering or reentering the work force and is compensated at a rate that does not exceed $1 in excess of the rate prescribed by section 6 of the Fair Labor Standards Act of 1938.

In addition, deferment previously available to a borrower who is unable to secure employment because the borrower is providing care (such as continuous nursing or other similar services) required by a spouse who is disabled was expanded to include provision of care to a disabled "dependent." The final regulation will use the term "dependent" to reflect this revision.

The Higher Education Technical Amendments of 1987 (Pub. L. 100–50, June 3, 1987) authorized a new internship deferment. Under the new provisions, a borrower may defer payment for up to two years while serving in an internship program that leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training. The current GSL regulations, 34 CFR 682.210(g), published in the **Federal Register** on November 10, 1986, and effective December 24, 1986, provide that a borrower qualifies for an internship deferment only if the internship program requires the borrower to hold at least a bachelor's degree before beginning the program, and is a program that a State licensing agency requires the borrower to complete before it will certify the individual for professional practice or service. 34 CFR 682.210(g)(1)(ii), (iii). Since publication of this regulation, the Department identified certain States that do not require the completion of medical internships as a condition for licensing or certification to practice. Because the regulation limited the internship deferment to borrowers who were serving internships required by State authority, students in these States did not qualify for internship deferments. The Department regards the enactment in June 1987 of this amendatory language in both Perkins and GSLP statutes establishing an additional internship deferment for an individual who is not required to complete an internship program before being eligible to practice as a legislative overruling of this particular limitation in GSLP regulations, and not the other limit in those regulations: Namely, that the program require at least a bachelor's degree as a prerequisite for acceptance into the program. 34 CFR 682.210(g)(1)(ii). Therefore, the Secretary has included the new internship deferment in these regulations, but continues to require that the internship require that the borrower hold at least a bachelor's degree before beginning the internship program.

These additions have been incorporated in § 674.34.

Section 674.37 Deferment procedures.

The deferment procedures proposed in the NPRM have been revised in order to simplify them and make them consistent with current Department policy regarding the effect of a default on a loan. The proposed rule permitted the institution to regard a borrower who did not make scheduled payments and did not apply for a deferment as in default on the loan, and to accelerate that loan. If the loan was accelerated, the institution could not grant a deferment for any repayments due after the date of acceleration. If the defaulted loan had not been accelerated, the institution could grant a deferment if the borrower repaid the entire past-due amount.

On September 22, 1986 the Department revised its rules regarding the effect of a default on the borrower's ability to quality for new Title IV aid. 34 CFR 674.2, 51 FR 33726. Under this revised rule, now in effect, a borrower who has failed to make a required payment is in default for purposes of determining both the default rate of the institution and the borrower's status for new aid, unless the borrower executes a new written repayment agreement for that loan. 34 CFR 674.2. The Department intended that institutions have considerable discretion over the terms of the new agreement. In order to encourage institutions to adopt those terms warranted by a borrower's repayment pattern before default, the Department urged institutions to require the defaulter to repay immediately some or all of the past-due amounts on the loan as a term of, or condition for, such a new agreement. It is important, however, that the borrower understands that once a new repayment agreement is executed, and he or she fails to make required payments when due, the loan will immediately revert to default status.

This cure procedure is available, if the institution chooses, even after a loan has been accelerated. It is consistent with that policy to permit the institution to give a deferment to a borrower after his or her loan is in default if the borrower cures the default by executing a new written repayment agreement and meets any conditions set by the institution for the agreement, such as immediate payment of some or all of those installment payments scheduled to be made before the borrower demonstrated to the institution that a condition existed that might qualify him or her for a deferment.

This revision imposes no additional burden on the borrower or the institution beyond that proposed in the NPRM, and, in fact, grants greater discretion to the institution. The Secretary intends that this final rule apply to all requests for deferment received by institutions after the effective date of this final rule, regardless of the date on which the loan was made. The Department has always regarded the availability of deferments as a matter of right only upon timely request and timely, satisfactory documentation that the borrower qualified for the deferment; neither the proposed rule nor this final rule represents any change in that policy.

The final rule also clarifies that deferments apply only after the borrower is required to begin repayment; the repayment period begins six or nine months after the borrower ceases half-time enrollment. At times a borrower may neglect to notify the institution that he or she has continued studies and remained at least a half-time student at another institution. Regardless of that failure, the borrower was not required to begin repayment until those later studies were completed. The institution holding the loan may reasonably have concluded that the repayment period on that loan had started, and may have demanded payment from the borrower. Under these circumstances, the borrower may mistakenly characterize his or her request for relief on the grounds of student status as a request for deferment, when it is actually no more than a request that the institution recognize the fact that, because the borrower had not ceased half-time enrollment status, the repayment period had not yet started. The borrower may submit proof at any time, even after a loan has been acclerated, that the repayment period on the loan began at a later date than was originally calculated, and the institution must recalculate that date upon receiving such proof from the borrower. The final rule articulates this long-standing Department interpretation that a borrower whose loan is regarded as in default has the right to the correct calculation of the start of the repayment period. However, the rule also articulates the Department's policy that the borrower remains responsible for payments that would have been due in any event, and that the institution is under no obligation to grant a deferment with regard to those past-due payments, and may immediately enforce its demand for those payments.

Section 674.57 Cancellation for volunteer service-Perkins loans.

The 1986 amendments authorize an institution to cancel up to 70 percent of a borrower's Perkins loan plus the interest on the unpaid balance for service as a volunteer under the Peace Corps Act or the Domestic Volunteer Service Act of 1973. Fifteen percent of the total principal amount of the loan plus interest on the unpaid balance may be cancelled for each of the first and second twelve-month periods of service and 20 percent may be cancelled for each of the third and fourth twelve-month periods of service.

Conforming Changes to the CWS Program Regulations

Section 675.21 Intitutional employment.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, a proprietary institution may now employ students to work for itself. However, that employment must be "on campus," provide student services, complement and reinforce the educational program or vocational goals of the student to the maximum extent possible, and not involve the solicitation of potential students for enrollment at the proprietary institution.

The Secretary considers that student services may include furnishing academic, library, financial aid, guidance and counseling, health, and social services *directly* to students. Examples of acceptable employment would include employment as an academic tutor or peer counselor.

Section 675.23 Employment provided by a private for-profit organization.

As a result of an amendment made to the HEA by the Higher Education Amendments of 1986, each award year an institution may use up to 25 percent of its allocation to pay the Federal share of the compensation earned by its students who are employed under the CWS program by a private for-profit organization. Section 675.23 contains the conditions under which that employment may be provided.

Section 675.26 CWS Federal share limitations.

Starting with the 1989–90 award year, the Federal share of CWS compensation earned by students working for the institution, for a Federal, State or local public agency, or for a private nonprofit organization under the CWS program will be 75 percent. For award year 1990–91 and subsequent years, the Federal share of that compensation will be 70 percent.

The Secretary will, however, increase the Federal share in each of those years to 100 percent to pay the compensation of students working for other than a private for-profit organization who are enrolled in an institution that applies for that increased share in a timely manner and qualifies as an eligible institution under the Strengthening Institutions program, the Strengthening Historically Black Colleges and Universities program, or the Strengthening Historically Black Graduate Institutions program, each of which is authorized by Title III of the HEA.

The Federal share of compensation for students working for a private for-profit organization is 60 percent for award years 1987–88 and 1988–89, 55 percent for award year 1989–90, and 50 percent for award year 1990–91 and subsequent award years. In addition, the non-Federal share must be provided by the private for-profit organization.

Subpart B—Job Location and Development Programs

A second job location and development program was added to the CWS statute. This program authorizes an institution to use the lesser of 10 percent of its allocation or $20,000 to fund a community service job location and development program. Subpart B has been revised to include the statutory requirements governing this new program.

Conforming Changes to the SEOG Program Regulations

Section 676.10 Selection of students for SEOG awards.

In selecting SEOG recipients for any award year an institution must first award grants to those eligible students, including students attending less than half-time, with the lowest expected family contributions in accordance with Part F Title IV of the HEA who are also recipients of a Pell Grant for that year. The institution may then select SEOG recipients who are not recipients of a Pell Grant for that year in priority order of lowest expected family contributions.

Section 676.20 Minimum and maximum SEOG awards.

The maximum grant has been increased to $4,000 and the minimum grant has been reduced to $100.

Section 676.21 SEOG Federal share limitations.

Starting with the 1989–90 award year, the Federal share of SEOG awards an institution makes will be 95 percent of

the amount of those grants. For award year 1990–91, the Federal share will be 90 percent of the amount of those awards and for the 1991–92 and subsequent years, the Federal share will be 85 percent of the amount of those awards.

The Secretary will, however, increase the Federal share of SEOG awards in each of those years to 100 percent for any institution that applies for that increased share in a timely manner and qualifies as an eligible institution under Strengthening Institutions program or the Strengthening Historically Black Colleges and Universities program, each of which is authorized by Title III of the HEA.

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.

Waiver of Notice of Proposed Rulemaking

In addition to the changes made as a result of public comments, the Secretary has made certain changes to conform the regulations to changes made to the Higher Education Act of 1965 by the Higher Education Amendments of 1986, Pub. L. 99–498, and the Higher Education Technical Amendments Act of 1987, Pub. L 100–50. In accordance with section 431(b)(2)(A) of the General Education Provisions Act 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the latter changes do not implement substantive policy, but merely incorporate statutory changes made to the HEA by the Higher Education Amendments of 1986 and the Higher Education Technical Amendments Act of 1987. Therefore, pursuant to 5 U.S.C. 553(b)(B), the Secretary finds that publication of proposed regulations with regard to these changes is unnecessary and contrary to the public interest.

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 NPRM, 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 its own review, as discussed in the appendix, the Department has determined that the regulations in this document may require the transmission of certain information that is also being gathered by other agencies or authorities of the United States. However, the Department either does not have statutory authority to obtain this information from those agencies or authorities, or the information is not currently available in a form usable by the Department.

List of Subjects in 34 CFR Parts 674, 675, and 676

Education loan programs—education, Student aid, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: Supplemental Educational Opportunity Grant Program, 84.007; College Work-Study Program, 84.033; Perkins Loan Program, 84.038)

Dated: November 24, 1987.

William J. Bennett,

Secretary of Education.

Summary of Comments and Responses to the Notice of Proposed Rulemaking—Parts 674, 675 AND 676—General

Section .2—Definitions—"Undergraduate Student/Graduate or Professional Student."

Comment: Many commenters requested clarification regarding the classification of students enrolled in a combined undergraduate and graduate program.

Response: A change has been made. Under the definition of an undergraduate student, a student who is enrolled in a combined undergraduate or graduate program is considered an undergraduate student for the first four years of that program.

Section .14—Overaward.

Comment: Many commenters disagreed with the provision which disallows excess earnings from CWS jobs to substitute for the expected family contribution (EFC). The commenters argued that it is illogical to allow students to substitute for EFC by increasing their debt while not allowing them to earn their EFC by working.

Response: No change has been made. A student's EFC represents an amount which the student's family is reasonably able to contribute toward his or her cost of attendance. A student is eligible for CWS employment only if the student demonstrates financial need (that is, the student's educational costs exceed the student's expected family contribution). CWS earnings may not exceed his or her demonstrated financial need. Since the EFC itself is one of the components used in determining financial need, it is illogical to allow excess earnings to be used to satisfy the EFC. Note that demonstration of financial need is not a requirement for largely unsubsidized loans such as PLUS or SLS (Supplemental Loans for Students).

Section .16—Making and Disbursing Loans: Payments to Students; and Payments of an SEOG.

Comment: Many commenters supported the proposal to delete the requirement that an institution shall get a written acceptance of the financial aid from the student. Three commenters recommended that the institution inform the students of the option to accept or deny all or part of the aid package and provide a time frame for response. Several commenters opposed this deletion stating that without a signed acceptance, students would later dispute the award, especially a loan.

Response: No change has been made. The Secretary emphasizes that before an institution makes a disbursement to a student, the institution is required to provide the student with certain disclosure information. In addition, a borrower must sign the promissory note for each advance under a Direct or Perkins loan, and each CWS payment must be made by check or similar instrument that a student must endorse in order to cash. Therefore, no further record of acceptance is necessary. If the institution is concerned that the student would later dispute that he/she did not receive the award, it is free to require that the student sign a written acceptance for each disbursement.

Comment: Many commenters opposed the proposed time frame of advancing payments of SEOG and Direct/Perkins loans in §.16. The reasons cited were (1) the proposal does not recognize educational expenses which are incurred before the beginning of the period of instruction; (2) the proposal will lead to a large number of overpayments; and (3) should a student withdraw, the grace period would begin and the institution's refund policy would apply any amount toward the student's outstanding principal. Several commenters recommended that each institution be allowed the flexibility of

crediting accounts to accommodate its own billing system.

Response: No change has been made. Under the previous regulation, an institution could disburse an SEOG or Perkins loan only at the beginning of our within a payment period (first day of classes). These regulations give greater flexibility to institutions regarding the disbursement of SEOG and Perkins loans and are consistent with the long-standing Pell Grant program policy of allowing an institution to advance funds directly to a student ten days before the beginning of classes and to credit a student's institutional account three weeks before the first day of classes. They accommodate the need of a student to pay educational expenses incurred before the beginning of a period of instruction.

If the institution chooses to exercise its right to make advance payments, it must accept the responsibility from any resulting overpayment. Therefore, should a student withdraw before the first day of classes, all monies disbursed are considered to be an overpayment and must be restored to the relevant program account.

Comment: Numerous commenters disagreed with the proposal in § 675.16 that the institution shall not obtain a student's power of attorney to authorize any disbursement of funds or crediting of funds to a student's accounts. Most of these commenters cited the large number of students in their overseas international programs and stated that mailing checks instead of crediting the accounts is unduly cumbersome and hazardous and would cause delays to the aid recipients. Some commenters also cited instances in which students are studying in off-campus programs that may be a great distance away. One suggestion that was made to change "shall not obtain" to "shall not hold." Most of the recommendations were to include an "exceptional conditions" clause that would allow institutions to obtain a student's power of attorney for students studying abroad or at a great distance. One commenter noted that "waiver of endorsement" authority is available, and stated that the student should have the choice between the use of that waiver and a power of attorney.

Response: A change has been made. In order to accommodate unusual circumstances, the regulation has been revised to allow the institution to obtain a student's power of attorney for purposes of authorizing disbursements of funds only after obtaining the Secretary's approval.

Section .19—Fiscal Procedures and Records.

Comment: Numerous commenters objected to the proposal in § .19 which requires the institution to maintain the source documents in hard copy or on microfilm. The commenters believe this negates the progress already made in electronic record-keeping. Hard copies of microfilm back-ups are not required in private industry for audit purposes. Other commenters suggested that "source documents" be changed to "promissory notes" and "microfilm" be changed to "microforms" in order to include other methods of storage.

Response: A change has been made. Except as specifically noted in the rule to the contrary (e.g., loan documentation) institutions will not be required to maintain source records in their original form, but may retain this information in either hard copy of microforms.

Public Comments and Departmental Responses Relating to Part 674 (Perkins Loan)

Section 674.8—Program Participation Agreement.

Comment: Many commenters objected to the proposal in § 674.8 requiring the institution to restore to the Fund the outstanding principal balance, accrued interest, and any administrative cost allowance it received if the institution improperly disbursed the loan or failed to exercise due diligence in its collection. The commenters recommended that repayment be required only when a financial loss to the Government occurs and stated that repaying the administrative cost allowance taken on these awards would be administratively burdensome. One of these commenters suggested that a 3% allowable error and omissions rate be allowed. Also, the commenters suggested there is no due process allowed before the institution is required to return the funds.

Response: A change has been made to clarify the intent of the rule. The subject of institutions restoring monies to the Fund has been clarified and moved to § 674.13—Reimbursement to the Fund. The Secretary intends by this rule to require the institution to restore amounts lost to the Fund because of the conduct of the institution or its agents. The relationship of the institution to the Fund has long been characterized by the Department as a trust relationship. This rule applies to that relationship traditional principles governing the responsibility of trustees for losses of trust assets caused by their acts or omissions. As such, the rule codifies existing Department views on the consequences of that responsibility, but does not adopt any new principle or create any new ground of liability.

Under these principles, the institution as trustee is responsible for restoring to the trust those funds used in violation of the directions of the party establishing the trust, the Department. Section 674.13(a)(1) addresses the institution's responsibility with regard to those loans or portions of loans which the borrower was not eligible to receive. These disbursements include overawards caused by a failure to review information available to the institution, such as other aid awarded to the individual in excess of need. *See also* 34 CFR 674.14(c)(2). The institution is likewise responsible, under this principle, for loans to individuals who were not eligible for a loan if the institution should have discovered that fact by a review of information in its own records, such as records regarding academic progress, repayment status on prior loans held by the institution, and immigration status.

The institution as trustee is also responsible for exercising reasonable care in making loans and due diligence in attempting to enforce the loans. Section 674.13(a)(2) addresses the institution's responsibility with regard to loans that it made in the proper amount to eligible borrowers, but on which it failed to exercise due care in collecting. The revised rule recognizes that for these loans, financial loss to the Fund occurs only in the event of default, and requires the institution to restore to the Fund that full unpaid portion of the loan with regard to which the institution failed to exercise reasonable care in disbursing, recording, or attempting to collect. The institution receives no credit for the institutional share of the uncollectable loan under this provision precisely because it had committed that ICC to the Fund for future lending; the loss to the Fund includes the share of the uncollected loan derived from the ICC, and the institution as trustee is required to compensate the Fund for the loss. For example, the institution is responsible, under this principle, for that portion of a loan evidenced by a promissory note that was altered, unsigned, or lost, or which lacked borrower acknowledgment of all advances of loan funds. If the institution uses a note that incorporates the repayment schedule, the institution likewise makes itself responsible for due care in executing and retaining that schedule.

The rule also regards a failure to comply with the regulatory collection

requirements as a cause of the loss to the Fund on an outstanding defaulted loan. Examples of failures to exercise due diligence include any failure to take the following actions in a timely and effective manner: To skip trace promptly, to engage a collection firm, to sue a gainfully employed or otherwise solvent debtor, to report to a credit bureau, or oppose an undue hardship petition in bankruptcy when such opposition is well-grounded and cost-effective.

In some instances, the connection between the institution's conduct and the loss on the loan is fairly clear. For example, the causal connection is reasonably clear where the institution does not sue a gainfully employed debtor whom the institution or its agent had located and whom it could have sued, and the applicable statute of limitations later runs so as to preclude effectively subsequent attempts to collect by lawsuit. Because the failure to sue here is so directly related to the lack of recovery, there is little reason for not holding the institution liable for the loss. On the other hand, a lack of causal connection may be equally clear in other circumstances. For example, if the institution failed to sue a gainfully employed debtor and the statute of limitations ran out on the debt, there is clearly a loss to the Fund. However, if the institution was now able to show that this debtor, at the time suit should have been brought, received a discharge of the loan in a Chapter 13 bankruptcy proceeding which made no provision for any payments on consumer debt, it would thereby demonstrate that the loss to the Fund was clearly caused by the bankruptcy and not its failure to sue. The institution under these circumstances would have no liability to the Fund under § 674.13(b)(1)(ii).

