

FIGURE 3 - SHORING AND SHIELDING OPTIONS

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Section 1 - General Information

Section 2 - Description of the Property

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# REGISTER

Tuesday  
October 31, 1989

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## Part III

### Department of Education

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34 CFR Part 668  
Student Assistance General Provisions;  
Notice of Proposed Rulemaking

## DEPARTMENT OF EDUCATION

## 34 CFR Part 668

RIN 1840-AB07

## Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

**SUMMARY:** The Secretary proposes to amend the verification regulations contained in Subpart E of the Student Assistance General Provisions Regulations, 34 CFR Part 668, to conform them to certain new provisions in the Tax Reform Act of 1986 (Pub. L. 99-514), the Higher Education Amendments of 1986 (Pub. L. 99-498), the Higher Education Technical Amendments Act of 1987 (Pub. L. 100-50), Public Law 100-369, and the Compact of Free Association (Pub. L. 99-239), and to update data reporting requirements to reduce the administrative burden associated with verification requirements on applicants and schools. The verification regulations require institutions to have a system for verifying student aid application information reported by applicants for use in calculating expected family contributions (EFCs) for the Pell Grant, campus-based (Perkins Loan [National Defense/Direct Student Loan], College Work-Study (CWS), Supplemental Educational Opportunity Grant (SEOG)), need-based Income Contingent Loan (ICL), and Guaranteed Student Loan (GSL) programs.

**DATE:** Comments must be received on or before January 2, 1990.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Paula Husselmann, Chief, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW., [Regional Office Building 3, Room 4613] Washington, DC 20202. A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Lorraine Kennedy, Program Analyst, Telephone (202) 732-5579.

**SUPPLEMENTARY INFORMATION:** The Secretary is proposing these revised regulations to conform to certain new provisions in the Tax Reform Act of 1986, the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1986, the Higher Education Amendments of 1987, and

Public Law 100-369, and the Compact of Free Association. Each applicant's information, which is subject to the verification regulations, is used to calculate an EFC. The EFC is the amount that an applicant and the applicant's family can reasonably be expected to contribute toward the cost of attendance at an institution of higher education and is used to determine the applicant's financial need for assistance. The applicant's financial need is defined as the difference between the applicant's cost of attendance and the EFC. The applicant may receive assistance under most Title IV Higher Education Act programs upon demonstrating financial need for such assistance.

The Secretary proposes to amend Section 668.53(a)(3) to reduce burden placed on institutions to notify each applicant that completes the verification process of the results of verification. Instead, institutions would be required to notify verified applicants of the results of verification only if the applicant's expected family contribution and award or loan amount changes as a result of verification. An applicant's award letter may serve as this notification.

The Secretary proposes to amend § 668.54(a) to provide that an institution is not required to verify the information from more than 30 percent of its applicants for assistance under the Pell Grant, campus-based, need-based ICL, and GSL Programs in any award year. This proposed change is required by section 484(f) of the Higher Education Act of 1965, as amended.

Currently, the regulations give an institution the authority to require an applicant, selected for verification, to provide documentation to verify any data element it specifies. The Secretary proposes to amend § 668.54 and § 668.60 to require an applicant to provide the necessary documentation to verify any data element required by an institution or the Secretary.

Previously, citizens of the Trust Territory of the Pacific Islands were excluded from verification requirements, unless an institution had information conflicting with information reported by an applicant or otherwise had reason to believe information reported by an applicant to be incorrect. The Compact of Free Association (Pub. L. 99-239) conferred independent nation status on certain entities, formerly trust territories of the United States; these entities are now known as the Federated States of Micronesia and the Republic of the Marshall Islands. Therefore, the Secretary proposes to amend § 668.54 to update the references to these entities so that eligible Title IV aid applicants

from these entities continue to be excluded from verification requirements. In anticipation of the enactment of a similar compact to create the Republic of Palau, these provisions are prospectively extended to eligible students of that Republic.

Section 668.54(b)(2)(vii) currently provides that under certain conditions a student transferring from one institution to another may be excluded from verifying data at the second school. The Secretary requests comment on how to notify the second school that it is not required to verify the student's data. The purpose of this notification is to relieve burden and improve delivery of aid. The Secretary requests comments on the use of the Electronic Student Aid Report (ESAR) to achieve this goal.

Section 668.55 is being amended to simplify and clarify the updating requirements. Currently, applicants must update or verify information as to the number of household members and the number of household members enrolled in postsecondary institutions, except for changes in marital status.

Currently, the regulations require an applicant to update information as to dependency status, except for changes in marital status, throughout the year. Also, an applicant is not permitted to update dependency status on a GSL application, if the institution has previously certified that application. To simplify the regulations and to make the updating requirements more consistent, the Secretary proposes to eliminate the marital status exception and require all applicants to update dependency status, including applicants for whom a loan has been certified. In the proposed regulations, applicants would be required to update information as to their household size, number of family members enrolled in a postsecondary educational institution, and dependency status throughout the year regardless of the reason for a change in the applicant's dependency status, for all Title IV programs. Household size, number of family members enrolled in a postsecondary educational institution, and dependency status, under these proposed regulations, must be updated as a result of an actual change in an applicant's marital status and may not be updated or changed because of a projected change in marital status.

Title IV Quality Control Studies indicate that there is significant misreporting by applicants of the number of family members enrolled in postsecondary educational institutions. These errors have resulted in incorrect awards and loans to students. Therefore, the Secretary proposes to

amend § 668.56 to provide that an institution must require an applicant selected for verification to verify the number of family members enrolled in postsecondary educational institutions, even though there was no change from information verified in the previous award year.