The Secretary recognizes that in many cases, the loss on a defaulted loan can be neither clearly attributed to, nor disassociated from, the failure of the institution to exercise due diligence in collection. For example, if the defaulting borrower moves without providing the institution with his or her forwarding address and the institution does not attempt promptly to trace the borrower, a loss to the Fund has occurred, but there any be several causes for that loss. To resolve questions of causation in these unclear cases, the Secretary considers it fair and practical to use a rebuttable presumption that losses that occur on loans not diligently collected were caused by that failure to attempt collection. The institution, and not the Department, had assumed responsibility for using due diligence in collecting the loan, and was and continues to be in a better position to know or discover the actual cause of its inability to collect the loan. The Secretary therefore considers it reasonable to place on the institution the burden of rebutting the conclusion that the loss would not have occurred if the institution had complied with its collection responsibilities under Federal regulations. § 674.13(b)(1)(ii). For example, an institution might show that its failure to begin skip-tracing while the borrower's trail was fresh was not the cause of the loss by demonstrating, through later investigation, that the borrower after his or her move was not gainfully employed during the period in which the institution might have brought suit to enforce the debt.

The presumption created in § 674.13(b)(1), that the loss to the Fund resulted from the act or omission of the institution, may also be rebutted as provided in this section by demonstrating that the loss was ultimately cured completely, by subsequent recovery from the borrower or consigner, or partially, by securing a judgment for the full amount outstanding on the loan. § 674.13(b)(1)(i)(2). The rule provides that the institution must demonstrate, to the satisfaction of the Secretary, that the loss was not caused by its failure to exercise due diligence. In deciding whether an institution has met that burden of proof in individual cases, the Secretary will take into account the extent to which the institution failed to follow the prescribed due diligence requirements.

If the institution reimburses the Fund under this section, it thereby acquires title to the loan in question in its own name, and not as trustee of the Fund, and may retain for its own account any amount later collected on that loan. The institution must restore to the Fund the outstanding balance of the loan in question, including any portion attributable to the institutional contribution to the Fund.

In response to the comment that this rule denies the institution due process, the Secretary notes that any action taken by the Department to enforce the requirements of § 674.13 wil arise as a result of audits or program reviews of the institution, and as such will be subject to an administrative review and an opportunity for a hearing under the provisions of section 487 of the HEA. In addition, the Secretary believes that adoption of a specific percentage of losses as "allowable" is not a prudent step for several reasons. No legal basis is apparent for such a prospective forgiveness of liability, and it appears that such a tolerance might have the effect of lessening collection efforts.

Comment: Many commenters strongly opposed the mandatory inclusion of the word "Federal" in § 674.19(a) for identifying an account in which Federal funds are deposited. The commenters cite added cost and confusion of check printing and disbursements. Commenters from State institutions stated they could not comply with this proposal because of dealing with State Treasuries. In addition, numerous commenters objected strongly to the proposed regulation requiring an institution to keep its NDSL and Perkins loans fund cash in a separate account. Many of these commenters cited the undue administrative burden and the cost of maintaining the account. Other commenters suggested that the requirement of a separate account should be mandated on an individual basis for those institutions that did not maintain acceptable accounting practices.

Response. A change has been made. The Secretary has deleted the requirement that the institution include the name "Federal" in the name of the account. However, this final rule continues to provide that institutions must either notify the bank in writing of the Federal character of the account, or include that phrase in the name of the account. However, to further clarify the nature of the funds on deposit in Title IV program accounts, the Secretary has added language to this section to establish more clearly that character.

First, the rule now articulates what has always been clear under the statute and Department policy: Title IV funds may be used by the institution only for program purposes. See 20 U.S.C. 1094(a)(1). The sum of the Title IV funds on deposit in the institution's accounts must therefore always at least equal the amount of those funds it has received but not yet spent on program purposes. § 674.19(a)(3)(i). By accepting these funds from the Department, moreover, the institution accepts a fiduciary responsibility for these funds; under traditional common law principles, the institution that depletes these accounts containing Title IV funds is deemed to make any subsequent deposits of institutional funds into these accounts with the intention of restoring to the depleted accounts trust funds previously illegally withdrawn. The Secretary recognizes that such restorative deposits are commonly made by institutions with specific intent that the restored funds become Title IV funds, and that such funds be used for disbursement to students. Indeed, the Department has,

over the years, directed institutions to satisfy liabilities for misspent funds by depositing in these Title IV accounts the amount of institutional funds that would otherwise have been paid over to the Department to satisfy its claim.

The Secretary under this rule places no additional burden on the institution, which was already under a legal obligation to restore improperly withdrawn Title IV funds; rather, the purpose of this rule is to make clear that the Secretary—and the institution—regard these non-Federal funds deposited to depleted Title IV accounts to become part of the Title IV trust funds which the institution holds as fiduciary. These funds therefore become, as part of the trust fund, immune from attachment by third parties to the same extent as the Federal advances they replaced. The Secretary also agrees that only those institutions that do not maintain acceptable accounting practices should be required to maintain funds in a separate Direct/Perkins account. The regulation has been modified accordingly.

Section 674.31—Promissory note.

Comment: Several commenters objected to the provision that the promissory note be limited to either one piece of paper (front and back) or be multiple pages with the borrower's signature on each page. The commenters believed that this is a cumbersome practice that would only increase clerical error and workload. The commenters suggested the use of a multiple page document using the format "page one of five, page two of five, * * *"

Response: A change has been made. The Secretary has added to the final regulations the alternate provision suggested by the commenters allowing a multiple page promissory note, listing the total number of pages in the note as well as the number of each page.

Comment: One commenter encouraged the Department to require co-signers on every Perkins Loan Promissory note as an aid to collection.

Response: No change has been made. Section 464 of the HEA forbids use of an endorser unless the borrower is a minor and the note would not, for that reason, constitute an enforceable obligation under local law. An institution that requires a cosigner, however, must ensure that the obligation of the cosigner or endorser is itself legally enforceable.

Comment: One commenter suggested that a final provision be added to the promissory note section that states that the lending institution should secure the borrower's permission before sending any information about the borrower's account to a credit bureau. The commenter feared that the proposed requirement would violate the general provision in the Family Education Rights and Privacy Act (FERPA).

Response: No change has been made. The Secretary has interpreted 20 U.S.C. 1232g(b)(1)(D), and in particular 34 CFR 99.31(a)(4)(iv), to permit the disclosure of information regarding default on a Perkins (NDSL) loan to credit bureaus. These provisions of FERPA and regulations permit the institution to disclose information contained in the student's educational record without the student's consent if the disclosure is necessary for enforcement of the terms of financial aid which the student has received; reporting the default to a credit bureau is clearly authorized by this authority.

Comment: One commenter suggested changing the language of the sample promissory note that addresses the consequences to the borrower of default and of acceleration of the loan. The commenter suggested that the note should read that the borrower "will lose" deferment or cancellation benefits for service performed after the institution accelerates the loan.

Response: A change has been made. The Secretary has changed the promissory note according to these provisions as adopted in this final rule.

Comment: Three commenters stated that for clarity and simplicity a standard $2 per month penalty charge should be used regardless of the frequency with which the borrower is billed.

Response: A change has been made. Recent statutory changes in the Higher Education Amendments of 1986 have replaced the late charge based on specific dollar charges for each late installment ($1 for the first month, $2 for each month or part of a month thereafter, if repayments are made on a monthly basis, and $3 or $6 for each interval or part thereof for bimonthly or quarterly repayment intervals), with a late charge provision that requires the institution to assess a late payment charge on each late payment, based on the costs of performing activities required in Subpart C of these regulations for the billing cycle (*See:* § 674.44), as long as the total charges do not exceed 20 percent of the amount of the borrower's monthly, bimonthly or quarterly payment. Section 674.31(b)(5) of the final regulations has been amended to read accordingly.

Comment: One commenter suggested the elimination of § 674.31(b)(2) which gives the borrower the option of having graduated installments at his or her request. The commenter suggested that the decision to allow graduated installments should be entirely that of the institution.

Response: No change has been made. The Secretary believes that keeping a borrower in repayment status is a more important objective than requiring equal payments. If a borrower requests a graduated repayment schedule, it is indicative that the borrower intends to repay the loan.

Comment: One commenter stated that the timely filing of cancellation and deferment requests should be clearly stated as a borrower responsibility.

Response: A change has been made. The Secretary agrees with the commenter and the note has been changed accordingly.

Comment: One commenter suggested that Perkins loans be reported to credit bureaus and have their status updated on a monthly basis. Another commenter asked if the IRS tax offset provision should be included in the note.

Response: No change has been made. The Secretary has interpreted FERPA and its implementing regulations, especially 34 CFR 99.31(a)(4)(iv), to permit reporting delinquent or defaulted loans to credit bureaus without the borrower's consent. An institution that wishes to report other loans to credit bureaus may do so only with the consent of the borrower. An institution must report, according to the reporting procedures of the bureau, any changes in account status. The Federal income tax refund offset program is only a pilot program at present, and for that reason it is premature to include notice of this collection tool among routine disclosures.

Comment: One commenter felt that an institution should be allowed to recover all of the costs of collection—either from the NDSL revolving fund or directly from a defaulted borrower. The commenter advocated the deletion of the 25 percent limitation on contingent fee charges by collection firms that may be assessed against the borrower.

Response: A change has been made. In the past, an institution that used a collection firm and intended to pass on to the debtor the cost incurred in paying the collection firm was directed to include in the promissory note a provision specifying that the amount charged the borrower would not exceed 25 percent of the outstanding principal and interest due on the loan. This direction was based on an interpretation by staff of the Federal Trade Commission (FTC) that section 808 of the Fair Debt Collection Practices Act required a specific identification of the type and amount of such charges. The FTC has since revised this position (45

FR 8027, March 7, 1986) and the Department has removed this provision from the model promissory note. Section 484A of the Higher Education Act, added by Pub. L. 99–272, clarifies the consequences of default as subjecting the defaulting borrower to liability for reasonable collection costs, in addition to other charges specified in the law, such as late charges. Final regulations for Subpart C of this part will address this issue of recovery from the debtor of the costs of collection.

Section 674.33—Repayment.

Comment: Several commenters remarked that proposed § 674.32(b) which addressed "minimum repayment rates" was unclear and unnecessarily complex. These commenters felt that institutions should be permitted to use a general pro rata concept when determining how much each account should be repaid. These commenters were also of the opinion that paragraph (b) is inconsistent with the intent of the statute because requiring minimum repayments to be made on one loan while another is deferred deprives the borrower of the benefit of the grace period or deferment prescribed by the statute.

Response: No change has been made. The minimum repayment rates and the deferment provisions are dictated by statute and therefore cannot be changed. See § 674.33(b).

Comment: Three commenters expressed the opinion that notifying the Secretary of all loans that were being extended past the standard ten-year repayment period served no useful purpose. Two commenters suggested that such extensions only be reported on the Fiscal Operations Report and Application to Participate in the campus-based programs (FISAP). One commenter was opposed to granting any extension in the repayment period due to a borrower's low income.

Response: A change has been made. The Secretary agrees with the comment that notifying the Department of all loans that have been extended beyond the ten-year repayment period is an unnecessary institutional burden. The authority to extend the borrower's repayment period remains with the institution.

Section 674.34—Deferment of Repayment—Perkins loans.

Section 674.35—Deferment of Repayment—Direct loans made on or after October 1, 1980.

Comment: There were fifteen comments relative to the internship deferment provision. Two commenters believed the Secretary should not continue to require a bachelor's degree. One commenter stated that the specificity of the proposed provision would be beneficial to the institution in making its decision on a request for deferment. However, all of the other respondents believed that the new requirements were burdensome, time-consuming and of little benefit.

Response: No change has been made. This requirement conforms with all Title IV statutory and program provisions for internships.

Comment: One commenter requested more specificity regarding when a grace period begins and ends. The inquirer felt there was confusion between date-specific or month-specific interpretations.

Response: No change has been made. Section 464 provides that the repayment period begins nine months after the date on which the borrower ceases to be enrolled as at least a half-time student. The grace period is between these two dates. It is determined by specific dates, and cannot be rounded to approximations coinciding with calendar months.

Section 674.37—Deferment Procedures.

Comment: A wide range of comments were received on this section. One respondent was confused by the options available to the institution when a note has not been accelerated. Another commenter questioned if the borrower must pay the amount in default before he or she may be granted a deferment. Another commenter wanted the institution to retain options because it provided leverage needed to collect some loans. Two other commenters believed that this regulation would be unfair to borrowers whose deferments were not processed through no fault of the borrower. They also expressed the concern that the regulation would be a deterrent to accelerating any loans. Four commenters believed that not calculating the interest had little or no significance except to place an additional costly administrative burden on institutions.

Response: A change has been made. Section 674.37 has been re-written to clarify deferment procedures. To qualify for a deferment on a loan, a borrower must submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, and must do so by the date that the institution establishes.

After a loan is in default, the institution may, at its discretion, grant a deferment if the borrower signs and complies with a new repayment agreement on the loan. The institution may do so even after it accelerates the defaulted loan. An institution may in these cases insist that the borrower immediately repay some or all of the amounts previously scheduled to be repaid before the date on which the institution made its determination that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs. Institutions are not required to grant deferments on loans in default; however, if they do so, by securing a new agreement, there is no reason to forego the recovery for the Fund of the accrued interest on that loan. If the institution regards the calculation of past-due, accrued interest as unduly burdensome, it may deny deferments on a defaulted loan.

Public Comments and Departmental Responses Relating to Part 675 (CWS)

Section 675.8—Program Participation Agreement.

Comment: A few commenters noted that the requirement in § 675.8(c) that the institution make non-CWS institutional jobs reasonably available to the extent of available funds is more restrictive than the statute. The regulation uses the phrase "* * * non-CWS institutional jobs * * *" but the statute states "* * * equivalent employment offered or arranged * * *." These commenters recommended that the regulation be changed to conform with the statute.

Response: A change has been made. The Secretary agrees with the commenters and § 675.8 has been rewritten to conform with the statute.

Section 675.18—Use of funds.

Comment: Two commenters objected to the proposed requirement in § 675.18 that before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year. The commenters stated that the requirement would be administratively burdensome because institutions commingle such funds with current year funds and it would be difficult for an institution to demonstrate which funds were used first.

Response: No change has been made. An institution must spend any funds carried forward from the previous year before spending its current year CWS allocation. The Secretary has the authority to reallocate unused current year CWS funds to other institutions. Therefore, to identify accurately the amount of such unused current year funds, it is necessary for institutions to spend first those funds carried forward

from the previous year. Further, the Department of Education may not commingle different CWS annual appropriations in its accounting system, by law; therefore these funds must also be reported separately by the institution.

Section 675.19—Fiscal Procedures and Records.

Comment: Many commenters objected to the proposed rule in § 675.19 which would require the institution to maintain a time record in clock time sequences. Most of these commenters cited increased administrative burden on institutions, prohibitive costs (redesigning time-cards, time sheets, and systems), and the difficulty for State-administered institutions to comply due to standardized forms and procedures for State employees. Many of them stated that this method is more prone to error and will lead students to falsify records. Some commenters recommended that this rule may be necessary only for certain institutions where audits have uncovered flagrant abuse of the present method.

One commenter agreed that the proposal was appropriate, but stated that several months would be required to implement it because of the changes necessary in financial aid offices and payroll systems.

Response: A change has been made. In order to complement existing payroll processes, the Secretary has revised the requirement to provide that the certification must contain, or be supported by, time records in clock-time sequence.

Section 675.21 (§ 675.21 in NPRM)—Institutional employment.

Comment: Two commenters suggested that the areas of contracted services for CWS employment in other than proprietary institutions should be expanded. The commenters stated that the wording "such as food, service, cleaning, maintenance or security" makes it unclear as to whether other areas are allowed.

Response: No change has been made. The regulation lists the most common examples of areas of contracted services to which CWS students may be employed.

Comment: One commenter objected to the wording of § 675.21(d)(2), specifically the statement "The institution may enter into an agreement ONLY with a reliable agency * * *." The commenter suggested the deletion of the word "reliable" because it is judgmental and unnecessary.

Response: A change has been made. The Secretary recognizes the judgmental nature of the word "reliable" and has deleted this word. The reference to the agreement between institutions and organizations has been moved to § 675.20(b) of the final regulations.

Comment: A few commenters supported the rule proposed in § 675.21(d)(4)(ii) that states that the employer may be required to pay such costs as the employer's share of social security or workers' compensation; however, the commenters expressed concern that the regulation does not state *when* an employer must pay such costs.

Response: No change has been made. In an effort to allow institutional flexibility, the Secretary does not regulate when an employer must pay these costs. The decision as to which entity pays these costs will be contained in the agreement between the institution and the employing agency.

Section 675.23 (Previously 675.24)—CWS Federal share limitations.

Comment: Many commenters objected and expressed concern about the proposal to delete the option which allows an institution to refund excess funds to an off-campus employer when the institution receives more money from the employer than is required to pay the non-Federal share of wages and the administrative costs. The commenters argued that this proposal could jeopardize the willingness of some off-campus employers to participate in the CWS program and to deposit sufficient funds to meet institutional payroll requirements. They also stated that the accounting procedures would be difficult, since the excess funds would have to be carried from one fiscal year to the next.

Response: A change has been made. The Secretary agrees with the commenters and the option will remain in the regulations.

The Secretary amends Parts 674, 675, and 676 of Title 34 of the Code of Federal Regulations as follows:

PART 674—PERKINS LOAN PROGRAM

1. The authority citation for Part 674 is revised to read as follows:

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

1a. The Part heading and Note and Subparts A (consisting of §§ 674.1 through 674.20), B (consisting of §§ 674.31 through 674.39), and D (consisting of §§ 674.51 through 674.60) of Part 674 of Title 34 of the Code of Regulations are revised to read as follows, and Appendices A, B, and C are revised, and Appendices D and E are added to read as follows:

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

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674.12 Loan maximums.
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* * * * *

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Appendix D—Promissory Note—Direct Loan—Less Than Half-time Student Borrower
Appendix E—Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment before January 1, 1986

Subpart A—General Provisions

§ 674.1 Purpose and identification of common provisions.

(a) The Perkins Loan Program provides low-interest loans to financially needy students attending institutions of higher education to help them pay their educational costs.

(b)(1) The Perkins Loan Program authorized by Title IV–E of the Higher Education Act of 1965 and previously named the National Direct Student Loan Program is a continuation of the National Defense Student Loan Program authorized by Title II of the National Defense Education Act of 1958. All rights, privileges, duties, functions, and obligations existing under Title II before the enactment of Title IV–E continue to exist.

(2) The Secretary considers any student loan fund established under Title IV–E to include the assets of an institution's student loan fund established under Title II.

*(c) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(d) Provisions in these regulations that refer to "loans" or "student loans" apply to all loans made under Title IV–E of the HEA or Title II of the National Defense Education Act.

(Authority: 20 U.S.C. 1087aa-1087hh; Pub. L. 92–318, sec. 137(d)(1))

§ 674.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
College Work-Study (CWS) Program
Defense loan
Direct loan
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan (ICL) Program
National Defense Student Loan Program
National Direct Student Loan (NDSL) Program
Pell Grant Program
Perkins loan
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

Default: The failure of a borrower to make an installment payment when due or to comply with other terms of the promissory note or written repayment agreement.

Default rate: Represented as a fraction:

$$\frac{\text{Defaulted principal amount outstanding}}{\text{Matured loans}}$$

Defaulted principal amount outstanding: (1) The total loan amount borrowed from an institution's Fund that has reached the repayment stage on those loans that are—

(i) Repayable monthly and in default at least 120 days; or

(ii) Repayable less frequently and in default at least 180 days; minus

(2) That portion of these loans that have been—

(i) Repaid or cancelled;

(ii) Referred to the Secretary;

(iii) Assigned to the Secretary;

(iv) Discharged in bankruptcy; and

(v) Subject to a satisfactory written repayment agreement with which the borrower is currently in compliance.