Section 668.56(a)(5) (formerly § 668.56(a)(6)) would be amended to delete data elements, listed in the verification regulations, that are no longer considered untaxed income as a result of the Tax Reform Act of 1986. Untaxed income is income that is excluded from Federal taxation by provisions of the Internal Revenue Code.

For the purpose of Title IV student financial assistance, untaxed income is considered in the formula used to determine the EFC toward the costs of postsecondary education. Except for Social Security benefits and child support, the Secretary relies on the information applicants, their spouses, and their parents report on their Federal tax returns to verify the receipt of untaxed income that is subject to the verification requirements. The Secretary intends to maintain untaxed income verification requirements that are consistent with Federal income tax reporting requirements for untaxed income items listed on the Federal tax return, except for Social Security benefits and child support.

To avoid publishing new regulations each time Federal income tax reporting requirements for untaxed income change, the Secretary proposes to follow Federal income tax reporting requirements in determining elements of untaxed income subject to verification. The Secretary, in § 668.56(a)(5)(vii), would require verification of all elements of untaxed income listed on the tax return without the use of additional schedules or attachments, beginning with the 1990-91 award year. The Secretary would publish in the Federal Register a list of categories of untaxed income subject to verification whenever Internal Revenue Service reporting requirements for untaxed income change.

Because of recent changes in Federal tax reporting requirements, § 668.56(a)(5) would be amended to delete references to unemployment compensation, which is now fully taxable, and to delete references to the married couple deduction and dividend exclusion, which have been discontinued. Similarly, references to capital gains would be deleted since these are now treated as taxable income and therefore no longer require a separate verification requirement. This section would also be amended to

require interest on tax-free bonds to be verified as a part of untaxed income. Prior to 1987, taxpayers were not required to report interest on tax-free bonds on the 1040 and 1040A tax forms. The new IRS Forms 1040 and 1040A include these data as a line item.

Section 668.56(c) of the current Verification Regulations provides an exclusion for the verification of a dependent Pell applicant's base year income because, under the previous Student Aid Index (SAI) formula, estimated year earnings were often used to calculate the applicant's EFC, instead of base year adjusted gross income. The Higher Education Act of 1965, as amended, now requires the use of the dependent Pell applicant's base year income as a fixed data element in the current SAI formula used in calculating an applicant's EFC, unless the dependent student is classified as a dislocated worker by the appropriate State agency in accordance with Title III of the Job Training Partnership Act. Consequently, the Secretary is proposing to delete § 668.56(c) to, in effect, require verification of dependent student base year income. This change does not result in significant additional burden to financial aid administrators because dependent student base year income must already be verified beginning with the 1988-89 award year for the campus-based and Guaranteed Student Loan programs.

Public Law 100-369 requires income tax returns filed with the Commonwealth of Puerto Rico, the government of another U.S. territory or commonwealth, or the central government of a foreign country to be treated the same as U.S. income tax returns. Therefore, § 668.57 would be amended to consider an income tax return filed with a government of a U.S. territory or commonwealth, the Commonwealth of Puerto Rico, or a foreign government in the same manner as a U.S. income tax return.

Section 668.57(d), independent student status, would be deleted. The Higher Education Act requires that, for independent students within certain categories, no disbursement of an award may be made without documentation of independent student status. The Secretary has previously issued guidance on this subject in a "Dear Colleague Letter" and will not prescribe requirements to document independent student status in these regulations.

Section 668.59 is being amended to change the amount of the dollar tolerance option for the GSL and campus-based programs and also to delete one of the Pell Grant specific tolerance options: SAI Recalculation

Option. A tolerance option is a dollar error level allowed on an applicant's application for which the recalculation of an applicant's EFC or SAI will not be required.

A \$200 tolerance option would be proposed for all Title IV programs in place of the current \$200 Pell and \$800 GSL/campus-based programs tolerance options. It is appropriate to apply the tolerance previously used only for the Pell Grant Program to the campus-based, need-based ICL, and GSL programs because the Higher Education Act now provides a single formula for establishing need for campus-based and need-based ICL aid and Guaranteed Student Loans, similar to the formula for the Pell Grant Program. Previously, under the Uniform Methodology, allowable variances in calculating the EFC warranted a more liberal tolerance. Additionally, the use of a single tolerance amount will increase consistency among the Title IV programs. Therefore, the Secretary proposes to use the Pell Grant \$200 tolerance figure to make all Title IV programs consistent.

Because changes in the Pell Grant formula made the Zero SAI Charts too complex, reference to the Zero SAI Charts would be deleted. An institution may continue to process the application of any applicant with a reported SAI of zero on his or her SAR without submitting that SAR to the Secretary for recalculation, if the institution determines that the applicant's SAI remains at zero on the basis of the verified information.

Section 668.58 is being amended to specify that a CWS recipient may be employed for the first sixty (60) consecutive days of the award year, prior to verification being completed, provided the institution has no information indicating that the aid application is inaccurate.

Several other minor changes have been made to the verification regulations to reflect changes in verification requirements resulting from the Higher Education Amendments of 1986.

#### Executive Order 12291

These proposed 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.

#### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a

substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. The proposed regulations revise the verification items used to calculate an applicant's financial need. These changes are required by statutory amendments. There are several other minor changes in the regulations to update present policy.

#### Paperwork Reduction Act of 1980

Sections 668.53, 668.54, 668.55, 668.56, 668.57, and 668.59 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review.

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.

#### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4613, ROB-3, 7th and D Streets, SW., Washington, DC 20202, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

#### Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

#### List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—

education, Report and recordkeeping requirements, Student aid.

Dated: October 23, 1989.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend part 668 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 E of part 668 is revised to read as follows:

##### Subpart E—Verification of Student Aid Application Information

Sec.

- 668.51 General.
- 668.52 Definitions.
- 668.53 Policies and procedures.
- 668.54 Selection of applications for verification.
- 668.55 Updating information.
- 668.56 Items to be verified.
- 668.57 Acceptable documentation.
- 668.58 Interim disbursements.
- 668.59 Consequences of a change in application information.
- 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.
- 668.61 Recovery of funds.

##### Subpart E—Verification of Student Aid Application Information

###### § 668.51 General.

(a) *Scope and purpose.* The regulations in this subpart govern the verification by institutions of information submitted by applicants for student financial assistance in connection with the calculation of their expected family contributions (EFC) for the Pell Grant, campus-based, need-based Income Contingent Loan (ICL) and Guaranteed Student Loan (GSL) programs.

(b) *Applicant responsibility.* If the Secretary or the institution requests documents or information from an applicant under this subpart, the applicant shall provide the specified documents or information.

(c) *Institutional Quality Control Pilot Project.* (1) For the 1988–89, 1989–90, and 1990–91 award years, the Secretary exempts institutions selected to participate in the Institutional Quality Control Pilot Project from the requirements contained in the following sections:

- (i) Section 668.53(a) (1) through (4).
- (ii) Section 668.54(a) (2), (3), and (5).
- (iii) Section 668.56.

(iv) Section 668.57, except that an institution shall require an applicant that it has selected for verification to submit to it a copy of the income tax return, if filed, of the applicant, his or her spouse, and his or her parents, if the income reported on the income tax return was used in determining the expected family contribution.

(v) Section 668.60(a).

(2) For the purpose of this section, the Institutional Quality Control Pilot Project is an experiment under which a participating institution develops and implements a quality control system in connection with its administration of the title IV, HEA programs. Under such a quality control system, the institution must evaluate its current procedures for administering the title IV, HEA programs ("management assessment component"), identify the errors that result from its current procedures ("error measurement process component") and design corrections to its procedures that will enable it to eliminate or significantly reduce those errors ("corrective actions process component").

(d) *Foreign schools.* The Secretary exempts from the provisions of this subpart institutions participating in the GSL Program that are not located in a State.

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

###### § 668.52 Definitions.

The following definitions apply to this subpart:

"Base year" means the calendar year preceding the first calendar year of an award year.

"Edits" means a set of pre-established factors for identifying—

(a) Student aid applications that may contain incorrect, missing, illogical, or inconsistent information; and

(b) Randomly selected student aid applications.

"Expected family contribution (EFC)" means the amount an applicant and his or her spouse and family are expected to contribute toward the applicant's cost of attendance.

"Need analysis servicer" means an agency or organization who has had its system for determining EFCs under the campus-based, GSL and need-based ICL programs certified by the Secretary for the applicable award year.

"Student aid application" means an application submitted by a person to have his or her EFC determined under the Pell Grant, campus-based, need-based ICL, or GSL programs.

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

**§ 668.53 Policies and procedures.**

(a) An institution shall establish and use written policies and procedures for verifying information contained in a student aid application in accordance with the provisions of this subpart. These policies and procedures must include—

(1) The time period within which an applicant shall provide the documentation;

(2) The consequences of an applicant's failure to provide required documentation within the specified time period;

(3) The method by which the institution notifies an applicant of the results of verification if, as a result of verification, the applicant's EFC changes and results in a change in the applicant's award or loan;

(4) The procedures the institution requires an applicant to follow to correct application information determined to be in error; and

(5) The procedures for making referrals under § 668.14(g).

(b) The institution's procedures must provide that it furnish, in a timely manner, to each applicant selected for verification a clear explanation of—

(1) The documentation needed to satisfy the verification requirements; and

(2) The applicant's responsibilities with respect to the verification of application information, including the deadlines for completing any actions required under this subpart and the consequences of failing to complete any required action.

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

**§ 668.54 Selection of applications for verification.**

(a) *General requirements.* (1) Except as provided in paragraph (b) of this section, an institution shall require an applicant to verify application information as specified in this paragraph.

(2) An institution shall require each applicant whose application is selected for verification on the basis of edits specified by the Secretary, to verify all of the applicable items specified in § 668.56, except that no institution is required to verify the applications of more than thirty (30) percent of its applicants for assistance under the Pell Grant, campus-based, need-based ICL, and GSL Programs in an award year. The Secretary may enter into agreements with need analysis servicers under which the Secretary provides the edits to the servicer and the servicer, once certified by the Secretary, indicates to institutions the applications selected for verification.

(3) The institution shall require each applicant to verify the applicable items specified in § 668.56 (except that no eligible institution is required to verify more than thirty (30) percent of the applications submitted in any award year), if—

(i) The applicant is selected by the institution to receive an award under the campus-based programs or requests the institution to certify his or her application for a GSL or need-based ICL loan; and

(ii) The institution does not receive—  
(A) A Student Aid Report (SAR) for the applicant; or

(B) The output document generated on behalf of the applicant submitting an application to a certified need analysis servicer that has an agreement with the Secretary as described under paragraph (a)(2) of this section.

(4) If an institution has reason to believe that any information on an application used to calculate an EFC is inaccurate, it shall require that the applicant verify the information that it has reason to believe is inaccurate.