**Expected family contribution (EFC):* The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

Federal capital contribution (FCC): Federal funds allocated or reallocated to an institution for deposit into the institution's Fund under section 462 of the HEA.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

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

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

(2) 24 semester hours or 38 quarter hours per academic year for an institution using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year.

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

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

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

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

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

Fund (Perkins Loan Fund): A fund established and maintained according to § 674.8.

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

Half-time graduate or professional student: An enrolled graduate or professional student who is carrying a half-time academic workload as determined by the institution according to its own standards and practices.

Half-time undergraduate student: An enrolled undergraduate student who is carrying a half-time academic workload, as determined by the institution, which amounts to at least half the workload of a full-time studnet. However, the institution's half-time standards must equal or exceed the equivalent of one or more of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term for an institution using a standard semester, trimester, or quarter system.

(2) 12 semester hours or 18 quarter hours per academic year for an institution using credit hours to measure progress, but not using a standard semester, trimester, or quarter system; or the prorated equivalent for a program of less than one year.

(3) 12 clock hours per week for an institution using clock hours.

(4) 12 hours of preparation per week for a student enrolled in a program of study by correspondence. Regardless of the workload, no student enrolled solely

in correspondence study is considered more than half-time.

Initial grace period: That period which immediately follows a period of enrollment and immediately precedes the date of the first required repayment on a loan. This period is generally nine months for Perkins loans, Defense loans, and Direct loans made before October 1, 1980, and six months for other Direct loans.

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Institutional capital contribution (ICC): Institutional funds contributed to establish or maintain a Fund.

Matured loans: The total principal amount of all loans made to students from an institution's Fund minus the principal amount of loans made from the institution's Fund to students who—

(1) Are enrolled as at least half-time students; or

(2) Are still in their first grace period.

**Payment period:* A semester, trimester, or quarter. For 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 an academic year.

Post-deferment grace period: That period of six consecutive months which immediately follows the end of certain periods of deferment and precedes the date on which the borrower is required to resume repayment on a loan.

Student loan: For this part means a Direct Loan, Defense Loan, or a Perkins Loan.

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

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

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

(Authority: 20 U.S.C. 1087aa–1087hh)

***§ 674.3 Application.**

(a) To participate in the Perkins Loan Program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the Perkins Loan Program funds under section 462 of the HEA.

(Authority: 20 U.S.C. 1087bb)

§ 674.4 Allocation and reallocation.

(a) The Secretary allocates Federal capital contributions to institutions participating in the Perkins Loan program in accordance with section 462 of the HEA.

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Perkins Loan program in a manner that best carries out the purpose of section 462 of the HEA.

(c) As used in section 462 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.

(2) Business.

(3) Trade/Technical.

(4) Art Schools.

(5) Other Proprietary Institutions.

(6) Non-Proprietary Institutions.

(d) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(Authority: 20 U.S.C. 1087bb)

§§ 674.5—674.7 [Reserved]

§ 674.8 Program participation agreement.

To participate in the Perkins Loan program, an institution shall enter into a participation agreement with the Secretary. The agreement provides that the institution shall use the funds it receives solely for the purposes specified in this part and shall administer the program in accordance with the Act, this part and the Student Assistance General Provisions regulations, 34 CFR Part 668. The agreement further specifically provides, among other things, that—

(a) The institution shall establish and maintain a Fund and shall deposit unto the Fund–

(1) FCC received under this subpart;

(2) ICC equal to at least one-ninth of the FCC described in paragraph (a)(1) of this section;

(3) Payments of principal, interest, late charges and collection costs on loans from the Fund;

(4) Payments to the institution as the result of loan cancellations under section 465(b) of the Act;

(5) Any other earnings on assets of the Fund, including the interest earnings of the funds listed in paragraphs (a)(1) through (4) of this section net of bank charges incurred with regard to Fund assets deposited in interest-bearing accounts; and

(6) Proceeds of short-term no-interest loans made to the Fund in anticipation of collections or receipt of FCC.

(b) The institution shall use the money in the Fund only for—

(1) Making loans to students;

(2) Administrative expenses as provided for in § 674.18(b);

(3) Capital distributions provided for in section 466 of the Act;

(4) Litigation costs (see §674.47);

(5) Other collection costs, agreed to by the Secretary in connection with the collection of principal, interest, and late charges on a loan made from the Fund (see § 674.47); and

(6) Repayment of any short-term, no-interest loans made to the Fund by the institution in anticipation of collections or receipt of FCC.

(c) The institution shall submit an annual report to the Secretary containing information about loans in default—

(1) 120 days or more for loans repayable in monthly installments; or

(2) 180 days or more for loans repayable in less frequent installments.

(d)(1) If an institution determines not to service or collect a loan, the institution may assign its rights to the loan to the United States without recompense at the beginning of a repayment period; or

(2) If a loan is in default despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights to the loan to the United States without recompense.

(e) To assist institutions in collecting outstanding loans, the Secretary provides to an institution the names and addresses of borrowers or other information relevant to collection which is available to the Secretary.

(f) The institution shall provide the loan information required by section 463A of the HEA to a borrower.

(Authority: 20 U.S.C. 1087cc, 1087cc–1, 1094)

§ 674.9 Student eligibility.

A student at an institution of higher education is eligible to receive a loan under the Perkins Loan program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution;

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order–

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

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members;

(d) Has received for that award year, if an undergraduate student—

(1) A SAR as a result of applying for a grant under the Pell Grant Program; or

(2) A preliminary determination of eligibility or ineligibility for a Pell Grant by the institution's financial aid administrator after applying for a SAR with a Pell Grant Processor; and

(e) Is willing to repay the loan. Failure to meet payment obligations on a previous loan, including a loan discharged in bankruptcy, is evidence that the student is unwilling to repay the loan.

(Authority: 20 U.S.C. 1087dd and 1091)

§ 674.10 Selection of students for loans.

(a)(1) An institution shall make loans under this part reasonably available, to the extent of available funds, to all students eligible under § 674.9 but shall give priority to those students with exceptional financial need.

(2) The institution shall define exceptional financial need for the purpose of the priority described in paragraph (a)(1) of this section and shall develop procedures for implementing that priority.

(b) If an institution's allocation of FCC is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragraph (a) of this section, award a reasonable proportion of its allocation to those students.

(c) The institution shall establish selection procedures and these procedures must be—

(1) In writing;

(2) Uniformly applied; and

(3) Maintained in the institution's files.

(Authority: 20 U.S.C. 1087cc and 1087dd)

§ 674.11 [Reserved]

§ 674.12 Loan maximums.

The cumulative maximum amount of Defense Loans, Direct loans and Perkins loans an eligible student may borrow is—

(a) $4,500 for a student who has not completed 2 academic years of study toward a bachelor's degree;

(b) $9,000 for a student who has completed 2 academic years of study toward a bachelor's degree and has achieved third-year status but has *not* received the degree; and

(c) $18,000 for study toward a professional or graduate degree.

(d) The maximum amounts listed in paragraphs (a), (b) and (c) of this section include any amount borrowed previously under Title IV–E of the HEA at any institution, regardless of any amounts that may have been repaid to the Fund at any institution.

(Authority: 20 U.S.C. 1087dd)

§ 674.13 Reimbursement to the Fund.

(a) The Secretary requires an institution to reimburse its Fund in an amount equal to that portion of the outstanding balance of—

(1) A loan disbursed by the institution to a borrower in excess of the amount that the borrower was eligible to receive, as determined on the basis of information the institution had, or should have had, at the time of disbursement; or

(2) Except as provided in paragraph (b) of this section, a defaulted loan with regard to which the institution failed—

(i) To record or retain the loan note in accordance with the requirements of this part;

(ii) To record advances on the loan note in accordance with the requirements of this part; or

(iii) To exercise due diligence in collecting in accordance with the requirements of this part.

(b) The Secretary does not require an institution to reimburse its Fund for the portion of the outstanding balance of a defaulted loan described in paragraph (a)(2) of this section—

(1) That the institution—

(i) Recovers from the borrower or endorser; or

(ii) Demonstrates, to the Secretary's satisfaction, would not have been collected from the borrower or endorser even if the institution complied in a timely manner with the due diligence requirements of Subpart C of this part; or

(2) On which the institution obtains a judgment.

(c) An institution that is required to reimburse its Fund under paragraph (a) of this section shall also reimburse the Fund for the amount of the administrative cost allowance claimed by the institution for that portion of the loans to be reimbursed.

(d) An institution that reimburses its Fund under paragraph (a) of this section thereby acquires for its own account all the right, title and interest of the Fund in the loan for which reimbursement has been made.

(Authority: 20 U.S.C. 1087dd–1087hh)

***§ 674.14 Overaward.**

(a) *Overaward prohibited.* *(1) An institution may only award or disburse a Direct loan or a Perkins loan to a student if that loan, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing a Direct loan or a Perkins loan to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards loan funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution advances the loan, and the total resources including the loan exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution advances the loan, and the total resources including the loan exceeds the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the loan, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include but are not limited to any—

(i) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Students Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowship or assistantship;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from employment other than CWS employment for the period of the award except as provided in 34 CFR 675.25; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(3) The student may use Supplemental Loans for Students (SLS), State-sponsored or private loans, PLUS loans, or non-need-based ICLs to substitute for his or her expected family contribution. However, if the sum of the loan amounts received exceeds the student's expected contribution, the excess is a resource.

(c) *Liability for and recovery of overpayments.* (1) The student is liable for any overpayment of loan advances made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan Fund even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recovery the overpayment by making a reasonable effort to contact the student and recover the overpayment.

The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render the student ineligible for further Title IV aid, to constitute such a reasonable effort.

*(d) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a student has earned, or will earn, an amount that when combined with other resources is $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, and the student's earnings plus other resources do not exceed this increased need by $200 or more, no further action is necessary.

(2) If the student's earnings plus other resources still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (d) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragaphs (d) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 1087dd, 1087hh)

***§ 674.15 Coordination with BIA grants.**

(a) To determine the amount of a loan for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA/eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1087dd)

§ 674.16 Making and disbursing loans.

(a)(1) Before an institution makes its first disbursement to a student, the student shall sign the promissory note and the institution shall provide the student with the following information:

(i) The name of the institution and the address to which communications and payments should be sent.

(ii) The principal amount of the loan.

(iii) The stated interest rate on the loan.

(iv) The yearly and cumulative maximum amounts that may be borrowed.

(v) An explanation of when repayment of the loan will begin and when the borrower will be obligated to pay interest that accrues on the loan.

(vi) The minimum and maximum repayment terms which the institution may impose and the minimum monthly repayment required.

(vii) A statement of the total cumulative balance owed by the student to that institution, and an estimate of the monthly payment amount needed to repay that balance.

(viii) Special options the borrowers may have for loan consolidation or other refinancing of the loan.

(ix) The borrower's right to prepay all or part of the loan, at any time, without penalty, and a summary of the circumstances in which repayment of the loan or interest that accrues on the loan may be deferred or canceled including a brief notice of the Department of Defense program for repayment of loans on the basis of specified military service.

(x) A definition of default and the consequences to the borrower including a statement that the default may be reported to a credit bureau or credit reporting agency.

(xi) The effect of accepting the loan on the eligibility of the borrower for other forms of student assistance.

(xii) The amount of any charges collected by the institution at or prior to the disbursement of the loan and any deduction of such charges from the proceeds of the loan or paid separately by the borrower.

(xiii) Any cost that may be assessed on the borrower in the collection of the loan including late charges and collection and litigation costs.

(2) The institution shall provide the information in paragraph (a)(1) of this section to the borrower in writing—

(i) As part of the written application material;

(ii) As part of the promissory note; or

(iii) On a separate written form.

(b)(1) Except as provided in paragraphs (c) and (f) of this section, an

institution shall advance in each payment period a portion of a loan awarded for a full academic year.

(2) The institution shall determine the amount advanced each payment period by the following fraction:

$$\frac{\text{Loan amount}}{N}$$

Where Loan Amount = the total loan awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may advance funds, within each payment period, at such time and in such amounts as it determines best meets the student's needs.

(c) If a student incurs uneven costs or resources during an academic year and needs additional funds in a particular payment period, the institution may advance loan funds to the student for those uneven costs.

(d) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive, and how and when that amount will be paid. In either case, the borrower must sign for each advance of funds on the promissory note.

(e)(1) An institution may not advance a loan to a student for a payment period until the student is enrolled for that period.

(2) Subject to the requirements of paragraph (f) of this section—

(i) An institution may advance loan proceeds directly to an enrolled student no more than 10 days before the first day of classes of a payment period; and

(ii) An institution may advance loan proceeds by crediting an enrolled student's account no more than 3 weeks before the first day of classes of a payment period.

(f)(1) The institution shall return to the Fund any amount advanced to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(g) Only one advance is necessary if the total amount the institution awards a student for an academic year under the Perkins Loan program is less than $501.

(h) An institutional official may not, without prior approval from the Secretary, obtain a student's power of attorney to endorse any check used to disburse loan funds.

(Authority: 20 U.S.C. 1987cc, 1087cc–1, 1087dd, 1091 and 1094)

§ 674.17 Federal interest in allocated funds—transfer of Fund.

(a) Funds received by an institution under the Perkins Loan program, including repayments on loans, are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(b)(1) If an institution responsible for a Perkins Loan fund closes or no longer wants to participate in the program, the Secretary directs the institution to take one or more of the following steps to protect the outstanding loans and the Federal interest in that Fund:

(i) A capital distribution of the liquid assets of the Fund according to section 466(c) of the Act.

(ii) The transfer of the outstanding loans to another institution.

(iii) The transfer of the outstanding loans to the Department of Education.

(2) An institution that transfers outstanding loans under this paragraph relinquishes its interest in those loans.

(3) If the Secretary directs the transfer of outstanding loans to a second institution, the transferee institution may deposit the collections on those loans in its own Fund. The Secretary considers that portion of the collections on transferred loans corresponding to the transferor institution's ICC to become part of the transferee institution's ICC.

(4) If the Secretary decides to transfer outstanding loans to another institution, and more than one institution offers to collect the outstanding loans, the Secretary directs that the loans be transferred to one or more of the competing institutions on the basis of—

(i) The offering institution's demonstrated loan collection capability; and

(ii) The number of students of the transferor institution expected to enroll in the offering institution.

(5) The Secretary does not take an audit exception against a transferee institution on account of actions or omissions of the transferor institution in the administration of its Fund. The transferee institution shall segregate the transferred Fund account until an audit satisfactory to the Secretary is performed on the operation of the transferor institution's program.

(Authority: 20 U.S.C. 1087cc, 1087ff), and (1087hh)

§ 674.18 Use of funds.

(a) *General.* An institution shall deposit the funds it receives under the Perkins Loan program into its Fund. It may use these funds only for making loans and the other activities specified in § 674.8(b).

(b) *Administrative cost allowance.* (1) An institution participating in the Perkins Loan program for an award year is entitled to an administrative cost allowance if it advances funds to students in that year under the Perkins Loan program.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(2) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.28), and the amount of NDSLs and Perkins loans that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its cost of administering the CWS, SEOG and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistant General Provisions regulations, 34 CFR Part 668.

(5) An institution shall charge any administrative costs against its Fund during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087cc, 1087dd, and 1096)

§ 674.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its Perkins Loan program, an institution shall establish and maintain an internal control system of checks and balances that ensures that no office can both authorize payments and disburse funds to students.

(2)(i) A separate bank account for Federal funds is not required, except as provided in paragraph (b) of this section.

(ii) An institution shall notify any bank in which it deposits Federal funds

of the accounts into which those funds are deposited by—

(A) Ensuring that the name of the account clearly discloses the fact that Federal funds are deposited in the account; or

(B) Notifying the bank, in writing, of the names of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(3)(i) The institution shall ensure that the cash balances of the accounts into which it deposits Perkins Loan Fund cash assets do not fall below the amount of Fund cash assets deposited in those accounts but not yet expended on authorized purposes in accordance with applicable Title IV HEA program requirements, as determined from the records of the institution.

(ii) If the cash balances of the accounts at any time fall below the amount described in paragraph (a)(3)(i) of this section, the institution is deemed to make any subsequent deposits into the accounts of funds derived from other sources with the intent to restore to that amount those Fund assets previously withdrawn from those accounts. To the extent that these institutional deposits restore the amount previously withdrawn, they are deemed to be Fund assets.

(b) *Account for Perkins Loan Fund.* (1) An institution must maintain all the cash of its Perkins Loan Fund in a separate bank account that contains no other funds if the Secretary determines that the institution's accounting system and internal controls do not—

(i) Meet the requirements of paragraph (c) or (d) of this section;

(ii) Identify the cash balance of the Perkins Loan Fund as readily as if the Fund were maintained in a separate bank account; or

(iii) Adequately identify the earnings of the Fund.

(2) The Secretary makes that determination on the basis of an audit examination or as a result of a program review.

(3) The separate bank account must be identified as the institution's Federal Fund account and must contain all the cash of the institution's Perkins Loan Fund. That cash includes Federal capital contributions, institutional capital contributions, repayments made by borrowers, loan cancellation payments, and any earnings of the Fund including interest.

(4) An institution shall ensure that all the cash in its Perkins Loan Fund is—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(5) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(c) *Deposit of ICC into Fund.* An institution shall deposit its ICC into its Fund prior to or at the same time it deposits any FCC.

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

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution shall maintain on file all loan applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(e) *Retention of records*—(1) *Records.* Each institution shall keep intact and accessible records pertaining to the application for and receipt and expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

(2) *Loan records.* (i) An institution shall maintain a repayment history for each borrower. This repayment history must show the date and amount of each repayment over the life of the loan. It must also indicate the amount of each repayment credited to principal, interest, late charges and collection costs.

(ii) This history must also show the date, nature, and result of each contact with the borrower or endorser in the collection of an overdue loan. The institution shall include in the repayment history copies of all correspondence to or from the borrower and endorser, except bills, routine overdue notices, and routine form letters.

* (3) *Period of retention.* (i) Except for loan records and records of expenditures questioned in audits or Departmental program reviews, an institution shall keep records for an award year for five years after it submits its FISAP.

(ii) An institution shall retain repayment records, including cancellation and deferment requests, for at least five years from the date on which a loan is assigned to the Department of Education, canceled or repaid.

(iii) An institution shall keep records on any claim or expenditure questioned by Federal audit or Department program review until resolution of any audit questions raised with regard to that transaction.

(4) *Manner of retention of records.* (i) An institution shall keep the original promissory notes and repayment schedules in a locked, fireproof container until—

(A) The loans are satisfied; or

(B) The original documents are needed in order to enforce the loan obligation.

(ii) The institution shall retain certified true copies of documents released for enforcement of the loan.

(iii) After the loan obligation is satisfied, the institution shall return the original notes marked "paid in full" to the borrower.

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

*(v) An institution may keep the records required in this section on microforms or it may keep its records in computer format. If an institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

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

(Authority: 20 U.S.C. 1087cc, 1087hh, 1094, and 1232f)

§ 674.20 Compliance with equal credit opportunity requirements.

(a) In making a loan, an institution shall comply with the equal credit opportunity requirements of Regulation B (12 CFR Part 202).

(b) The Secretary considers the Perkins Loan program to be a credit assistance program authorized by

Federal law for the benefit of an economically disadvantaged class of persons within the meaning of 12 CFR 202.8(a)(1). Therefore, the institution may request a loan applicant to disclose his or her marital status, income from alimony, child support, and spouse's income and signature.