(5) If an applicant is selected to verify the information on his or her application under paragraph (a)(2) of this section, the institution shall require the applicant to verify the information as specified in § 668.56 on each additional application he or she submits for that award year, except for information already verified under a previous application submitted for the applicable award year.

(6) An institution or the Secretary may require an applicant to verify any data elements that the institution or the Secretary specifies.

(b) *Exclusions from verification.* (1)

An institution need not verify an application submitted for an award year if the applicant dies during the award year.

(2) Unless the institution has reason to believe that the information reported by the applicant may be incorrect, it need not verify applications of the following applicants:

(i) An applicant who is—

(A) A legal resident of and, in the case of a dependent student, whose parents are also legal residents of the Commonwealth of the Northern Mariana Islands, Guam, or American Samoa; or

(B) A citizen of and, in the case of a dependent student, whose parents are also citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau.

(ii) An applicant who is incarcerated at the time at which verification would occur.

(iii) An applicant who is a dependent student, whose parents are residing in a country other than the United States and

cannot be contacted by normal means of communication.

(iv) An applicant who is an immigrant and who arrived in the United States during either calendar year of the award year.

(v) An applicant who is a dependent student, both of whose parents are deceased or are physically or mentally incapacitated, or whose parents' address is unknown.

(vi) An applicant who does not receive assistance for reasons other than his or her failure to verify the information on the application.

(vii) An applicant who transfers to the institution, had previously completed the verification process at the institution from which he or she transferred, and applies for assistance on the same application used at the previous institution, if the current institution obtains—

(A) A letter from the previous institution stating that it has verified the applicant's information and, if relevant, the provision used in § 668.59 for not recalculating the applicant's EFC; and

(B) A copy of the verified application and, if the applicant applied for a Pell Grant, pages 1 and 3 of the applicant's SAR.

(3) An institution need not require an applicant to document spouse information or provide a spouse's signature if—

(i) The spouse is deceased;

(ii) The spouse is mentally or physically incapacitated;

(iii) The spouse is residing in a country other than the United States and cannot be contacted by normal means of communication; or

(iv) The spouse cannot be located because his or her address is unknown and cannot be obtained by the applicant.

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

**§ 668.55 Updating information.**

(a) (1) Unless the provisions of paragraph (a)(2) of this section apply, an applicant is required to update the information contained in his or her application for assistance in an award year to reflect the applicant's current circumstances regarding—

(i) The number of family members in the applicant's household and the number of those household members attending postsecondary educational institutions, in accordance with provisions of paragraph (b) of this section; and

(ii) His or her dependency status in accordance with the provisions of paragraph (d) of this section.

(2) An institution need not require an applicant to verify the information contained in his or her application for assistance in an award year if—

(i) The applicant previously submitted an application for assistance for that award year;

(ii) The applicant updated and verified the information contained in that application; and

(iii) No change in the information to be updated has taken place since the last update.

(b) If the number of family members in the applicant's household or the number of such household members attending postsecondary educational institutions changes—

(1) An applicant who is selected for verification shall update the information contained in his or her application regarding those factors so that the information is correct as of the day the applicant verifies the information; and

(2) An applicant for a Pell Grant who is not selected for verification shall update the information contained in his or her application regarding those factors and shall certify that the information is correct as of the day that the applicant submits his or her first SAR to the institution.

(c) If an applicant has received Pell Grant, campus-based, need-based ICL, or GSL program assistance for an award year, the applicant subsequently submits another application for assistance under any of those programs for that award year, and the applicant is required to update household size and number attending postsecondary educational institutions on the subsequent application, the institution—

(1) Is required to take that newly updated information into account when awarding for that award year further Pell Grant, campus-based, or need-based ICL program assistance or certifying a GSL loan application; and

(2) Is not required to adjust the Pell Grant, campus-based or need-based ICL program assistance previously awarded to the applicant for that award year, or any previously certified GSL loan application for that award year, to reflect the newly updated information unless the applicant would otherwise receive an overaward.

(d) If an applicant's dependency status changes after the applicant applies to have his or her EFC calculated for an award year, the applicant shall file a new application for that award year reflecting the applicant's new dependency status regardless of whether the applicant is selected for verification.

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

#### § 668.56 Items to be verified.

(a) Except as provided in paragraphs (b), (c), (d), and (e) of this section, an institution shall require an applicant selected for verification under § 668.54 (a) (1) or (2) to submit acceptable documentation described in § 668.57 that will verify or update the following information used to determine the applicant's EFC:

(1) Adjusted gross income (AGI) for the base year if base year data was used in determining eligibility, or income earned from work if a non-tax filer.

(2) U.S. income tax paid for the base year.

(3)(i) For an applicant who is a dependent student, the aggregate number of family members in the household or households of the applicant's parents if—

(A) The applicant's parent is single, divorced, separated or widowed and the aggregate number of family members is greater than two; or

(B) The applicant's parents are married and the aggregate number of family members is greater than three.

(ii) For an applicant who is an independent student, the number of family members in the household of the applicant if—

(A) The applicant is single, divorced, separated, or widowed and the number of family members is greater than one; or

(B) The applicant is married and the number of family members is greater than two.

(4) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions if that number is greater than one.