(Authority: 20 U.S.C. 1087aa–1087hh)

Subpart B—Terms of Loans

§ 674.31 Promissory note.

(a) *Promissory note.* (1) An institution may use only a promissory note which the Secretary has approved.

(2) The Secretary has approved the promissory notes set forth in the Appendices to this part. The institution shall not change the substance of the notes set forth in the Appendices without the Secretary's approval.

(3)(i) The institution shall print the note on one page, front and back; or

(ii) The institution may print the note on more than one page if—

(A) The note requires the signature of the borrower and/or any endorser on each page; or

(B) Each page of the note contains both the total number of pages in the complete note as well as the number of each page, e.g., page 1 of 4, page 2 of 4, etc.

(b) *Provisions of the promissory note*—(1) *Interest.* The promissory note must state that—

(i) The rate of interest on the loan is 5 percent per annum on the unpaid balance; and

(ii) No interest shall accrue before the repayment period begins, during certain deferment periods as provided by this subpart, or during the grace period following those deferments.

(2) *Repayment.* (i) Except as otherwise provided in § 674.32, the promissory note must state that the repayment period—

(A) For Direct Loans made on or after October 1, 1980, begins 6 months after the borrower ceases to be at least a half-time regular student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(B) For Perkins Loans and Direct Loans made before October 1, 1980, begins 9 months after the borrower ceases to be at least a half-time student at an institution of higher education or a comparable institution outside the U.S. approved for this purpose by the Secretary, and normally ends 10 years later;

(C) May begin earlier at the borrower's request; and

(D) May vary because of minimum monthly repayments (see § 674.33(b)), extensions of repayment (see § 674.33(c)), or deferments (see §§ 674.34, 674.35 and 674.36); and

(ii) The promissory note must state that the borrower shall repay the loan—

(A) In equal quarterly, bimonthly, or monthly amounts, as the institution chooses; or

(B) In graduated installments if the borrower requests a graduated repayment schedule, the institution submits the schedule to the Secretary for approval, and the Secretary approves it.

(3) *Cancellation.* The promissory note must state that the unpaid principal, interest, late charges and collection costs on the loan are cancelled upon the death or permanent disability of the borrower.

(4) *Prepayment.* The promissory note must state that—

(i) The borrower may prepay all or part of the loan at any time without penalty;

(ii) The institution shall use amounts repaid during the academic year in which the loan was made to reduce the original loan amount and not consider these amounts to be prepayments;

(iii) If the borrower repays amounts during the academic year in which the loan was made and the initial grace period ended, only those amounts in excess of the amount due for any repayment period shall be treated as prepayments; and

(iv) If, in an academic year other than that described in paragraph (b)(4)(iii) of this section, a borrower repays more than the amount due for any repayment period, the institution shall use the excess to prepay the principal unless the borrower designates it as an advance payment of the next regular installment.

(5) *Late charge.* (i) An institution shall state in the promissory note that the institution will assess a late charge if the borrower does not—

(A) Repay all or part of a scheduled repayment when due; or

(B) File a timely request for cancellation or deferment with the institution. This request must include sufficient evidence to enable the institution to determine whether the borrower is entitled to a cancellation or deferment.

(ii)(A) The amount of the late charge on a Perkins Loan or a Direct Loan made to cover the cost of attendance for a period of enrollment that began on or after January 1, 1986 must be determined in accordance with § 674.43(b) (2), (3) and (4).

(B) The amount of the late or penalty charge on a Direct loan made for periods of enrollment that began before January 1, 1986 may be—

(*1*) For each overdue payment on a loan payable in monthly installments, a maximum monthly charge of $1 for the first month and $2 for each additional month.

(*2*) For each overdue payment on a loan payable in bimonthly installments, a maximum bimonthly charge of $3.

(*3*) For each overdue payment on a loan payable in quarterly installments, a maximum charge per quarter of $6. (See Appendix E of this part)

(iii) The institution may—

(A) Add the late charge to the principal the day after the scheduled repayment was due; or

(B) Include it with the next scheduled repayment after the borrower receives notice of the late charge.

(6) *Security and endorsement.* The promissory note must state that the loan shall be made without security and endorsement unless—

(i) The borrower is a minor; and

(ii) Under applicable State law, a note signed by a minor would not create a binding obligation.

(7) *Assignment.* The promissory note must state that a note may only be assigned to—

(i) The United States or an institution approved by the Secretary; or

(ii) An institution to which the borrower has transferred if that institution is participating in the Perkins Loan program.

(8) *Acceleration.* The promissory note must state that an institution may demand immediate repayment of the entire loan, including any late charges, collection costs and accrued interest, if the borrower does not—

(i) Make a scheduled repayment on time; or

(ii) File cancellation or deferment form(s) with the institution on time.

(9) *Cost of collection.* The promissory note must state that the borrower shall pay all attorney's fees and other loan collection costs and charges.

(10) *Disclosure of information.* The promissory note must state that if the borrower defaults on the loan and the loan is referred or assigned to the Secretary, the Secretary may disclose to a credit bureau organization—

(i) That the borrower has defaulted on the loan; and

(ii) Any other relevant information.

(Authority: 20 U.S.C. 1087dd)

§ 674.32 Special terms: loans to less than half-time student borrowers.

(a) The promissory note used with regard to loans to borrowers enrolled on a less than half-time basis must state that the repayment period begins—

(1) On the date of the next scheduled installment payment on any outstanding loan to the borrower; or

(2) If the borrower has no outstanding loan, at the earlier of—

(i) Nine months from the date the loan was made, or

(ii) The end of a none-month period that includes the date the loan was made and began on the date the borrower ceased enrollment as at least a regular half-time student at an institution of higher education or comparable institution outside the U.S. approved for this purpose by the Secretary.

(b) The note must otherwise conform to the provisions of § 674.31.

(Authority: U.S.C. 1087dd)

§ 674.33 Repayment

(a) *Repayment Plan.* (1) The institution shall establish a repayment plan before the student ceases to be at least a half-time student.

(2) If the last scheduled payment would be $15 or less the institution may combine it with the next-to-last repayment.

(3) The institution shall apply any payment on a loan in the following order:

(i) Collection costs.

(ii) Late charges.

(iii) Accured interest.

(iv) Principal.

(b) *Minimum repayment rates—(1) Rounding monthly repayment amounts.* If the monthly repayment for all loans made to a borrower by an institution is not a multiple of $5, the institution may round that payment to the next highest dollar amount that is a multiple of $5.

(2) *Minimum monthly repayment of Defense loans from one institution.* An institution may require a borrower of a Defense loan to pay a $15 minimum monthly repayment if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $15 a month; and

(ii) The promissory note includes a $15 minimum monthly repayment provision.

(3) *Minimum monthly repayment of Defense loans from more than one institution.* If a borrower has received Defense loans from more than one institution and—

(i) Only one institution exercises $15 option when the monthly repayment would otherwise be less than $15, that institution receives the difference between $15 and the repayment owed to the other institution; or

(ii) Each institution exercises the $15 minimum option the $15 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(4) *Minimum monthly repayment of Direct loans and Perkins loans from one institution.* The institution may require a borrower to pay a $30 monthly repayment on Direct loans or Perkins loans if—

(i) The monthly repayment of principal and interest for a 10-year repayment period is less than $30 a month; and

(ii) The promissory note includes a $30 minimum monthly repayment provision.

(5) *Minimum monthly repayment of Direct loans and Perkins loans from more than one institution.* If a borrower has received Direct loans or Perkins loans from more than one institution and—

(i) Only one institution exercises the $30 option when the monthly repayment would otherwise be less than $30 that institution receives the difference between $30 and the repayment owed to the other institution; or

(ii) Each institution exercise's the $30 minimum option, the $30 monthly payment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(6) *Minimum monthly repayment of both Defense and Direct or Perkins loans from one or more institutions.* If a borrower has received both a Defense loan and a Direct or Perkins loan, the following rules apply:

(i) If the total of the monthly repayments for a Defense, Direct and a Perkins loan is at least $30, no institution may exercise a minimum repayment option, even if the Defense loan repayment is less than $15 or the Direct or Perkins loan repayment is less than $30.

(ii) If the total of the monthly repayments would otherwise be less than $30 for the Defense, Direct, and Perkins loans, an institution may exercise the minimum repayment options applicable to the respective loans. The maximum total monthly repayment, however, may not exceed $30 a month.

(iii) If the total monthly repayment is less than $30 and the monthly repayment on a Defense loan is less than $15 a month, the amount attributed to the Defense loan may not exceed $15 a month. However, $15 may be attributed to the Defense loan only if the institution exercises the minimum option on the Defense loan.

(7) *Minimum monthly repayment of loans from one institution with different interest rates.* (i) If a borrower has received loans with different interest rates from the same institution, and the total monthly repayment is at least $30 for the loans, the institution may not exercise the minimum monthly payment on any loan.

(ii) If the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than $30, the institution may exercise the $30 minimum payment option, providing it is in one of the promissory notes, and the institution divides the repayment between the accounts in proportion to the amount of principal advanced under each loan.

(8) *Differing grace periods and deferments.* If the borrower has received loans with different grace periods and deferments, the institution shall treat each note separately, and the borrower shall pay the applicable minimum monthly payment for a loan that is not in the grace or deferment period.

(9) *Hardship.* The institution may reduce the borrower's scheduled repayments for a period of not more than one year if—

(i) It determines that the borrower is unable to make the scheduled repayments due to hardship (see § 674.33(c)); and

(ii) The borrower's scheduled repayment is the $30 minimum monthly repayment described in paragraph (b) of this section.

(10) The institution shall determine the minimum repayment amount under paragraph (b)(6) of this section for loans with repayment installment intervals greater than one month by multiplying the amounts in paragraph (b)(6) by the number of months in the installment interval.

(c) *Extension of repayment period—*(1) *Hardship.* The institution may extend a borrower's repayment period due to hardship.

(2) *Low-income individual.* (i) For Direct and Perkins loans made on or after October 1, 1980. The institution may extend the borrower's repayment period up to 10 additional years beyond the 10-year maximum repayment period if the institution determines that the borrower will be a low-income individual during the course of the repayment period. The term "low-income individual" means an individual whose family's taxable income for the preceding calendar year did not exceed 150 percent of the poverty level established by the Bureau of the Census for that year. The individual's family includes the borrower and any spouse or legal dependents.

(ii) The institution may adjust the repayment schedule to reflect the income of that individual.

(iii) The institution shall review the borrower's status annually. If the borrower is no longer a low-income individual, the institution shall appropriately adjust the repayment period.

(3) Interest continues to accrue during any extension of a repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, sec. 137(d) of Pub. L. 92-318)

§ 674.34 Deferment of repayment—Perkins loans.

(a) The borrower may defer repayment on a Perkins Loan during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) On full-time active duty as a member of the National Oceanic and Atmospheric Administration Corps;

(3) A Peace Corps volunteer,

(4) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(5) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes and allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(6) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a dependent who is so disabled. As used in this paragraph—

(i) "Temporarily totally disabled", with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(ii) "Temporarily totally disabled", with regard to a disabled spouse or other dependent of a borrower, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is one which—

(i) Requires the borrower to hold at least a baccalaureate degree before beginning the internship; and

(ii)(A) A State licensing agency requires an individual to complete as a prerequisite for certification for professional practice or service; or

(B) Is a part of an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(3) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(A) of this section, the borrower must provide the institution with the following certifications:

(i) A statement from an official of the appropriate State licensing agency that successful completion of the internship program is a prerequisite for its certification of the individual for professional service or practice.

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) That a baccalaureate degree must be attained in order to be admitted into the internship program;

(B) That the borrower has been accepted into its internship program; and

(C) The anticipated dates on which the borrower will begin and complete the program.

(4) To qualify for an internship deferment as provided in paragraph (c)(2)(ii)(B) of this section, the borrower must provide the institution with a statement from an authorized official of the internship program certifying that—

(i) A baccalaureate degree must be attained in order to be admitted into the internship program;

(ii) The borrower has been accepted into its internship program; and

(iii) The internship of residency program in which the borrower has been accepted leads to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training.

(e) The borrower need not repay principal, and interest does not accrue, for a period not in excess of six months—

(1) During which the borrower is—

(i) Pregnant, caring for a newborn baby, or caring for a child immediately after placement of the child through adoption; and

(ii) Not attending an eligible institution of higher education or gainfully employed; and

(2) That begins not later than six months after a period in which the borrower was at least a half-time student at an eligible institution.

(f) The borrower need not repay principal, and interest does not accrue, for a period not in excess of one year during which the borrower—

(1) Is a mother of preschool age children;

(2) Has just entered or reentered the work force; and

(3) Is being compensated at a rate which is not more than $1.00 over the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938.

(g) The institution shall not include the deferment periods described in

paragraphs (b), (c), (d), (e), and (f) of this section and the period described in paragraph (h) of this section when determining the 10-year repayment period.

(h) The borrower need not repay principal, and interest does not accrue, until six months after completion of any period during which the borrower is in deferment under paragraphs (b), (c), (d), (e), and (f) of this section.

(i) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(Authority: 20 U.S.C. 1087dd)

§ 674.35 Deferment of repayment—Direct loans made on or after October 1, 1980.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, during the periods described in this section.

(b)(1) The borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least a half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the borrower's deferment ends on the date the institution ceases to qualify.

(c) The borrower need no repay principal, and interest does not accrue, for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines, or Coast Guard or an officer in the Commissioned Corps of the U.S. Public Health Service (see § 674.56);

(2) A Peace Corps volunteer;

(3) As volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs);

(4) A full-time volunteer in service which the Secretary has determined is comparable to service in the Peace Corps or under the Domestic Volunteer Act of 1973. The Secretary considers that a borrower is providing comparable service if he or she satisfies the following five criteria:

(i) The borrower serves in an organization which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

(5)(i) Temporarily totally disabled, as established by an affidavit of a qualified physician, or unable to secure gainful employment because the borrower is providing care, such as continuous nursing or other similar services, required by a spouse who is so disabled.

(ii) "Temporarily totally disabled" with regard to the borrower, means the inability by virtue of an injury or illness to attend an eligible institution or to be gainfully employed during a reasonable period of recovery; and

(iii) "Temporarily totally disabled" with regard to a disabled spouse, means requiring continuous nursing or other services from the borrower for a period of at least three months because of illness or injury.

(d)(1) The borrower need not repay principal, and interest does not accrue, for a period not to exceed two years during which time the borrower is serving an eligible internship.

(2) An eligible internship is an internship—

(i) That requires the borrower to hold at least a bachelor's degree before beginning the internship program; and

(ii) That the State licensing agency requires the borrower to complete before certifying the individual for professional practice or service.

(3) To qualify for an internship deferment, the borrower shall provide to the institution the following certifications:

(i) A statement from an official of the appropriate State licensing agency that the internship program meets the provisions of paragraph (d)(2) of this section; and

(ii) A statement from the organization with which the borrower is undertaking the internship program certifying—

(A) The acceptance of the borrower into its internship program; and

(B) The anticipated dates on which the borrower will begin and complete the program.

(e) An institution may defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33)(c)).

(f) The institution shall not include the deferment periods described in paragraphs (b), (c), and (d) of this section and the period described in paragraph (g) of this section when determining the 10-year repayment period.

(g) No repayment of principal or interest begins until six months after completion of any period during which the borrower is in deferment under paragraphs (a), (b), and (c) of this section.

(Authority: 20 U.S.C. 1087dd)

§ 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

(a) A borrower may defer repayment—

(1) On a Direct loan made before October 1, 1980 during the periods described in paragraphs (b) through (e) of this section; and

(2) On a Defense loan, during the periods described in paragraphs (b) through (f) of this section.

(b)(1) A borrower need not repay principal, and interest does not accrue, during a period after the commencement or resumption of the repayment period on a loan, when the borrower is at least a half-time student at—

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

(2) The institution of higher education does not need to be participating in the Perkins Loan program for the borrower to qualify for a deferment.

(3) If a borrower is attending as at least a half-time regular student for a full academic year and intends to enroll as at least half-time regular student in the next academic year, the borrower is entitled to deferment for 12 months.

(4) If an institution no longer qualifies as an institution of higher education, the

borrower's deferment ends on the date the institution ceases to qualify.

(c) A borrower need not repay principal, and interest does not accrue for a period of up to 3 years during which time the borrower is—

(1) A member of the U.S. Army, Navy, Air Force, Marines or Coast Guard (see § 674.56);

(2) A Peace Corps volunteer; or

(3) A volunteer under Title I—Part A of the Domestic Volunteer Act of 1973 (ACTION programs).

(d) The institution shall exclude the deferment periods described in paragraphs (b) (1) and (2) of this section when determining the 10-year repayment period.

(e) An institution may permit the borrower to defer payments of principal and interest, but interest shall continue to accrue, if the institution determines this is necessary to avoid hardship to the borrower (see § 674.33(c)).

(f) The institution may permit the borrower to defer payment of principal and interest, but interest shall continue to accrue, on a Defense loan for a total of 3 years after the commencement or resumption of the repayment period on a loan, during which he or she is attending an institution of higher education as a less-than-half-time regular student.

(Authority: 20 U.S.C. 425, 1087dd)

§ 674.37 Deferment procedures.

(a)(1) To qualify for a deferment on a loan, a borrower shall submit to the institution to which the loan is owed a written request for a deferment with documentation required by the institution, by the date that the institution establishes.

(2) If the borrower fails to meet the requirements of paragraph (a) (1) of this section, the institution may declare the loan to be in default, and may accelerate the loan.

(b)(1) The institution may grant a deferment to a borrower after it has declared a loan to be a default.

(2) As a condition for a deferment under this paragraph, the institution—

(i) Shall require the borrower to execute a written repayment agreement on the loan; and

(ii) May require the borrower to pay immediately some or all of the amounts previously scheduled to be repaid before the date on which the institution determined that the borrower had demonstrated that grounds for a deferment existed, plus late charges and collection costs.

(c) If the information supplied by the borrower demonstrates that for some or all of the period for which a deferment is requested, the borrower had retained in-school status or was within the initial grace period on the loan, the institution shall—

(1) Redetermine the date on which the borrower was required to commence repayment on the loan;

(2) Deduct from the loan balance any interest accrued and late charges added before the date on which the repayment period commenced, as determined in paragraph (c)(1) of this section; and

(3) Treat in accordance with paragraph (b) of this section, the request for deferment for any remaining portion of the period for which deferment was requested.

(Authority: 20 U.S.C. 425, 1087dd)

§ 674.38 Postponement of loan repayments in anticipation of cancellation.

(a) An institution shall postpone loan repayments for a 12-month period if the borrower—

(1) Notifies the institution in writing that he or she is teaching or engaged in other services that qualify for loan cancellation under § 674.55, 674.56 or 674.57.

(2) Submits a statement signed by a responsible official in the military, agency, or school employing the borrower, specifying that the borrower is so employed. The statement must describe the borrower's job, list the period of employment, and state whether the job is full- or part-time.

(b) If a borrower has received Defense, Direct, and Perkins loans and is eligible for cancellation benefits on only one, the institution may postpone only repayments on the loan for which cancellation is available.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

§ 674.39 Treatment of loan repayments where cancellation, loan repayments, and minimum monthly repayments apply.

(a) An institution may not exercise the minimum monthly repayment provisions on a note when the borrower has received a partial cancellation for the period covered by a postponement.

(b) If a borrower has received Defense, Direct, and Perkins loans and only one can be cancelled, the amount due on the uncancelled loan is the amount established in § 674.31(b) (2), loan repayment terms; § 674.33(b), minimum repayment rates; or § 674.33(c), extension of repayment period.

(Authority: 20 U.S.C. 425 and 1087dd, 1087ee)

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Subpart D—Loan Cancellation

§ 674.51 Special definitions.

The following definitions apply to this Subpart:

(a) *Academic year or its equivalent for elementary and secondary schools and special education:* (1) One complete school year, or two half years from different school years, excluding summer sessions, that are complete and consecutive and generally fall within a 12-month period.

(2) If such a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

(b) *Academic year or its equivalent for institutions of higher education:* A period of time in which a full-time student is expected to complete—

(1) The equivalent of 2 semesters, 2 trimesters, or 3 quarters at an institution using credit hours; or

(2) At least 900 clock hours of training for each program at an institution using clock hours.

(c) *Chapter I children:* Children of ages 5 through 17 who are counted under section 111(c) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Elementary school:* A school that provides elementary education, including education below grade 1, as determined by—

(1) State law; or

(2) The Secretary, if the school is not in a State.

(e) *Handicapped children:* Children of ages 3 through 21 inclusive who require special education and related services because they are—

(1) Mentally retarded;

(2) Hard of hearing;

(3) Deaf;

(4) Speech and language impaired;

(5) Visually handicapped;

(6) Seriously emotionally disturbed;

(7) Orthopedically impaired;

(8) Specific learning disabled; or

(9) Otherwise health impaired.

(f) *Local educational agency:* (1) A public board of education or other public authority legally constituted within a State to administer, direct, or perform a service function for public elementary or secondary schools in a city, county, township, school district, other political subdivision of a State; or such combination of school districts of counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

(2) Any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(g) *Secondary school:* (1) A school that provides secondary education, as determined by—

(i) State law; or

(ii) The Secretary, if the school is not in a State.

(2) However, State laws notwithstanding, secondary education does not include any education beyond grade 12.

(h) *State education agency:* (1) The State board of education; or

(2) An agency or official designated by the Governor or by State law as being primarily responsible for the State supervision of public elementary and secondary schools.

(i) *Teacher:* (1) A teacher is a person who provides—

(i) Direct classroom teaching;

(ii) Classroom-type teaching in a non-classroom setting; or

(iii) Educational services to students directly related to classroom teaching such as school librarians or school guidance counselors.

(2) A supervisor, administrator, researcher, or curriculum specialist is not a teacher unless he or she primarily provides direct and personal educational services to students.

(3) An individual who provides one of the following services does not qualify as a teacher unless that individual is licensed, certified, or registered by the appropriate State education agency for that area in which he or she is providing related special educational services, and the services provided by the individual are part of the educational curriculum for handicapped children:

(i) Speech pathology and audiology.

(ii) Psychological and counseling services.

(iii) Physical or occupational therapy.

(iv) Recreational therapy.

Authority: 20 U.S.C. 425, 1087ee, 1141, and 1401(1).

§ 674.52 Cancellation procedures.

(a) *Application for cancellation.* To qualify for cancellation of a loan, a borrower shall submit to the institution to which the loan is owed, by the date that the institution establishes, both a written request for cancellation and any documentation required by the institution to demonstrate that the borrower meets the conditions for the cancellation requested.

(b)(1) An institution may refuse a request for cancellation based on a claim of simultaneously teaching in two or more schools or institutions if it cannot determine easily from the documentation supplied by the borrower that the teaching is full-time. However, it shall grant the cancellation if one school official certifies that a teacher worked full-time for a full academic year.

(2) If the borrower is unable due to illness or pregnancy to complete the academic year, the borrower still qualifies for the cancellation if—

(i) The borrower completes the first half of the academic year, and has begun teaching the second half; and

(ii) The borrower's employer considers the borrower to have fulfilled his or her contract for the academic year for purposes of salary increment, tenure, and retirement.

(c)(1) Except with regard to cancellation on account of the death or disability of the borrower, a borrower whose defaulted loan has not been accelerated may qualify for a cancellation based on teaching, volunteer, or military service by complying with the requirements of paragraph (a) of this section.

(2) A borrower whose defaulted loan has been accelerated—

(i) May qualify for a loan cancellation for services performed before the date of acceleration; and

(ii) Cannot qualify for a cancellation for services performed on or after the date of acceleration.

(3) An institution shall grant a request for cancellation on account of the death or disability of the borrower without regard to the repayment status of the loan.

(d) The Secretary considers a borrower's loan deferment under §§ 674.34, 674.35 and 674.36 to run concurrently with any period for which a cancellation for military or VISTA service is granted.

Authority: 20 U.S.C. 425, 1087ee.

§ 674.53 Teacher cancellation—Direct and Perkins loans.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Direct or Perkins loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under Chapter 1 of the Education Consolidation and Improvement Act of 1981; and

(ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of Chapter 1 children.

(2) However, the Secretary does not select more than 50 percent of the schools in a State receiving Chapter 1 assistance.

(3)(i) The Secretary selects schools under paragraph (a)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(iii) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (a) of this section.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Direct or Perkins loan, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(c) *Cancellation rates.* (1) To qualify for cancellation under paragraph (a) or (b) (low-income or handicapped) of this section, a borrower shall teach full time for a complete academic year, or its equivalent.

(2) Cancellation rates are—

(i) 15 percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the first and second years of full-time teaching;

(ii) 20 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth years of full-time teaching; and

(iii) 30 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for the fifth year of full-time teaching.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

Authority: 20 U.S.C. 1067ee.

§ 674.54 Teacher cancellation—Defense loans.

(a) *Cancellation for full-time teaching.* (1) An institution shall cancel up to 50 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in—

(i) A public or other nonprofit elementary or secondary school;

(ii) An institution of higher education; or

(iii) An overseas Department of Defense elementary or secondary school.

(2) The cancellation rate is 10 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year, or its equivalent, of teaching.

(b) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) The institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds in that year under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended; and

(ii) Has been selected by the Secretary based on a determination that a high concentration of students enrolled at the school are from low-income families.

(2)(i) The Secretary does not select more than 25 percent of the eligible schools in a State for any year unless at least 50 percent of the enrollment of each school selected is made up of Chapter 1 children.

(ii) In making this calculation, the Secretary uses a low-income factor of $3,000.

(3)(i) The Secretary selects schools under paragraph (b)(1) of this section based on a ranking by the State education agency.

(ii) The State education agency shall base its ranking of the schools on objective standards and methods. These standards must take into account the numbers and percentages of Chapter 1 children attending those schools.

(4) The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Affairs (BIA) or operated on Indian reservations by Indian tribal groups under contract with BIA to qualify as schools serving low-income students.

(5) For each academic year, the Secretary notifies participating institutions of the schools selected under paragraph (b) of this section.

(6) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(7) Cancellation for full-time teaching under paragraph (b) of this section is available only for teaching beginning with academic year 1966–67.

(c) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Defense loan, plus interest, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

(2) The cancellation rate is 15 percent of the original principal loan amount, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching.

(3) A borrower qualifies for cancellation under this paragraph only if a majority of the students whom the borrower teaches are handicapped children.

(4) Cancellation for full-time teaching under paragraph (c) of this section is available only for teaching beginning with the academic year 1967–68.

(d) *Teaching in a school system.* The Secretary considers a borrower to be teaching in a public or other nonprofit elementary or secondary school system only if the borrower is directly employed by the school system.

(e) *Teaching children and adults.* A borrower who teaches both adults and children qualifies for cancellation for this service only if a majority of the students whom the borrower teaches are children.

Authority: 20 U.S.C. 425(b)(3).

§ 674.55 Cancellation for service in a Head Start program.

(a) An institution shall cancel up to 100 percent of a borrower's Direct or Perkins loan, plus the interest on the unpaid balance, for service as a full-time staff member in a "Head Start" program if—

(1) The program operates for a complete academic year, or its equivalent; and

(2) The borrower's salary does not exceed the salary of a comparable employee working in the local educational agency of the area served by the local Head Start program.

(b) The cancellation rate is 15 percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete academic year, or its equivalent, of full-time teaching service.

(c)(1) "Head Start" is a preschool program carried out under the Head Start Act (Subchapter B, Chapter 8 of Title VI of Pub. L. 97–35, the Budget Reconciliation Act of 1981, as amended; formerly authorized under section 222(a)(1) of the Economic Opportunity Act of 1964). (42 U.S.C. 2809 (a) (1))

(2) "Full-time staff member" is a person regularly employed in a full-time professional capacity to carry out the educational part of a Head Start program.

Authority: 20 U.S.C. 425.

§ 674.56 Cancellation for military service.

(a) *Cancellation on a Defense loan.* (1) An institution shall cancel up to 50 percent of a Defense loan made after April 13, 1970, for the borrower's full-time active service starting after June 30, 1970, in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for the first complete year of qualifying service, and for each consecutive year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

(b) *Cancellation of a Direct or Perkins loan.* (1) An institution shall cancel up to 50 percent of a Direct or Perkins loan for service as a member of the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) The cancellation rate is 12½ percent of the original loan principal, plus the interest on the unpaid balance accruing during the year of qualifying service, for each complete year of qualifying service.

(3) Service for less than a complete year, including any fraction of a year beyond a complete year of service, does not qualify for military cancellation.

Authority: 20 U.S.C. 425(b)(3) and 1087ee.

§ 674.57 Cancellation for volunteer service—Perkins loans.

(a) An institution shall cancel up to 70 percent of the outstanding balance on a Perkins loan for service as a volunteer under—

(1) The Peace Corps Act; or

(2) The Domestic Volunteer Service Act of 1973.

(b) Cancellation rates are—

(1) Fifteen percent of the original principal loan amount plus the interest

on the unpaid balance accruing during the year of qualifying service, for each of the first and second twelve-month periods of service;

(2) Twenty percent of the original principal loan amount plus the interest on the unpaid balance accruing during the year of qualifying service, for each of the third and fourth twelve-month periods of service.

Authority: 20 U.S.C. 1087ee.

§ 674.58 Cancellation for death or disability.

(a) *Death.* An institution shall cancel the unpaid balance of a borrower's Defense, Direct, or Perkins loan, including interest, if the borrower dies. The lending institution shall cancel the loan on the basis of a death certificate or other evidence of death that is conclusive under State law.

(b) *Permanent and total disability.* (1) An institution shall cancel the unpaid balance of a Defense, Direct, or Perkins loan, including interest, if the borrower becomes permanently and totally disabled after receiving the loan. The lending institution shall decide whether to cancel the loan based on medical evidence, certified by a physician, which the borrower or his or her representative supplies.

(2) Permanent and total disability is the inability to work and earn money because of an impairment that is expected to continue indefinitely or result in death.

(c) *No Federal reimbursement.* No Federal reimbursement is made to an institution for cancellation of loans due to death or disability.

(d) *Retroactive.* Cancellation for death or disability applies retroactively to all Defense, Direct or Perkins loans.

(Authority: 20 U.S.C. 425 and 1087dd and sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94-482)

§ 674.59 No cancellation for prior service—no repayment refunded.

(a) No portion of a loan may be cancelled for teaching, Head Start, volunteer or military service if the borrower's service is performed—

(1) During the same period that he or she received the loan; or

(2) Before the date the loan was disbursed to the borrower.

(b) The institution shall not refund a repayment made during a period for which the borrower qualified for a cancellation unless the borrower made the payment due to an institutional error

(Authority: 20 U.S.C. 425 and 1067ee)

§ 674.60 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest cancelled under §§ 674.54 and 674.56(a).

(2) The institution's share of cancelled principal and interest is computed by the following ratio:

$$\frac{I}{I+F}$$

Where I is the institution's capital contribution to the Fund, and F is the Federal capital contribution to the Fund.

(b) *Reimbursement for Direct and Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest cancelled from its student loan fund under §§ 674.53, 674.55, 674.56(b) and 674.57. The institution shall deposit this amount in its Fund.

(Authority: 20 U.S.C. 428 and 1087ee)

Appendix A—Promissory Note—Perkins Loan

Perkins Loan Program: PERKINS LOAN

[Any bracketed clause or paragraph may be included at option of institution.]

I, ——— promise to pay to ——— (hereinafter called the Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 9 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraphs III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

[(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all may outstanding Perkins Loans including those received from other institutions. The amount of the $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion,

circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Article VI, VII, VIII, IX, X, or XI of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother of preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six (6) months—

(i) That follows by six months or less a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of the teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate to 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the

United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the U.S.C.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunter Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

Schedule of Perkins Loans at Other Institutions

	Amount	Date	Institution
1.....			
2.....			
3.....			
4.....			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	signature of borrower
1.....			
2.....			
3.....			
4.....			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature ——— [(seal)].

Date ——— 19—.

Permanent Address (Street or Box Number, City, State, and Zip Code).

Social Security Number (borrower must provide).———

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner ——— [(seal)].

Date ——— 19—.

Permanent Address (Street or Box Number, City, State, Zip Code).

(Authority: 20 U.S.C. 1087dd)

Appendix B—Promissory Note—Direct Loan

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ——— promise to pay to ——— (hereinafter called the Institution) located at ——— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning 6 months after the date I cease to be at least a half-time student at an institution of higher education, or at a comparable institution outside the United States approved for this purpose by the United States Secretary of Education (hereinafter called the Secretary), and ending 10 years later, unless that period is shortened under paragraph III(5), or extended under paragraph III(4), III(7) (extensions), or VI(1) (deferments).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my installment payment for all the loans made to

me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).]

[(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be difference between $30 and the total of the amounts owed at a monthly rate on my other Direct, Defense and Perkins Loans.]

[(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) Amounts I repay in the academic year in which the loan was made will be used to reduce the amount of the loan and will not be considered a prepayment, unless that year is also the year in which I am required to begin repayment on this loan.

(3) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be canceled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be canceled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon canceled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be canceled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon canceled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be canceled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be canceled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loan I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL STUDENT LOANS AT OTHER INSTITUTIONS.

	Amount	Date	Institution
1.....			
2.....			
3.....			
4.....			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the date indicated:

	Amount	Date	Signature of borrower
1.....			
2.....			
3.....			
4.....			

NOTICE TO BORROWERS: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature _____ [(seal)]

Date _____ 19—

Permanent Address (Street or Box Number, City, State, and Zip Code) _____

Social Security Number (borrower must provide) _____

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner _____ [(seal)]

Date _____ 19—

Permanent Address (Street or Box Number, City, State, and Zip Code) _____

Authority: 20 U.S.C. 1087dd.

Appendix C—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Perkins Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, _____ promise to pay to _____ (hereinafter called the Institution) located at _____ the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures For Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to prove that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through XI, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Lending Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding Perkins loan I have received; or

(ii) If I have no other outstanding Perkins loans, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraph III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment

period in equal monthly, bimonthly or quarterly installments as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon my written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Lending Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Perkins Loans including this loan, is less than $30 per month, I shall repay the principal and interest on this loan at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owed at a monthly rate on my other Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayments or extend the repayment period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charges and collection costs if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles IV, VII, VIII, IX, X, or XI of this agreeemnt.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant informaion, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer or military service described in Articles VII, VIII and IX, performed after the date the Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accure, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary;

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or the National Oceanic and Atmospheric Administration Corps, or as an officer on full-time active duty in the Commissioned Corps of the United States Public Health Service;

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my dependent who is so disabled;

(C) For a period not in excess of two (2) years—

(i) After I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service, or

(ii) Serving in an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital or a health care facility that offers postgraduate training;

(D) For a period not in excess of one (1) year during which, if I am a mother or preschool age children, I have entered or reentered the work force, and am being paid at a rate which does not exceed $1.00 above the minimum hourly wage established by section 6 of the Fair Labor Standards Act of 1938;

(E) For a period not in excess of six months—

(i) That follows by six months or less of a period during which I was enrolled as at least a half-time student at an eligible institution; and

(ii) During which I am pregnant, caring for my newborn baby, or caring for a child immediately after he or she was placed with me through adoption and I am neither attending an eligible institution of higher education nor gainfully employed; and

(F) During a six (6) month period immediately following the expiration of any deferment provided in paragraphs VI(1)(A) through VI(1)(E).

(2) The Institution may, upon my written request, defer my scheduled repayments if it determines that the deferment is necessary to avoid a financial hardship for me. Interest, however, will continue to accrue.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have specific learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or the equivalent period of service in a Head Start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Lending Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete year of such service.

X. Volunteer Service Cancellation

(1) I understand that upon making a properly documented request to the Lending Institution, I am entitled to have up to 70 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a volunteer under the Peace Corps Act; or

(B) As a volunteer under the Domestic Volunteer Service Act of 1973.

(2) This loan will be cancelled at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second twelve-month periods of volunteer service completed;

(B) 20 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the third and fourth twelve-month periods of volunteer service completed.

XI. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XII. Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XIII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, X, and XI of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIV. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XVI. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This notice is signed as a sealed instrument.]

Signature ———— [(seal)].

Date ———— 19——.

Permanent Address (Street or Box Number, City, State, and Zip Code)

———————————————

Social Security Number (borrower must provide) ————.————

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of cosigner ———— [(seal)].

Date ———— 19——.

Permanent Address (Street or Box Number, City, State, Zip Code)

———————————————

(Authority: 20 U.S.C. 1087dd)

Appendix D—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower

Perkins Loan Program: Direct Loan

[Any bracketed clause or paragraph may be included at option of institution.]

I, ———— promise to pay to ———— (hereinafter called the Institution) located at ———— the sum of the amounts that are advanced to me and endorsed in the Schedule of Advances set forth below. I promise to pay all attorney's fees and other reasonable collection costs and charges necessary for the collection of any amount not paid when due.

I further understand and agree that:

I. General

(1) *Applicable Law.* All sums advanced under this note are drawn from a fund created under Part E of Title IV of the Higher Education Act of 1965, as amended, hereinafter called the Act, and are subject to the Act and the Federal Regulations issued under the Act. The terms of this note shall be interpreted in accordance with the Act and

Federal Regulations, copies of which are to be kept by the Institution.

(2) *Procedures for Receiving Deferment or Cancellation.* I understand that in order to receive a deferment or cancellation, I must request the deferment or cancellation in writing from the Institution, and must submit to the Institution any documentation required by the Institution to provide that I qualify for the deferment or cancellation. I further understand that if I am eligible for deferment or cancellation under Articles VI through X, I am responsible for submitting the appropriate requests on time. I further understand that I may lose my deferment and cancellation benefits if I fail to file my request on time.

II. Interest

Interest shall accrue from the beginning of the repayment period and shall be at the ANNUAL PERCENTAGE RATE OF FIVE PERCENT (5%) on the unpaid balance, except that no interest shall accrue during any deferment period described in paragraph VI(1).

III. Repayment

(1)(A) I promise to repay the principal and the interest which accrues on it to the Institution over a period beginning—

(i) On the date of the next scheduled installment payment on any other outstanding loan made under the Perkins Loan Program I have received; or,

(ii) If I have no other outstanding loans made under the Perkins Loan Program, either nine months from the date this loan is made, or, if the loan was made less than nine months after I ceased at least half-time enrollment status, at the end of that nine-month period.

(B) I understand that this repayment period shall end 10 years later, unless it is extended under paragraphs III(4), III(7), or VI(1), or shortened under paragraph III(5).

(2) Upon my written request, the repayment period may start on a date earlier than the one indicated in paragraph III(1).

(3)(A) I promise to repay the principal and interest over the course of the repayment period in equal monthly, bimonthly or quarterly installments, as determined by the Institution. I understand that if my monthly payment for all the loans made to me by the Institaution is not a multiple of $5, the Institution may round that payment to the next highest dollar amount that is a multiple of $5.