(5) The following untaxed income and benefits for the base year—

(i) Social security benefits if—

(A) Verification is required by a comment on the applicant's SAR; or

(B) The applicant does not receive an SAR and the institution has reason to believe that those benefits were received;

(ii) Child support if the institution has reason to believe that child support was received;

(iii) U.S. income tax deduction for a payment made to an individual retirement account (IRA) or Keogh account;

(iv) Interest on tax-free bonds;

(v) Foreign income excluded from U.S. income taxation if the institution has reason to believe that foreign income was received;

(vi) The earned income credit taken on the applicant's tax return.

(vii) All other untaxed income subject to U.S. income tax reporting

requirements in the base year which are included on the tax return form without the use of additional schedules or attachments.

(b) If an applicant selected for verification submits a SAR to the institution, or the institution receives an output document as described in § 668.54(a)(3)(ii)(B) within 90 days of the date the applicant signed his or her application, or if an applicant is selected for verification under § 668.54(a)(2), the institution need not require the applicant to verify—

(1) The number of family members in the household; or

(2) The number of family members in the household who are enrolled as at least half-time students in postsecondary educational institutions.

(c) If the number of family members in the household, the independent student status, or the amount of child support reported by an applicant selected for verification is the same as that verified by the institution in the previous award year, the institution need not require the applicant to verify that information.

(d) If the family members who are enrolled as at least half-time students in postsecondary educational institutions are enrolled at the same institution as the applicant, and the institution verifies their enrollment from its own records, the institution need not require the applicant to verify this information.

(e) If the applicant or the applicant's spouse, or in the case of a dependent student, the applicant's parents receive untaxed income or benefits from a Federal, State, or local government agency determining their eligibility for that income or benefits by means of a financial needs test, the institution need not require the untaxed income and benefits to be verified.

(Authority: 20 U.S.C. 1094, 1095)

#### § 668.57 Acceptable documentation.

(a) *Adjusted Gross Income (AGI) and U.S. income tax paid.* (1) Except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section, an institution shall require an applicant selected for verification to verify AGI and U.S. income tax paid by submitting to it, if relevant—

(i) A copy of the income tax return of the applicant, his or her spouse, and his or her parents. The copy of the return must be signed by the filer of the return or by one of the filers of a joint return;

(ii) For a dependent student, a copy of each Internal Revenue Service (IRS) Form W-2 received by the parent whose income is being taken into account if—

(A) The parents filed a joint return; and

(B) The parents are divorced or separated or one of the parents has died; and

(iii) For an independent student, a copy of each IRS Form W-2 he or she received if the independent student—

(A) Filed a joint return; and

(B) Is a widow or widower, or is divorced or separated.

(2) If an individual who filed a U.S. tax return and who is required by paragraph (a)(1) of this section to provide a copy of his or her tax return does not have a copy of that return, the institution may require that individual to submit, in lieu of a copy of the tax return, a copy of the "IRS Listing of Tax Account Information."

(3) An institution shall accept, in lieu of an income tax return or an IRS Listing of Tax Account Information of a relevant individual, the documentation set forth in paragraph (a)(4) of this section if the relevant individual for the base year—

(i) Has not filed and is not required to file an income tax return;

(ii) Is required to file a U.S. tax return and has been granted a filing extension by the IRS; or

(iii) Has requested a copy of the tax return or a Listing of Tax Account Information and the IRS or a government of a U.S. territory or commonwealth or a foreign central government cannot locate the return or provide a Listing of Tax Account Information.

(4) An institution shall accept—

(i) For an individual described in paragraph (a)(3)(i) of this section, a statement signed by that individual certifying that he or she has not filed nor is required to file an income tax return for the base year and certifying for that year that individual's—

(A) Sources of income earned from work as stated on the application; and

(B) Amounts of income from each source;

(ii) For an individual described in paragraph (a)(3)(ii) of this section—

(A) A copy of the IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for the base year, or a copy of the IRS's approval of an extension beyond the automatic four-month extension if the individual requested an additional extension of the filing time; and

(B) A copy of each IRS Form W-2 that the individual received for the base year, or for a self-employed individual, a statement signed by the individual certifying the amount of adjusted gross income for the base year; and

(iii) For an individual described in paragraph (a)(3)(iii) of this section—

(A) A copy of each IRS Form W-2 that the individual received for the base year; or

(B) For an individual who is self-employed or has filed an income tax return with a government of a U.S. territory or commonwealth, or a foreign central government, a statement signed by the individual certifying the amount of adjusted gross income for the base year.

(5) An institution shall require an individual described in paragraph (a)(3)(ii) of this section to provide to it a copy of his or her completed income tax return when filed. When an institution receives the copy of the return, it may re-verify the adjusted gross income and taxes paid by the applicant and his or her spouse or parents.

(6) If an individual who is required to submit an IRS Form W-2 under this paragraph is unable to obtain one in a timely manner, the institution may permit that individual to set forth, in a statement signed by the individual, the amount of income earned from work as stated on the application, the source of that income, and the reason that the IRS Form W-2 is not available in a timely manner.

(7) For the purpose of this section, an institution may accept in lieu of a copy of an income tax return signed by the filer of the return or one of the filers of a joint return, a copy of the filer's return that has been signed by the preparer of the return or stamped with the name and address of the preparer of the return.

(b) *Number of family members in household.* An institution shall require an applicant selected for verification to verify the number of family members in the household by submitting to it a statement signed by the applicant and the applicant's parent if the applicant is a dependent student, or the applicant and the applicant's spouse if the applicant is an independent student, listing the name and age of each family member in the household and the relationship of each household member to the applicant.