(B) Notwithstanding paragraph III(3)(A), upon written request, repayment may be made in graduated installments in accordance with a schedule approved by the Secretary.

(4) Notwithstanding paragraph III(1), if I qualify as a low-income individual during the repayment period, the Institution, upon my written request, may extend the repayment period for up to an additional 10 years, and may adjust any repayment schedule to reflect my income.

[(5)(A) If the monthly rate that would be established under paragraph III(1), or the total monthly repayment rate of principal and interest on all my Direct, Defense and Perkins Loans, including this loan, is less than $30 per month, I shall repay the principal and interest on this laon at the rate of $30 per month (which includes both principal and interest).

(5)(B) If I have received Direct, Defense and Perkins Loans from other institutions and the total monthly repayment rate on those loans is less than $30, the $30 monthly payment established under subparagraph III(5)(A) includes the amounts I owe on all my outstanding Direct, Defense and Perkins Loans including those received from other institutions. The amount of this $30 monthly payment that will be applied to this loan will be the difference between $30 and the total of the amounts owned at a monthly rate on my other Direct, Defense and Perkins Loans.

(6) The Institution may permit me to pay less than the rate of $30 per month for a period of not more than one year where necessary to avoid hardship to me unless that action would extend the repayment period in paragraph III(1).]

(7) The Institution may, upon my written request, reduce any scheduled repayment or extend the repayments period indicated in paragraph III(1), if, in its opinion, circumstances such as prolonged illness or unemployment, prevent me from making the scheduled repayments. However, interest shall continue to accrue.

IV. Prepayment

(1) I may, at my option and without penalty, prepay all or any part of the principal, plus any accrued interest thereon, at any time.

(2) If I repay more than the amount due for any installment, the excess will be used to prepay principal unless I designate it as an advance payment of the next regular installment.

V. Default

(1) The Institution may, at its option, declare my loan to be in default and may demand immediate payment of the entire unpaid balance of the loan, including principal, interest, late charge and collection costs, if—

(A) I do not make a scheduled payment when due under the repayment schedule established by the Institution, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles, VI, VII, VIII, IX, and X of this agreement.

(2) I understand that if I default on my loan, the Institution may disclose that I have defaulted, along with other relevant inforrmation, to credit bureau organizations.

(3) Further, I understand that if I default on my loan and the loan is transferred to the Secretary for collection, the Secretary may disclose that I have defaulted, along with other relevant information, to credit bureau organizations.

(4) I understand that if I default on my loan, I will then lose my right to defer repayments.

(5) I understand that after the Institution accelerates the loan under paragraph V(1), I will then lose my right to receive a cancellation of a portion of my loan for any teaching, volunteer, or military service described in Articles VII, VIII and IX, performed after the date of Institution accelerated the loan.

(6) I understand that failure to pay this obligation under the terms agreed upon will prevent my obtaining additional student financial aid authorized under Title IV of the Higher Education Act of 1965, as amended, until I have made arrangements which are satisfactory to the Institution or the Secretary regarding the repayment of the loan.

VI. Deferment

(1) I understand that upon making a properly documented written request to the Institution, I may defer making scheduled installment payments, and will not be liable for any interest that might otherwise accrue, during the following periods:

(A) While I am enrolled and in attendance as at least a half-time student at an institution of higher education or at a comparable institution outside the United States approved for this purpose by the Secretary.

(B) For a period of three (3) years during which I am—

(i) On full-time active duty as a member of the Armed Forces of the United States (Army, Navy, Air Force, Marine Corps, or Coast Guard) or an officer on full-time active duty in the Commissioned Corps of the U.S. Public Health Service.

(ii) In service as a volunteer under the Peace Corps Act,

(iii) A volunteer under the Domestic Volunteer Service Act of 1973 (ACTION programs),

(iv) A full-time volunteer in a tax-exempt organization performing service comparable to the service performed in the Peace Corps or under the Domestic Volunteer Service Act of 1973, or

(v) Temporarily totally disabled as established by an affidavit of a qualified physician, or unable to secure employment because I am providing care required by my spouse who is so disabled;

(C) For a period not in excess of two (2) years after I receive a baccalaureate or professional degree during which time I am serving in an internship which is required in order that I may receive professional recognition required to begin my professional practice or service; and

(D) During a six (6) month period following the expiration of my deferment in paragraph VI(1)(A) through VI(1)(C).

(2) In addition, the Institution may permit me to defer making scheduled installment payments if it determines that the deferment is necessary to avoid a financial hardship for me. I will be required to repay interest that accrues during this period of deferment.

VII. Cancellation for Teaching

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service—

(A) As a full-time teacher in a public or other nonprofit elementary or secondary school which is in the school district of a local educational agency which is eligible in such year of service for funds under Chapter I of the Education Consolidation and Improvement Act of 1981, as amended, and

which has been designated by the Secretary (after consultation with each State Department of Education) in accordance with the provisions of section 465(a)(2) of the Act as a school with a high concentration of students from low-income families. An official Directory of designated low-income schools is published annually by the Secretary.

(B) As a full-time teacher of handicapped children (including those who are mentally retarded, hard of hearing, deaf, speech and language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, have special learning disabilities, or are otherwise health-impaired children, who by reason thereof require special education and related services) in a public or other nonprofit elementary or secondary school system.

(2) A portion of this loan will be cancelled for each completed year of teaching service at the following rates:

(A) 15 percent of the total principal amount of the loan plus interest on the unpaid balance accruing during that year will be cancelled for each of the first and second complete academic years of that teaching service,

(B) 20 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each of the third and fourth complete academic years of that teaching service, and

(C) 30 percent of the total principal amount plus interest on the unpaid balance accruing during that year for the fifth complete academic year of that teaching service.

VIII. Head Start Cancellation

(1) I understanding that upon making a properly documented written request to the Institution, I am entitled to have up to 100 percent of the amount of this loan plus the interest thereon cancelled if I perform service as a full-time staff member in a Head Start program if—

(A) That Head Start program is operated for a period which is comparable to a full school year in the locality, and

(B) My salary is not more than the salary of a comparable employee of the local educational agency.

(2) This loan will be cancelled at the rate of 15 percent of the total principal amount plus interest on the unpaid balance accruing during that year for each complete school year or equivalent period of service in a Head start program.

(3) Head Start is a preschool program carried out under the Head Start Act.

IX. Military Cancellation

(1) I understand that upon making a properly documented written request to the Institution, I am entitled to have up to 50 percent of the principal amount of this loan plus the interest thereon cancelled if I serve as a member of the Armed Forces of the United States in an area of hostilities that qualifies for special pay under section 310 of Title 37 of the United States Code.

(2) This loan will be cancelled at the rate of 12½ percent of the total principal amount plus interest on the unpaid balance for each complete year of such service.

X. Death and Disability Cancellation

(1) In the event of my death, the total amount owed on this loan will be cancelled.

(2) If I become totally and permanently disabled after I receive this loan, the Institution will cancel the total amount of this loan.

XI Change in Name, Address, Telephone Number and Social Security Number

I am responsible, and any endorser is responsible, for informing the Institution of any change or changes in name, address, telephone number or Social Security number.

XII. Late Charge

(1) The Institution will impose a late charge if—

(A) I do not make a scheduled payment when it is due, and

(B) I do not submit to the Institution, on or before the date on which payment is due, documentation that I qualify for a deferment or cancellation described in Articles VI, VII, VIII, IX, and X of this agreement.

(2) No charge may exceed twenty (20) percent of my monthly, bimonthly or quarterly payment.

(3)(A) The Institution may—

(i) Add the late charge to the principal the day after the scheduled repayment was due; or

(ii) Include it with the next scheduled repayment after I have received notice of the late charge.

(B) If the Institution elects to add the assessed charge to the outstanding principal of the loan, it must so inform me before the due date of the next installment.

XIII. Assignment

(1) This note may be assigned by the Institution only to—

(A) The United States;

(B) Another institution upon my transfer to that institution if that institution is participating in this program; or

(C) Another institution approved by the Secretary.

(2) The provisions of this note that relate to the Institution shall, where appropriate, relate to an assignee.

XIV. Prior Loans

I hereby certify that I have listed below all of the Perkins Loans, National Direct Student Loans, and National Defense Student Loans I have obtained at other institutions. (If no prior loans have been received, state "None.")

SCHEDULE OF PERKINS LOANS, NATIONAL DIRECT STUDENT LOANS, AND NATIONAL DEFENSE STUDENT LOANS AT OTHER INSTITUTIONS

	Amount	Date	Institution
1			
2			
3			
4			

XV. Schedule of Advances

The following amounts were advanced to me under this loan agreement on the dates indicated:

	Amount	Date	Signature of borrower
1			
2			
3			
4			

NOTICE TO BORROWER: DO NOT SIGN THIS NOTE BEFORE YOU READ IT. THE INSTITUTION MUST SUPPLY A COPY OF THIS NOTE TO YOU AND ANY COSIGNER.

[This note is signed as a sealed instrument.]

Signature————————[(seal)].

Date————19——.

Permanent Address (Street or Box Number, City, State, and Zip Code)

Social Security Number (borrower must provide)————————.

The borrower and Institution shall execute this note without security and without endorsement unless the borrower is a minor and this note would not, under the law of the State in which the Institution is located, create a binding obligation. If the borrower is a minor and this note would not, therefore, be legally binding, the Institution shall require a cosigner to this note:

I agree to repay all amounts due on this loan if the borrower fails to do so in accordance with the terms of the note.

Signature of Cosigner————————[(seal)].

Date————19——.

Permanent Address (Street or Box Number, City, State, Zip Code)

(Authority: 20 U.S.C. 1087dd)

Appendix E—Examples for Computing Maximum Penalty Charges (6 Months Unpaid Overdue Payments) on Direct Loans Made for Periods of Enrollment Before January 1, 1986

Monthly repayment schedule	Installment due dates—Missed payments						Separate monthly maximum penalty charges
	Jan. 2	Feb. 2	Mar. 2	Apr. 2	May 2	June 2	
1st Past due installment	$1						$1
2nd Past due installment		$1+$2					3
3rd Past due installment			$3+$2				5
4th Past due installment				$5+$2			7
5th Past due installment					$7+$2		9
6th Past due installment						$9+$2	11
Cumulative maximum subtotals.	1	4	9	16	25	36	

Bimonthly repayment schedule	Installment due dates—Missed payments			Separate bimonthly maximum penalty charges
	Jan. 2	Mar. 2	May 2	
1st Past due installment	$3			$3
2nd Past due installment		$3+$3		6
3rd Past due installment			$6+$3	9
Cumulative maximum subtotals	3	9	18	

Quarterly repayment schedule	Installment due dates—Missed payments		Separate quarterly maximum penalty charges
	Jan. 2	Apr. 2	
1st Past due installment	$6		$6
2nd Past due installment		$6+$6	12
Cumulative maximum subtotals	6	18	

Note.—In the above table of examples, the Cumulative Maximum Subtotal line contains the maximum penalty charges that can be assessed on an NDSL borrower for any given installment that was missed on its due date. For example, if three borrowers, all on different repayment schedules, owed and missed their first installment payment on January 2 and all three made their next payment on April 10, the maximum penalty charges that could be assessed each individual borrower would be as follows: $16 to the monthly repayment schedule borrower; $9 to the bimonthly repayment schedule borrower; and $18 to the quarterly repayment schedule borrower.

2. Part 675 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 675—COLLEGE WORK-STUDY AND JOB LOCATION AND DEVELOPMENT PROGRAMS

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Subpart A—College Work-Study Program

Sec.

675.1 Purpose and identification of common provisions.
675.2 Definitions.
*675.3 Application.
675.4 Allocation and reallocation.
675.5–675.7 [Reserved]
675.8 Program participation agreement.
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675.24 Establishment of wage rate under CWS.
675.25 Earnings applied to cost of attendance.
675.26 CWS Federal share limitations.
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Subpart B—Job Location and Development Programs

675.31 Purpose.
675.32 Program description.
675.33 Allowable costs.
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675.35 Agreement.
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Appendix A [Reserved]
Appendix B—Model Off-campus Agreement

Authority: 42 U.S.C. 2571–2756z, unless otherwise noted.

Subpart A—College Work-Study Program

§ 675.1 Purpose and identification of common provisions.

(a) The College Work-Study (CWS) Program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

(Authority: 42 U.S.C. 2751–2756b)

§ 675.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
Clock hour
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan Program
Pell Grant Program
Perkins Loan Program
PLUS Program
Secretary
SLS Program
Supplemental Educational Opportunity Grant (SEOG) Program

(b) The Secretary defines other terms used in this part as follows:

*_Expected family contribution_ (EFC): The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

*_Financial need:_ The difference between a student's cost of attendance and his or her EFC.

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

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

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

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

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

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

*Financial

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

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

Graduate or professional student: A student who—

(1) Is enrolled in a program or course above the baccalaureate level at an institution of higher education or is enrolled in a program leading to a first professional degree;

(2) Has completed the equivalent of at least three years of full-time study at an institution of higher education, either prior to entrance into the program or as part of the program itself; and

(3) Is not receiving Title IV aid as an undergraduate student for the same period of enrollment.

**Institution of higher education (institution).* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

Nonprofit organization: An organization owned and operated by one or more nonprofit corporations or associations where no part of the organization's net earnings benefits, or may lawfully benefit, any private shareholder or entity. An organization may show that it is nonprofit by meeting the provisions of § 75.51 of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.51.

(Authority: 20 U.S.C. 1141(c))

**Payment period:* A semester, trimester, or quarter. For 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 an academic year. A payment period is not the payroll period discussed in § 675.16.

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

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

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

(Authority: 20 U.S.C. 1087aa–1087ii)

§ 675.3 Application.

(a) To participate in the CWS program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation or reallocation of the CWS program funds under section 442 of the HEA.

(Authority: 42 U.S.C. 2752)

§ 675.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the College Work-Study program in accordance with section 442 of the HEA.

(b) As used in section 442 of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.
(2) Business.
(3) Trade/Technical.
(4) Art Schools.
(5) Other Proprietary Institutions.
(6) Non-Proprietary Institutions.

(c) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) *Authority to expend funds.* Except as specifically provided in § 675.18 (c) and (d), an institution shall not use funds allocated or reallocated for an award year—

(1) To meet CWS wage obligations incurred with regard to an award of CWS employment made in any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 42 U.S.C. 2752)

§§ 675.5–675.7 [Reserved]

§ 675.8 Program participation agreement.

To participate in the CWS program, an institution of higher education shall enter into a participation agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part;

(b) Administer the CWS program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668;

(c) Make employment under the CWS program reasonably available, to the extent of available funds, to all eligible students;

(d) Make equivalent employment offered or arranged by the institution reasonably available, to the extent of available funds, to all students in the institution who want to work; and

(e) Award CWS employment, to the maximum extent practicable, that will complement and reinforce each

recipient's educational program or career goals.

(Authority: 20 U.S.C. 1094, 42 U.S.C. 2753)

§ 675.9 Student eligibility.

A student at an institution of higher education is eligible to receive part-time employment under the CWS program for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate or professional student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

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

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1091; 42 U.S.C. 2752–2753)

§ 675.10 Selection of students for CWS employment.

(a) An institution shall make employment under CWS reasonably available, to the extent of available funds, to all eligible students.

(b) An institution shall establish selection procedures and those procedures must be—

(1) Uniformly applied;

(2) In writing; and

(3) Maintained in the institution's files.

(c) If an institution's allocation of CWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall award a reasonable proportion of its allocation of CWS funds to those students.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2752–2753)

§§ 675.11—675.13 [Reserved]

***§ 675.14 Overaward.**

(a) *Overaward prohibited.* *(1) An institution may award CWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding CWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards CWS funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution employs the student under the CSW program, and the total resources including the prospective CWS wages exceed the student's need, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution disburses the student's CWS wages and the total resources including the CWS wages exceed the student's need by $200 or more and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more money from employment than the institution anticipated or could have reasonably anticipated when it awarded the CWS employment, the institution shall treat the earnings in accordance with paragraph (c) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include but are not limited to any—

(i) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs an ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowship or assistantship;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from employment other than CWS employment for the period of the award except as provided in 34 CFR 675.25; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(2) The student may use Supplemental Loans for Students (SLS), State-sponsored or private loans, PLUS loans, or non-need-based ICLs to substitute for his or her expected family contribution. However, if the sum of loan amounts received exceeds the student's expected family contribution, the excess is a resource.

*(c) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a student has earned, or will earn, an amount that when combined with other resouces is $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, and the student's earnings plus other resources do not exceed this increased need by $200 or more, no further action is necessary.

(2) If the student's earnings plus other resources still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in paragraphs (c) (1) and (2) of this section, and the student is not enrolled for the next academic year, no further action is necessary.

(d) An institution may continue to employ a student employed in a CWS job, during a payment period, at the time income derived from any employment (CWS or non-CWS employment) is in excess of the student's financial need for that payment period. However, as provided in § 675.26(a)(3), if that excess income equals $200 or more, continued employment under CWS may not be subsidized with CWS funds.

(Authority: 42 U.S.C. 2753(b)(3))

***§ 675.15 Coordination with BIA grants.**

(a) To determine the amount of CWS compensation for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total or the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted only from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: Loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 42 U.S.C. 2753)

§ 675.16 Payments to students.

(a)(1)(i) An institution shall pay a student at least once a month. The Federal share of each payment must be paid to the student by check or similar instrument that the student can cash on his or her own endorsement.

(ii) The institution may not directly transfer the Federal share of any payment to the student's account at the institution or elsewhere.

(2) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(3) A student's CWS wages are earned when the student performs the work.

(4) An institution may pay a student after the student's last day of attendance for CWS wages earned while he or she was in attendance at the institution.

(b)(1) If an institution pays a student its share or his or her CWS wages by check, it shall pay the student at the same time it pays the Federal share.

(2) If an institution pays a student its CWS share for an award period in the form of tuition, fees, services, or equipment, it shall pay that share before the student's final payroll period.

(3) If an institution pays its CWS share in the form or prepaid tuition, fees, services, or equipment for a forthcoming academic period, it shall give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(c) A correspondence student shall submit his or her first completed lesson before receiving a payment.

(d) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(Authority: 20 U.S.C. 1091, 42 U.S.C. 2753)

***§ 675.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 675.18(b)) and for certain activities under the Job Location and Development Programs, funds received by an institution under the CWS program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e. serve as collateral) for any other purpose.

(Authority: 42 U.S.C. 2751–56)

§ 675.18 Use of funds.

(a) *General.* An institution may use its CWS allocation only for—

(1) Paying the Federal share of CWS wages;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section;

(3) Meeting the cost of a Job Location and Development program under Subpart B; and

(4) Transferring a portion of its CWS allocation to its SEOG allocation as described in paragraph (f) of this section.

(b) *Administrative cost allowance.* (1) An institution participating in the CWS program is entitled to an administrative cost allowance if it provides CWS employment to its students in that award year.

(2) For any award year the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) Four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (§ 675.25), and the amount of loans made under the Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR Part 668.

(5)(i) In addition to the amount calculated in paragraph (b)(1) of this section, an institution's administrative cost allowance includes ten (10) percent of its expenditures under the community service learning program set forth in § 675.25.

(ii) This portion of its administrative cost allowance must be taken from the institution's CWS allocation.

(iii) The institution may use this portion of its administrative cost allowance to offset the costs of administering the Pell Grant, CWS, SEOG, and Perkins Loan programs and to pay the administrative costs of conducting its community service learning program. These latter costs may include the costs of—

(A) Developing mechanisms to assure the academic quality of a student's experience;

(B) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(C) Collaborating with public and private nonprofit agencies in the planning and administering of these programs.

(c) *Carry forward funds.* (1) An institution may carry forward and expend in the next award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year.

(2) Before an institution may spend its current year CWS allocation, it shall spend any funds carried forward from the previous year.

(d) *Carry back funds.* An institution may carry back and expend in the previous award year up to 10 percent of the sum of its initial and supplemental CWS allocations for the current award year. The institution's official allocation letter represents the Secretary's approval to carry back funds.

(e) The institution may use the funds carried forward or carried back under paragraphs (c) and (d) of this section, respectively, for activities described in paragraph (a) of this section.

(f) *Transfer funds to SEOG.* (1) An institution may transfer up to 10 percent of the sum of its initial and supplemental

CWS allocations for an award year to its SEOG program.

(2) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under § 675.19(b).

(4) An institution shall transfer back to the SEOG program any funds unexpended at the end of the award year that it transferred to the CWS program from the SEOG program.

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2756, 2756b)

§ 675.19 Fiscal procedures and records.

(a) *Fiscal procedures.* (1) In administering its CWS program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2) If an institution uses a fiscal agent, that agent may perform only ministerial acts.

(3)(i) Except as provided in paragraph (a)(3)(ii) of this section, a separate bank account for CWS funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the account in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are deposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep CWS funds in a separate bank account.

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

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Include a certification that each student has worked and earned the amount being paid. The student's supervisor, an official of the institution or off-campus agency, shall sign the certification. The certification shall include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence;

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.25(a));

(iv) Are reconciled at least monthly;

(v) Identify each student's account and status;

(vi) Show the eligibility of each student aided under the program; and

(vii) Show how the need was met for each student.

(3) Each year an institution shall submit a Fiscal Operations Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(4) The institution must maintain on file all CWS employment applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(5) The institution shall maintain all records supporting its application for funds under this part.

(c) *Retention of records.*—(1) *Records.* Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

*(2) *Period of retention.* Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

*(3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

*(4) *Audit questions.* An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 42 U.S.C. 2753 and 20 U.S.C. 1094 and 1232f)

§ 675.20 Eligible employers and general conditions and limitation on employment.

(a) *Eligible CWS employers.* A student may be employed under the CWS program by—

(1) The institution in which the student is enrolled;

(2) A Federal, State, or local public agency;

(3) A private nonprofit organization; or

(4) A private for-profit organization.

(b) *Agreement between institution and organization.*

(1) If an institution wishes to have its students employed under this part by a Federal, State or local agency, or a private nonprofit or for-profit organization, it shall enter into a written agreement with that agency or organization. The agreement must set forth the CWS work conditions (see Appendix B for a sample agreement). The agreement must indicate whether the institution or the agency or organization shall pay the students employed, except that the agreement between an institution and a for-profit organization must require the employer to pay the non-Federal share of the student earnings.

(2) The institution may enter into an agreement with an agency or organization that has professional direction and staff.

(3) The institution is responsible for ensuring that—

(i) Payment for work performed under each agreement is properly documented; and

(ii) Each student's work is properly supervised.

(4) The agreement between the institution and the employing agency or nonprofit organization may require the employer to pay—

(i) The non-Federal share of the student earnings; and

(ii) Required employer costs such as the employer's share of social security or workers' compensation.

(c) *CWS general employment conditions and limitation.* (1) Regardless of the student's employer, the student's work must be governed by employment conditions, including pay, that are appropriate and reasonable in terms of—

(i) Type of work;

(ii) Geographical region;

(iii) Employee proficiency; and

(iv) Any applicable Federal, State, or local law.

(2) CWS employment may not—

(i) Impair existing service contracts;

(ii) Displace employees;

(iii) Fill jobs that are vacant because the employer's regular employees are on strike;

(iv) Involve the construction, operation, or maintenance of any part of a facility used or to be used for religious worship or sectarian instruction; or

(v) Include employment for the U.S. Department of Education.

(Authority: 42 U.S.C. 2753)

§ 675.21 Institutional employment.

(a) An institution, other than a proprietary institution, may employ a student to work for the institution itself, including those operations, such as food service, cleaning, maintenance, or security, for which the institution contracts, if the contract specifies—

(1) The number of students to be employed; and

(2) That the institution selects the students to be employed and determines each student's pay rate.

(b) A proprietary institution may employ a student only in jobs that—

(1) Are on campus;

(2) Furnish student services;

(3) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(4) Do not involve the solicitation of potential students to enroll at the proprietary institution.

(Authority: 42 U.S.C. 2753)

§ 675.22 Employment provided by a Federal, State, or local agency, or a private nonprofit organization.

(a) If a student is employed by a Federal, State, or local public agency, or a private nonprofit organization, the work that the student performs must be in the public interest.

(b) *CWS employment in the public interest.* The Secretary considers work in the public interest to be work performed for the national or community welfare rather than work performed to benefit a particular interest or group. Work is not in the public interest if—

(1) It primarily benefits the members of a limited membership organization such as a credit union, a fraternal or religious order, or a cooperative;

(2) It is for an elected official who is not responsible for the regular administration of Federal, State, or local government;

(3) It is work as a political aide for any elected official;

(4) A student's political support or party affiliation is taken into account in hiring him or her;

(5) It involves any partisan or nonpartisan political activity or is associated with a faction in an election for public or party office; or

(6) It involves dlobbying on the Federal, State, or local level.

(Authority: 42 U.S.C. 2753)

§ 675.23 Employment provided by a private for-profit organization.

(a) An institution may use up to 25 percent of its CWS allocation and reallocation for an award year to pay the compensation of CWS students employed by a private for-profit organization.

(b) If a student is employed by a private, for-profit organization—

(1) The work that the student performs must be academically relevant to the student's educational program; and

(2) The private for-profit organization—

(i) Must provide the non-Federal share of the student's compensation; and

(ii) May not use any CWS funds to pay an employee who would otherwise by employed by that organization.

(Authority: 42 U.S.C. 2753)

§ 675.24 Establishment of wage rate under CWS.

(a) *Wage rates.* (1) Except as provided in paragraph (a)(3) of this section, an institution shall compute CWS compensation on an hourly wage basis for actual time on the job. An institution may not pay a student a salary, commission, or fee.

(2) An institution may not count fringe benefits as part of the wage rate.

(3) An institution may pay a graduate student it employs a salary or an hourly wage, in accordance with its usual practices.

(b) *Minimum wage rate.* The minimum wage rate for a student employee under the CWS program is the minimum wage rate required under section 6(a) of the Fair Labor Standards Act of 1938.

(Authority: 42 U.S.C. 2753)

§ 675.25 Earnings applied to cost of attendance.

(a)(1) The institution shall determine the amount of earnings from a CWS job to be applied to a student's cost of attendance (attributed earnings) by subtracting taxes and job related costs from the student's gross earnings.

(2) Job related costs are costs the student incurs because of his or her job. Examples are uniforms and transportation to and from work. Room and board during a vacation period may also be considered a job related cost if they would not otherwise be incurred except for the CWS employment.

(b) If a student is employed under CWS during a vacation or other period when he or she is not attending classes, the institution shall apply the attributed earnings (earnings minus taxes and job related costs) to the cost of attendance for the next period of enrollment.

(Authority: 42 U.S.C. 2753)

§ 675.26 CWS Federal share limitations.

(a)(1) Unless the Secretary approves a higher share under paragraph (d) of this section, the Federal share of CWS compensation paid to a student employed other than by a for-profit organization may not exceed—

(i) 80 percent for award years 1987–88 and 1988–89, 75 percent for award years 1989–90, and 70 percent for award year 1990–91 and subsequent award years; or

(ii) 90 percent under a community service learning program described in § 675.28 if the amount paid to students under the community service learning program does not exceed 10 percent of the institution's CWS allocation or reallocation for an award year.

(2) The Federal share of the compensation paid to a student employed by a for-profit organization may not exceed 60 percent for award years 1987–88 and 1988–89, 55 percent for award year 1980–90, and 50 percent for award year 1990–91 and subsequent award years.

(3) An institution may not use CWS funds to pay a student after he or she has, in addition to other resources, earned $200 or more over his or her financial need.

(b) The institution may not include the following when determining the Federal share:

(1) Fringe benefits such as paid sick days, paid vacations, or paid holidays.

(2) The employer's share of social security, workers' compensation, retirement, or any other welfare or insurance program that the employer must pay on account of the student employee.

(c) If an institution receives more money under an employment agreement from an off-campus employer than required employer costs, its not-Federal share, and any share of administrative costs that the employer agreed to pay, the excess funds must be—

(1) Used to reduce the Federal share on a dollar-for-dollar basis;

(2) Held in trust for off-campus student employment next year; or

(3) Refunded to the off-campus employer.

(d) For each award year, the Secretary authorizes a Federal share of 100 percent of the compensation earned by a student under this part if—

(1) The work performed by the student is for the institution itself, for a Federal, State or local public agency, or for a private nonprofit organizations; and

(2) The institution at which the student is enrolled—

(i) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR 607), the

Strengthening Historically Black Colleges and Universities program (34 CFR Part 608), or the Strengthening Historically Black Graduate Institutions program (34 CFR Part 609); and

(ii) Requests that increased Federal share as part of its regular CWS funding application for that year.

(Authority: 20 U.S.C. 1069a, 42 U.S.C. 2753)

§ 675.27 Nature and source of institutional share.

(a)(1) An institution may use any resource available to it, except funds allocated under the CWS program, to pay the institutional share of CWS compensation to its students. The institutional share may be paid in the form of services and equipment, e.g., tuition, room, board, and books.

(2) The institution shall document all amounts claimed as non-cash contributions.

(3) Non-cash compensation may not include forgiveness of a charge assessed solely because of a student's employment under the CWS program.

(b) An institution may not solicit or accept fees, commission, contributions, or gifts as a condition for CWS employment, nor permit any organization with which it has an employment agreement to do so.

(Authority: 42 U.S.C. 2753)

§ 675.28 Community service learning program.

(a) From its allocation under the CWS program, an institution may employ its students in a community service learning program designed to develop, improve or expand services for low-income individuals and families, or to solve particular programs related to the needs of low-income individuals.

(b) A community service learning program is a program of student work that—

(1) Provides tangible community services for or on behalf of low-income individuals; and

(2) Provides students with work-learning opportunities related to their educational or vocational programs or goals.

(c) As used in this section—

(1) A low-income individual is an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the proverty level detemined by using criteria of poverty established by the Bureau of the Census; and

(2) Community services—

(i) Are direct services, planning or applied research activities, designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems relating to the needs of low-income individuals; and

(ii) May include activities related to such fields as health care, education, welfare, social services, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development and community improvement.

(Authority: 42 U.S.C. 2756a)

Subpart B—Job Location and Development Programs

§ 675.31 Purpose.

(a) The purpose of the regular job location and development program is to expand off-campus job opportunities for students enrolled in eligible institutions of higher education who want jobs, regardless of their financial need.

(b) The purpose of the community services job location and development program is to locate and develop community services jobs for students qualifying as eligible students under § 675.9.

(Authority: 42 U.S.C. 2756)

§ 675.32 Program description.

(a) *Regular job location and development program.* An institution may expend up to the lesser of $30,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs for currently enrolled students.

(b) *Community services job location and development program.* (1) An institution may expend up to the lesser of $20,000 or 10 percent of its CWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions and through consultation with local nonprofit, governmental, educational, and community-based organizations, locates and develops community services jobs for students qualifying as eligible students under § 675.9.

(2) As used in this subpart, the term "community services" means services that—

(i) Are identified by the institution through formal or informal consultation with local nonprofit, governmental and community-based organizations; and

(ii) Are designed to—

(A) Improve the quality of life for community residents, particularly low-income individuals; or

(B) Solve particular problems related to the needs of the community residents including, but not limited to, such fields as health care, child care, literacy training, education (including tutorial services), housing and neighborhood improvement, rural development, and community improvement.

(Authority: 42 U.S.C. 2756)

§ 675.33 Allowable costs.

(a)(1) *Allowable and unallowable costs.* Except as provided in paragraph (a)(2) of this section, costs reasonably related to carrying out the programs described in § 675.32 are allowable.

(2) Costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs are not allowable.

(b) *Federal share of allowable costs.* An institution may use CWS funds, as provided in § 675.32, to pay up to 80 percent of allowable costs.

(c) *Institutional share of allowable costs.* An institution's share of allowable costs may be in cash or in the form of services. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756)

§ 675.34 Multi-Institutional job location and development programs, or arrangements with nonprofit organizations.

(a) An institution participating in the CWS program may enter into a written agreement to establish and operate job location programs for its students with—

(1) Other participating institutions; or

(2) A nonprofit organization. The nonprofit organization must have professional direction and staff.

(b) The agreement described in paragraph (a) of this section must—

(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions or with a nonprofit organization.

(Authority: 42 U.S.C. 2756)

§ 675.35 Agreement.

(a) A CWS participating institution, to establish or expand these programs, shall enter into an agreement with the Secretary.

(b) The agreement must provide—

(1) That the institution will administer the programs accordance with the HEA and the provisions of this part;

(2) That the institution will submit to the Secretary an annual report on the use of the funds and an evaluation of the effectiveness of the programs in benefiting the institution's students; and

(3) Satisfactory assurances that—

(i) The institution will not use program funds to locate and develop jobs at the institution under the regular job location and development program described in § 675.32(a);

(ii) The institution will use program funds to locate and develop jobs for students during and between periods of attendance at the institution, not upon graduation;

(iii) The program will not displace employees or impair existing service contracts;

(iv) Program funds can realistically be expected to generate total student wages exceeding the total amount of the Federal funds spent under this subpart; and

(v) If the institution uses Federal funds to contract with another organization, suitable performance standards will be part of that contract.

(Authority: 42 U.S.C. 2756)

§ 675.36 Procedures and records.

Procedures and records concerning the administration of a JLD project established and operated under this subpart are governed by applicable provisions of § 675.19.

(Authority: 42 U.S.C. 2756a)

§ 675.37 Termination and suspension.

(a) If the Secretary terminates or suspends an institution's eligibility to participate in the CWS program, the action also applies to the institution's job location and development programs.

(b) The Secretary pays an institution's financial obligations incurred and allowable before the termination but not incurred—

(1) During a suspension; or

(2) In anticipation of a suspension.

(c) However, the institution must cancel as many outstanding obligations as possible.

(Authority: 42 U.S.C. 2756a)

Appendix A—[Reserved]

Appendix B—Model Off-Campus Agreement

(The paragraphs below are suggested as models for the development of a written agreement between an institution of higher education and a Federal, State, or local public agency or private nonprofit organization which employs students participating in the College Work-Study program. Institutions and agencies or organizations may devise additional or substitute paragraphs which are not inconsistent with the statute or regulations.)

This agreement is entered into between ————————, hereinafter known as the "Institution," and ————————, hereinafter known as the "Organization," a (Federal, State, or local public agency), (private nonprofit organization), (strike one), for the purpose of providing work to students eligible for the College Work-Study program (CWS).

Schedules to be attached to this agreement from time to time must be signed by an authorized official of the institution and the organization and must set forth—

(1) brief descriptions of the work to be performed by students under this agreement;

(2) the total number of students to be employed;

(3) the hourly rates of pay, and

(4) the average number of hours per week each student will be used.

These schedules will also state the total length of time the project is expected to run, the total percent, if any, of student compensation that the organization will pay to the institution, and the total percent, if any, of the cost of employers' payroll contribution to be borne by the organization. The institution will inform the organization of the maximum number of hours per week a student may work.

Students will be made available to the organization by the institution to perform specific work assignments. Students may be removed from work on a particular assignment or from the organization by the institution, either on its own initiative or at the request of the organization. The organization agrees that no student will be denied work or subjected to different treatment under this agreement on the grounds of race, color, national origin, or sex. It further agrees that it will comply with the provisions of the Civil Rights Act of 1964 (Pub. L. 88–352; 78 Stat. 252) and Title IX of the Education Amendments of 1972 (Pub. L. 92–318) and the Regulations of the Department of Education which implement those Acts.

(Where appropriate any of the following three paragraphs or other provisions may be included.)

(1) Transportation for students to and from their work assignments will be provided by the organization at its own expense and in a manner acceptable to the institution.

(2) Transportation for students to and from their work assignments will be provided by the institution at its own expense.

(3) Transportation for students to and from their work assignments will not be provided by either the institution or the organization.

(Whether the institution or the organization will be considered the employer of the students covered under the agreement depends upon the specific arrangement as to the type of supervision exercised by the organization. It is advisable to include some provision to indicate the intent of the parties as to who is considered the employer. As appropriate, one of the following two paragraphs may be included.) [1]

(1) The institution is considered the employer for purposes of this agreement. It has the ultimate right to control and direct the services of the students for the organization. It also has the responsibility to determine whether the students meet the eligibility requirements for employment under the College Work-Study program, to assign students to work for the organization, and to determine that the students do perform their work in fact. The organization's right is limited to direction of the details and means by which the result is to be accomplished.

(2) The organization is considered the employer for purposes of this agreement. It has the right to control and direct the services of the students, not only as to the result to be accomplished, but also as to the means by which the result is to be accomplished. The insitution is limited to determining whether the students meet the eligibility requirements for employment under the College Work-Study program, to assigning students to work for the organization, and to determining that the students do perform their work in fact.

(Wording of the following nature may be included, as appropriate, to locate responsibility for payroll disbursements and payment of employers' payroll contributions.)

Compensation of students for work performed on a project under this agreement will be disbursed—and all payments due as an employer's contribution under State or local workers' compensation laws, under Federal or State social security laws, or under other applicable laws, will be made—by the (organization) (institution) (strike one).

(Where appropriate any of the following paragraphs may be included.)

(1) At times agreed upon in writing, the organization will pay to the institution an amount calculated to cover the organization's share of the compensation of students employed under this agreement.

(2) In addition to the payment specified in paragraph (1) above, at times agreed upon in writing, the organization will pay, by way of reimbursement to the institution, or in advance, an amount equal to any and all payments required to be made by the institution under State or local workers' compensation laws, or under Federal or State social security laws, or under any other applicable laws, on account of students participating in projects under this agreement.

(3) At times agreed upon in writing, the institution will pay to the organization an

[1] It should be noted that although the following paragraphs attempt to fix the identity of the employer, they will not necessarily be determinative if the actual facts indicate otherwise. Additional wording which specifies the employer's responsibility in case of injury on the job may also be advisable, since Federal funds are not available to pay for hospital expenses or claims in case of injury on the job. In this connection it may be of interest that one or more insurance firms in at least one State have in the past been willing to write a workers' compensation insurance policy which covers a student's injury on the job regardless of whether it is the institution or the organization which is ultimately determined to have been the student's employer when he or she was injured.

amount calculated to cover the Federal share of the compensation of students employed under this agreement and paid by the organization. Under this arrangement the organization will funish to the institution for each payroll period the following records for review and retention:

(a) Time reports indicating the total hours worked each week in clock time sequence and containing the supervisor's certification as to the accuracy of the hours reported;

(b) A payroll form identifying the period of work, the name of each student, each student's hourly wage rate, the number of hours each student worked, each student's gross pay, all deductions and net earnings, and the total Federal share applicable to each payroll; [2] and

(c) Documentary evidence that students received payment for their work, such as photographic copies of cancelled checks.

3. Part 676 of Title 34 of the Code of Federal Regulations is revised to read as follows:

PART 676—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Note: An asterisk (*) indicates provisions that are common to Parts 674, 675, and 676. The use of asterisks will assure participating institutions that a provision of one regulation is identical to the corresponding provisions in the other two.