(c) *Number of family household members enrolled in postsecondary institutions.* (1) Unless the institution has reason to believe that the information included on the application regarding the number of household members in the applicant's family enrolled on at least half-time basis in postsecondary institutions is inaccurate, the institution shall require an applicant selected for verification to verify that information by submitting to it a statement signed by the applicant and

the applicant's parents if the applicant is a dependent student, or by the applicant and the applicant's spouse if the applicant is an independent student, listing—

(i) The name of each family member who is or will be attending a postsecondary educational institution as at least a half-time student in the award year;

(ii) The age of each student; and

(iii) The name of the institution attended by each student.

(2) If the institution has reason to believe that the information included on the application regarding the number of family household members enrolled in postsecondary institutions is inaccurate, the institution shall require—

(i) The statement required in paragraph (c)(1) of this section from the individuals described in paragraph (c)(1) of this section; and

(ii) A statement from each institution named by the applicant in response to the requirement of paragraph (c)(1)(iii) of this section that the household member in question is or will be attending the institution on at least a half-time basis, unless the institution the student is attending determines that such a statement is not available because the household member in question has not yet registered at the institution he or she plans to attend.

(d) *Untaxed income and benefits.* An institution shall require an applicant selected for verification to verify—

(1) Untaxed income and benefits described in § 668.56(a)(5) (iii), (iv), (v), and (vi) by submitting to it—

(i) A copy of the U.S. income tax return signed by the filer or one of the filers if a joint return, if collected under paragraph (a) of this section, or the IRS listing of tax account information if collected by the institution to verify adjusted gross income; or

(ii) If no tax return was filed or is required to be filed, a statement signed by the relevant individuals certifying that no tax return was filed or is required to be filed and providing the sources and amount of untaxed income and benefits specified in § 668.56(a)(5) (iii), (iv), (v), and (vi);

(2) Social security benefits—

(i) If an edit comment appears on the applicant's SAR indicating incorrect Social Security benefits, the applicant shall verify Social Security benefits, by submitting a document from the Social Security Administration showing the amount of benefits received in the appropriate calendar year by the applicant, applicant's parents, and any other children of the applicant's parents who are members of the applicant's

household, in the case of a dependent student, or by the applicant, the applicant's spouse, and the applicant's children in the case of an independent student; or

(ii) If the applicant does not receive an SAR and the institution has reason to believe that the applicant has incorrectly reported Social Security benefits received by the applicant or any individual described in paragraph (d)(2)(i), the applicant shall verify Social Security benefits by submitting either the document described in paragraph (d)(2)(i) or, at the institution's option, a statement signed by both the applicant and the applicant's parent in the case of a dependent student or by the applicant in the case of an independent student certifying that the amount listed on the applicant's aid application is correct; and

(3) Child support received by submitting to it—

(i) A written statement signed by the applicant and the applicant's parent in the case of a dependent student, or by the applicant and the applicant's spouse in the case of an independent student, certifying the amount of child support received; and

(ii) If the institution has reason to believe that the information provided is inaccurate, the applicant must verify the amount of child support received by providing a document such as—

(A) A copy of the separation agreement or divorce decree showing the amount of child support to be provided;

(B) A statement from the parent providing the child support showing the amount provided; or

(C) Copies of the child support checks or money order receipts.

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

#### § 668.58 Interim disbursements.

(a)(1) If an institution has reason to believe that the information included on the application is inaccurate, until the applicant verifies or corrects the information included on his or her application, the institution may not—

(i) Disburse any Pell Grant or campus-based program funds to the applicant;

(ii) Employ the applicant in its CWS Program; or

(iii) Certify the applicant's GSL application or process GSL proceeds for any previously certified GSL application.

(2) If an institution does not have reason to believe that the information included on an application is inaccurate prior to verification, the institution—

(i) May withhold payment of Pell Grant, campus-based, and need-based ICL funds; or

(ii)(A) May make one disbursement of any combination of Pell Grant, Perkins Loan, NDSL, SEOG or need-based ICL funds for the applicant's first payment period; and

(B) May employ or allow an employer to employ an eligible student under the CWS Program for the first sixty (60) consecutive days of the award year in any award year; and

(iii)(A) May withhold certification of the applicant's GSL application; or

(B) May certify the GSL application provided that the institution does not process GSL proceeds.

(b) If an institution chooses to make disbursement under paragraph (a)(2)(ii) (A) or (B) of this section, it is liable for any overpayment discovered as a result of the verification process.

(c) An institution may not withhold any GSL proceeds from a student under paragraph (a)(2) of this section for more than forty-five (45) days. If the applicant does not complete the verification process within the forty-five day period, the institution shall return the proceeds to the lender.

(d) (1) If the institution receives GSL proceeds in an amount which exceeds the student's need for the loan based upon the verified information and the excess funds can be eliminated by reducing subsequent disbursements for the applicable loan period, the institution shall process the proceeds and advise the lender to reduce the subsequent disbursements.

(2) If the institution receives GSL proceeds in an amount which exceed the student's need for the loan based upon the verified information and the excess funds cannot be eliminated in subsequent disbursements for the applicable loan period, the institution shall return the excess proceeds to the lender.

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

#### § 668.59 Consequences of a change in application information.

(a) Except as provided in paragraph (b) of this section, if the information on an application used to determine Pell Grant eligibility changes as a result of the verification process, the institution shall require the applicant to resubmit his or her SAR to the Secretary if—

(1) The institution recalculates the applicant's SAI (student aid index), determines that the applicant's EFC changes, and determines that the change in the EFC changes the applicant's Pell Grant award; or

(2) The institution does not recalculate the applicant's EFC.