Sec.

676.1 Purpose and identification of common provisions.
676.2 Definitions.
*676.3 Application.
676.4 Allocation and reallocation.
676.5—676.7 [Reserved]
676.8 Program participation agreement.
676.9 Student eligibility.
676.10 Selection of students for SEOG awards.
676.11—676.13 [Reserved]
676.14 Overaward.
*676.15 Coordination with BIA grants.
676.16 Payment of an SEOG.
676.17 Federal interest in allocated funds.
676.18 Use of funds.
676.19 Fiscal procedures and records.
676.20 Minimum and maximum SEOG awards.
676.21 SEOG Federal share limitations.

Authority: 20 U.S.C. 1070b—1070b–3, unless otherwise noted.

§ 676.1 Purpose and identification of common provisions.

(a) The Supplemental Educational Opportunity Grant (SEOG) Program awards grants to financially needy students attending institutions of higher education to help them pay their educational costs.

*(b) Provisions in these regulations that are common to all campus-based programs are identified with an asterisk.

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

§ 676.2 Definitions.

*(a) Subpart A of the Student Assistance General Provisions regulations, 34 CFR Part 668, sets forth definitions of the following terms used in this part:

Academic year
Award year
Clock hour
College Work-Study (CWS) Program
Enrolled
Guaranteed Student Loan (GSL) Program
HEA
Income Contingent Loan Program
Pell Grant Program
Perkins Loan Program
PLUS Program
Secretary
SLS Program

(b) The Secretary defines other terms used in this part as follows:

**Expected family contribution (EFC):* The amount a student and his or her spouse and family are expected to pay toward the student's cost of attendance.

**Financial need:* The difference between a student's cost of attendance and his or her EFC.

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

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

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

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

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

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

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

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

**Institution of higher education (institution):* A public or private nonprofit institution of higher education, a proprietary institution of higher education, or a postsecondary vocational institution.

**Payment period:* A semester, trimester, or quarter. For 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 an academic year.

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

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

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

(Authority: 20 U.S.C. 1087aa–1087ii)

*§ 676.3 Application.

(a) To participate in the SEOG program, an institution shall file an application with the Secretary before an annually established closing date.

(b) The application must be on a form approved by the Secretary and contain the information needed by the Secretary to determine the institution's allocation of reallocation of the SEOG program funds under section 413D of the HEA.

(Authority: 20 U.S.C. 1070b–3)

§ 676.4 Allocation and reallocation.

(a) The Secretary allocates and reallocates funds to institutions participating in the Supplemental Educational Opportunity Grant program in accordance with section 413D of the HEA.

(b) As used in section 413D of the HEA, "Eligible institutions offering comparable programs of instruction" means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

(1) Cosmetology.
(2) Business.
(3) Trade/Technical.
(4) Art Schools.
(5) Other Proprietary Institutions.
(6) Non-Proprietary Institutions.

[2] These forms, when accepted, must be countersigned by the institution as to hours worked as well as to the accuracy of the total Federal share which is to be reimbursed to the organization or agency.

(c) *Payment to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments and may make these payments in advance or by way of reimbursement. The Secretary bases the amounts of these installments on periodic fiscal reports.

(d) *Authority to expend funds.* An institution shall not use funds allocated or reallocated for an award year—

(1) To make SEOG disbursements to students in any subsequent award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b–3)

§§ 676.5—676.7 [Reserved]

§ 676.8 Program participation agreement.

To participate in the SEOG program, an institution shall enter into a participation agreement with the Secretary. The participation agreement provides, among other things, that the institution shall—

(a) Use the funds it receives solely for the purposes specified in this part; and

(b) Administer the SEOG program in accordance with the HEA, the provisions of this part, and the Student Assistance General Provisions regulations, 34 CFR Part 668.

(Authority: 20 U.S.C. 1070b *et seq.*, and 1094)

§ 676.9 Student eligibility.

A student at an institution of higher education is eligible to receive an SEOG for an award year if the student—

(a) Meets the relevant eligibility requirements contained in 34 CFR 668.7;

(b) Is enrolled or accepted for enrollment as an undergraduate student at the institution; and

(c) Has financial need as determined in accordance with Part F of Title IV of the HEA. A member of a religious order (an order, community, society, agency, or organization) who is pursuing a course of study at an institution of higher education is considered to have no financial need if that religious order—

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

(2) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(3) Directs the member to pursue the course of study or provides subsistence support to its members.

(Authority: 20 U.S.C. 1070b–1, 1070b–2 and 1091)

§ 676.10 Selection of students for SEOG awards.

(a)(1) In selecting among eligible students for SEOG awards in each award year, an institution shall select those students with the lowest expected family contributions who will also receive Pell Grants in that year.

(2) If the institution has SEOG funds remaining after giving SEOG awards to all the Pell Grant recipients at the institution, the institution shall award the remaining SEOG funds to those eligible students with the lowest expected family contributions who will not receive Pell Grants.

(b) If an institution's allocation of SEOG funds is directly or indirectly based on the financial need demonstrated by students attending the institution as less than full-time students, the institution shall, consistent with the requirements of paragrah (a) of this section, award a reasonable proportion of its allocation to those students.

(Authority: 20 U.S.C. 1070b–2)

§ 676.11–676.13 [Reserved]

***§ 676.14 Overaward.**

(a) *Overaward prohibited.* *(1) An institution may award or disburse an SEOG to a student if the SEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) When awarding and disbursing an SEOG to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards SEOG funds to the student;

(ii) Makes available to its students; or

(iii) Knows about.

(3)(i) If a student receives additional resources before the institution disburses the SEOG, and the total resources including the SEOG exceed the student's need, and the excess is not from employment, the overaward is the amount that exceeds need.

*(ii) If a student receives additional resources after the institution disburses the SEOG, and the total resources including the SEOG exceed the student's need by $200 or more, and the excess is not from employment, the overaward is the amount that exceeds $199.

*(4) If a student earns more from employment than the institution anticipated or could have reasonably anticipated when it awarded or disbursed the SEOG, the institution shall treat the earnings in accordance with paragraph (d) of this section.

*(b) *Resources.* (1) The Secretary considers that "resources" include but are not limited to any—

(i) Funds the student is entitled to receive from a Pell Grant, regardless of whether the student applies for the Pell Grant;

(ii) Guaranteed Student Loans;

(iii) Waiver of tuition and fees;

(iv) Grants, including SEOGs and ROTC subsistence allowances;

(v) Scholarships, including athletic scholarships and ROTC scholarships;

(vi) Fellowship or assistantship;

(vii) Insurance programs for the student's education;

(viii) Veterans benefits;

(ix) Net earnings from employment other than CWS employment for the period of the award except as provided in 34 CFR 675.25; and

(x) Except as provided in paragraph (b)(3) of this section, long-term loans, including Perkins and Direct Loans and need-based ICLs, made by the institution.

(2) The Secretary does not consider as a resource any portion of the resources described in paragraph (b)(1) of this section that are included in the student's EFC.

(3) The student may use Supplemental Loans for Students (SLS), State-sponsored or private loans, PLUS loans, or non-need-based ICLs to substitute for his or her expected family contribution. However, if the sum of loan amounts received exceeds the student's expected family contribution, the excess is a resource.

(c) *Liability for and recovery of overpayments.* (1) The student is liable for any SEOG overpayment made to him or her.

(2) The institution is also liable for an overpayment if the overpayment occurred because it failed to follow the procedures set forth in this Part. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its SEOG account even if it cannot collect the overpayment from the student.

(3) If an institution makes an overpayment for which it is not liable, it shall help the Secretary recover the overpayment by making a reasonable effort to contact the student and recover the overpayment.

The Secretary regards a written demand to the student for repayment of the overawarded funds, with notice that failure to make that repayment will render student ineligible for further Title IV aid, to constitute such a reasonable effort.

*(d) *Treatment of earnings in excess of need.* An institution shall take the following steps when it learns that a student has earned, or will earn, an

amount that when combined with other resources is $200 or more over his or her financial need:

(1) The institution shall decide whether the student has increased financial need unanticipated when it awarded financial aid to the student. If the student does, and the student's earnings plus other resources do not exceed this increased need by $200 or more, no further action is necessary.

(2) If the student's earnings plus other resources still exceed need by $200 or more after the institution subtracts any additional costs, it shall cancel any unpaid loan or grant (other than Pell Grants) to avoid exceeding need by more than $199.

(3) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes the steps required in the two preceding subparagraphs, and the student is enrolled for the next academic year, the institution shall consider the amount that exceeds $199 as a resource to help pay the student's cost of attendance in the following year.

(4) If the student's earnings plus other resources still exceed his or her need by $200 or more after the institution takes steps required in subparagraphs (1) and (2) of this paragraph, and the student is not enrolled for the next academic year, no further action is necessary.

(Authority: 20 U.S.C. 107b–1)

***§ 676.15 Coordination with BIA grants.**

(a) To determine the amount of an SEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with package prepared for students in similar circumstances who are not eligible for BIA education grant.

(b)(1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements that package.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c)(1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted and may be deducted from the other assistance, not the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Pell Grants. However, the institution may change the sequence if requested by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a BIA-eligible student, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b–1).

§ 676.16 Payment of an SEOG.

(a)(1) Except as provided in paragraphs (b) and (e) of this section, an institution shall pay in each payment period a portion of an SEOG awarded for a full academic year.

(2) The institution shall determine the amount paid each payment period by the following fraction:

$$\frac{\text{SEOG}}{\text{N}}$$

Where:

SEOG = the total SEOG awarded for an academic year and N = the number of payment periods that the institution expects the student will attend in that year.

(3) An institution may pay the student, within each payment period, at such times and in such amounts as it determines best meets the student's needs.

(b) If a student incurs uneven cost or resources during an academic year and needs additional funds in a particular payment period, the institution may pay SEOG funds to the student for those uneven costs.

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

(d)(1) An institution may not pay an SEOG to student for a payment period until the student registers for that period.

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

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

(e)(1) The institution shall return to the SEOG account any funds paid to a student who, before the first day of classes—

(i) Officially or unofficially withdraws; or

(ii) Is expelled.

(2) A student who does not begin class attendance is deemed to have withdrawn.

(f) Only one payment is necessary if the total amount the institution awards a student for an academic year under the SEOG and NDSL program is less than $501.

(g) A correspondence student shall submit his or her first completed lesson before receiving an SEOG payment.

(Authority: 20 U.S.C. 1070b. 1091)

***§ 676.17 Federal interest in allocated funds.**

Except for funds received for the administrative cost allowance (see § 676.18(b)), funds received by an institution under the SEOG program are held in trust for the intended student beneficiaries and the Secretary. Funds may not be used or hypothecated (i.e., serve as collateral) for any other purpose.

(Authority: 20 U.S.C. 1070b–1070b–3)

§ 676.18 Use of funds.

(a) *General.* An institution may use its SEOG allocation and reallocation only for—

(1) Making grants to eligible students;

(2) Carrying out the administrative activities described in paragraph (b)(4) of this section; and

(3) Transferring a portion of its SEOG allocation to its CWS allocation as described in paragraph (c) of this section.

(b) *Administrative cost allowance.* (1) An institution participating in the SEOG program is entitled to an administrative cost allowance for an award year if it awards grants to students in that year.

(2) For any award year, the amount of the allowance equals—

(i) Five (5) percent of the first $2,750,000 of the institution's expenditures in that award year under the CWS, SEOG, and Perkins Loan programs; plus

(ii) four (4) percent of its expenditures which are greater than $2,750,000 but less than $5,500,000; plus

(iii) Three (3) percent of its expenditures which are in excess of $5,500,000.

(3) However, the institution may not include, in calculating this allowance in paragraph (b)(1) of this section, the institution's CWS expenditures under the community service learning program (34 CFR 675.25) and the amount of loans made under the Perkins Loan Program that it assigns to the Secretary under section 463(a)(6) of the HEA.

(4) An institution shall use its administrative cost allowance to offset its costs of administering the Pell Grant,

CWS, SEOG, and Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR 668.

(c) *Transfer of funds to CWS.* (1) An institution may transfer up to 10 percent of the sum of its SEOG allocation for an award year to its CWS program.

(2) An institution shall use transferred funds according to the requirements of the program to which they were transferred.

(3) An institution shall report any transferred funds on the Fiscal Operations Report required under § 676.19.

(4) An institution shall transfer back to the CWS program any funds unexpended at the end of the award year that it transferred to the SEOG program from the CWS program.

(Authority: 20 U.S.C. 1070b *et seq.*, 1095 and 1096)

§ 676.19 Fiscal procedures and records.

(a) *Fiscal Procedures.* (1) In administering its SEOG program, an institution shall establish and maintain an internal control system of checks and balances that insures that no office can both authorize payments and disburse funds to students.

(2)(i) Except as provided in paragraph (a)(2)(ii) of this section, a separate bank account for SEOG funds is not required. However, an institution shall notify any bank in which it deposits Federal funds of the accounts in which those funds are deposited by—

(A) Including in the name of the account the fact that Federal funds are desposited; or

(B) Notifying the bank in writing of the accounts in which it deposits Federal funds. The institution shall retain a copy of this notice in its files.

(ii) If the Secretary determines that adequate accounting records are not maintained, the institution shall keep SEOG funds in a separate bank account.

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

(2) The institution shall also establish and maintain program and fiscal records that—

(i) Are reconciled at least monthly;

(ii) Identify each student's account and status;

(iii) Show the eligibility of each student aided under the program; and

(iv) Show how the need was met for each student.

(3) The institution shall maintain on file all SEOG applications for those students it reports on the Fiscal Operations Report and Application to Participate in the Perkins Loan, SEOG, and CWS Programs (FISAP).

(4) The institution shall maintain all records supporting its application for funds under this part.

(5) Each year an institution shall submit a Fiscal Operation Report plus other information the Secretary requires. The institution shall insure that the information reported is accurate and shall submit it on the form and at the time specified by the Secretary.

(c) *Retention of records.*—(1) *Records.* Each institution shall keep intact and accessible records of the application, the receipt, and the expenditure of Federal funds, including all accounting records and original and supporting documents necessary to document how the funds are spent.

* (2) *Period of retention.* Except for audit questions, an institution shall keep records for an award year for five years after it submits its FISAP for that year.

* (3)(i) An institution may keep the records required in this section on microforms or it may keep its records in computer format.

(ii) If the institution keeps its records in computer format it shall maintain, in either hard copy or microforms, the source documents supporting the computer input.

(4) *Audit questions.* An institution shall keep records on any claim or expenditure questioned by Federal audit or program review until any audit questions are resolved.

(Authority: 20 U.S.C. 1070b, 1094, and 1232f)

§ 676.20 Minimum and maximum SEOG awards.

(a) An institution may award an SEOG for an academic year in an amount it determines a student needs to

continue his or her studies. However, an SEOG may not be awarded for a full academic year that is—

(1) Less than $100; or

(2) More than $4,000.

(b) For a student enrolled for less than a full academic year, the minimum allowable SEOG may be proportionately reduced.

(Authority: 20 U.S.C. 1070, 1070b–1)

§ 676.21 SEOG Federal share limitations.

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

(1) For award years 1987–88 and 1988–89, the Federal share of SEOGs awarded to students by an institution equals 100 percent of the amount of the SEOG awards made by that institution;

(2) For award year 1989–90, the Federal share of SEOG awards made by an institution may not exceed 95 percent of the amount of those awards;

(3) For award year 1990–91, the Federal share of SEOG awards made by an institution may not exceed 90 percent of the amount of those awards; and

(4) For award year 1991–1992 and subsequent award years, the Federal share of SEOG awards made by an institution may not exceed 85 percent of the amount of those awards.

(b) Beginning with the 1989–90 award year, the Secretary authorizes, for each award year, a Federal share of 100 percent of the SEOGs awarded to students by an institution that—

(1) Is designated as an eligible institution under the Strengthening Institutions program (34 CFR Part 607) or the Strengthening Historically Black Colleges and Universities program (34 CFR Part 608); and

(2) Requests that increased Federal share as part of its regular SEOG funding application for that year.

(c) The non-Federal share of SEOG awards must be made from the institution's own resources, which include for this purpose—

(1) Institutional grants and scholarships;

(2) Tuition or fee waivers;

(3) State scholarships; and

(4) Foundation or other charitable organization funds.

(Authority: 20 U.S.C. 1070b–2 and 1069a)

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federal register

Tuesday
December 1, 1987

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons; Final Annual Funding Priority; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Postsecondary Education Program for Handicapped Persons

AGENCY: Department of Education.

ACTION: Notice of final annual funding priority.

SUMMARY: The Secretary announces an annual funding priority for the Postsecondary Education Program for Handicapped Persons-Demonstration Projects component. This priority will support projects that provide development or refinement of employment-related skills to youths with mild and moderate handicaps in community colleges, vocational-technical institutions, and other postsecondary educational settings.

EFFECTIVE DATE: This final annual funding priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this annual funding priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Rosenstein, Postsecondary Education Program for Handicapped Persons, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3096—M/S 2313), Washington, DC 20202. Telephone: (202) 732–1176.

SUPPLEMENTARY INFORMATION: The Postsecondary Education Program for Handicapped Persons is authorized by section 625 of Part C of the Education of the Handicapped Act (20 U.S.C. 1424a) to develop, operate, and disseminate specially designed or adapted model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities. Consideration is given, under a separate competition, to four regional centers serving individuals who are deaf. This notice concerns support for model projects for individuals with handicapping conditions other than deafness, for the purpose of developing and adapting educational programs that meet the special needs of these individuals. These projects are to coordinate, facilitate, and encourage education of persons with handicaps with their nonhandicapped peers. Under this program, The Secretary makes awards to State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies.

Summary of Comment and Response

A notice of proposed annual funding priority was published in the **Federal Register** on September 9, 1987 (52 FR 34104). The public was given thirty days in which to comment. One comment was received from a professional organization in response to the notice of proposed annual funding priority. The comment and the Department's response are summarized below:

Comment: The comment expresses concern that the priority may be too limiting in that it focuses solely "on short-term educational interventions".

Response: No change has been made. Longer-term educational interventions have been targeted in past years under this program, and models have been generated for two- and four-year programs. The focus suggested under the current priority encourages the field to propose specially-modified interventions that may better fit the needs of the targeted population.

Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary will give an absolute preference to applications submitted under this priority for model projects of supportive services to individuals with mild or moderate handicapping conditions other than deafness that (1) focus on specially adapted or designed educational programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers, and (2) are targeted to vocational outcomes for youth who have recently completed or left secondary educational programs. Applicants must develop strategies for locating and serving young adults with handicaps who are in need of continued educational services to secure and maintain competitive employment. Applicants must establish or make use of existing formal cooperative relationships between secondary schools and potential employers, and must assure that these young adults will have individualized educational plans that detail the goals and objectives for obtaining the skills requisite for employment. Job placements and follow-along activities are expected as basic components of proposed activities. This priority is focused on short-term educational interventions necessary to assist youth to secure competitive employment. In addition to entry-level employment, interventions may include training in aspects of adjustment to the community as well as to the workplace. Applications for multi-year awards will have graduates entering the work force; these applications may reflect follow-up and follow-along data from worker-graduates in their evaluation plans.

Program Authority: 20 U.S. 1424a.

Dated: November 16, 1987.

(Catalog of Federal Domestic Assistance No. 84.078: Postsecondary Educational Programs for Handicapped Persons)

William J. Bennett,

Secretary of Education.

[FR Doc. 87–27500 Filed 11–30–87; 8:45 am]

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