(b) An institution need not require an applicant to resubmit his or her SAR to the Secretary, need not recalculate his

or her EFC, and need not adjust his or her Title IV award if, as a result of the verification process, the institution finds no errors in dollar items or finds errors reflecting a cumulative change in dollar items of \$200 or less.

(c) If the applicant has received funds based on information that may be incorrect and the institution has made a reasonable effort to resolve the alleged discrepancy, but cannot, the institution shall forward the applicant's name, Social Security number, and other relevant information to the Secretary.

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

#### § 668.60 Deadlines for submitting documentation and the consequences of failing to provide documentation.

(a) An institution shall require an applicant selected for verification to submit to it, within the period of time it or the Secretary specifies, the documents set forth in § 668.57 that are requested by the institution or the Secretary.

(b) For purposes of the campus-based, GSL and need-based ICL programs—

(1) If an applicant fails to provide the requested documentation within a reasonable time period established by the institution or by the Secretary—

(i) The institution may not—

(A) Disburse any additional Perkins Loan, NDSL, SEOG or need-based ICL funds to the applicant;

(B) Continue to employ or allow an employer to employ the applicant under CWS;

(C) Certify the applicant's GSL application; or

(D) Process GSL proceeds for the applicant;

(ii) The institution shall return to the lender any GSL proceeds payable to the applicant; and

(iii) The applicant shall repay to the institution any Perkins Loan, NDSL, or SEOG, or need-based ICL payments received for that award year;

(2) If the applicant provides the requested documentation after the time period established by the institution, the institution may, at its option, award aid to the applicant notwithstanding the guidelines listed in paragraph (b)(1)(i) of this section; and

(3) An institution may not withhold any GSL proceeds from a student under paragraph (b)(1)(i)(D) of this section for more than forty-five (45) days. If the applicant does not complete verification within the forty-five (45) day period, the institution shall return the GSL proceeds to the lender.

(c) For purposes of the Pell Grant Program—

(1) An applicant may submit a verified SAR to the institution after the applicable deadline specified in 34 CFR 690.61 but within an established additional time period set by the Secretary through publication of a notice in the *Federal Register*. If a verified SAR is submitted to the institution during the established additional time period, and the SAIs on the two SARs are different, payment must be based on the higher of the two SAIs.

(2) If the applicant does not provide the requested documentation, and if necessary, a reprocessed verified SAR, within the additional time period referenced in paragraph (c)(1) of this section, the applicant—

(i) Forfeits the Pell Grant for the award year; and

(ii) Shall return any Pell Grant payments previously received for that award year to the Secretary.

(d) The Secretary may determine not to process any subsequent Pell Grant application, and an institution, if directed by the Secretary, may not process any subsequent application for campus-based, need-based ICL or GSL program assistance of an applicant who has been requested to provide

information until the applicant provides the documentation or the Secretary decides that there is no longer a need for the documentation.

(e) If an applicant selected for verification for an award year dies before the deadline for completing the verification process without completing that process, and the deadline is in the subsequent award year, the institution may not—

(1) Make any further disbursements on behalf of that applicant;

(2) Certify that applicant's GSL loan application or process that applicant's GSL proceeds; or

(3) Consider any funds it disbursed to that applicant under § 668.58(a)(2) as an overpayment.

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

**§ 668.61 Recovery of funds.**

(a) If an institution discovers, as a result of the verification process, that an applicant received under

§ 668.58(a)(2)(ii)(A) more than he or she was eligible to receive, the institution shall eliminate the overpayment by—

(1) Adjusting subsequent financial aid payments in the award year in which the overpayment occurred; or

(2) Reimbursing the appropriate program account by—

(i) Requiring the applicant to return the overpayment to the institution if the institution cannot correct the overpayment under paragraph (a)(1) of this section; or

(ii) Making restitution from its own funds, if the applicant does not return the overpayment, by the earlier of the following dates:

(A) Sixty days after the applicant's last day of enrollment.

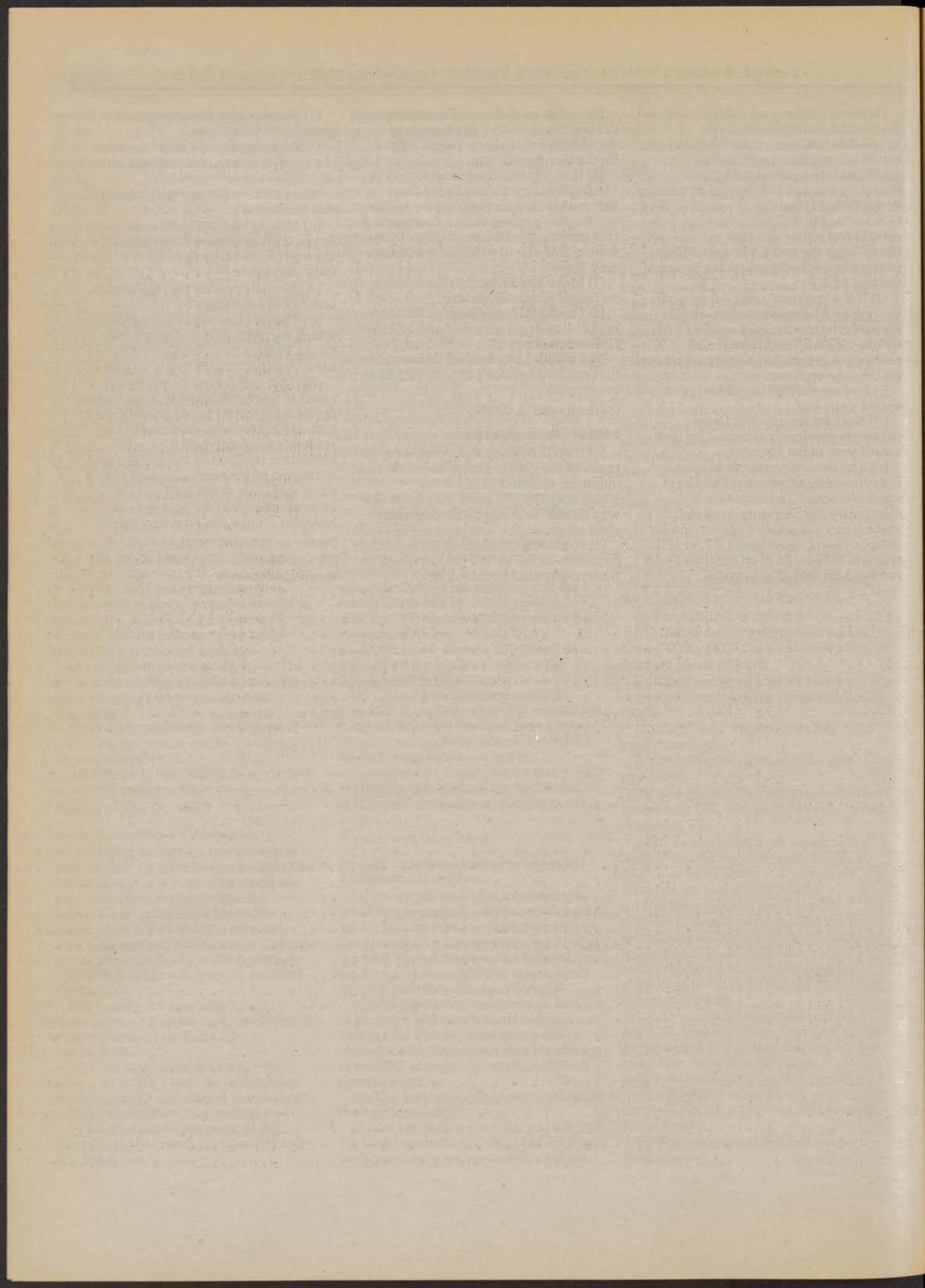
(B) The last day of the award year in which the institution disbursed Pell Grant, Perkins Loan, NDSL, SEOG or need-based ICL funds to the applicant.

(b) If the institution determines as a result of the verification process that an applicant received for an award year a GSL of \$200 or more in excess of the student's financial need for the loan, the institution shall notify the student and the lender of the excess amount within thirty (30) days of the institution's determination that the borrower is ineligible for the excess amounts.

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

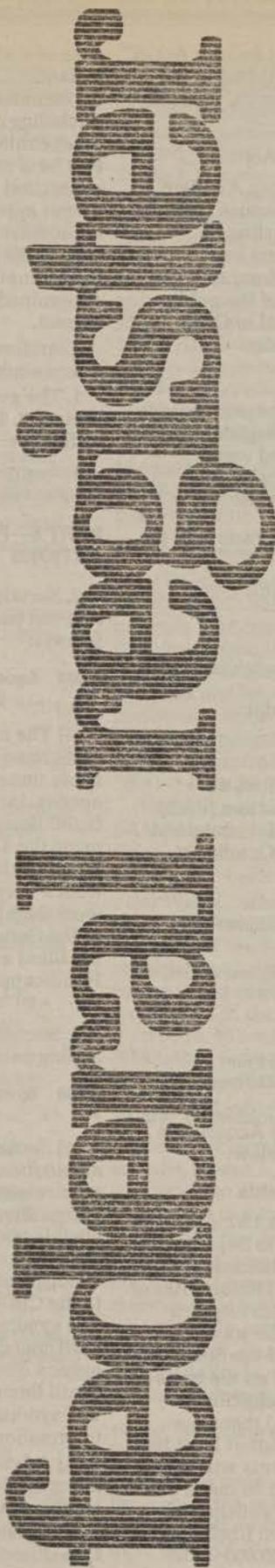
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Tuesday  
October 31, 1989



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**Part IV**

**Department of Defense  
General Services  
Administration  
National Aeronautics and  
Space Administration**

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**48 CFR Parts 5, 6, 19, and 52  
Federal Acquisition Regulation (FAR);  
Competitive Thresholds; Final Rule**

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Parts 5, 6, 19, and 52

[Federal Acquisition Circ. 84-52]

RIN AD 31

Federal Acquisition Regulation (FAR);  
Competitive Thresholds

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** Federal Acquisition Circular (FAC) 84-52 amends Federal Acquisition Regulation (FAR) Parts 5, 6, 19, and 52 to implement sections 303(b) and 303(d) of the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656.

**EFFECTIVE DATE:** November 30, 1989.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-52.

**SUPPLEMENTARY INFORMATION:****A. Background**

Section 303(b) of the Business Opportunity Development Reform Act of 1988 requires that acquisitions offered for award pursuant to section 8(a) of the Small Business Act be awarded on the basis of competition restricted to eligible program participants if (a) there is a reasonable expectation that at least two eligible program participants will submit offers and that award can be made at a fair market price, and (b) the anticipated award price of the contract (including options) will exceed \$5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and \$3,000,000 (including options) in the case of all other contract opportunities.

Section 303(d) amends the current appeal authority of the Small Business Administration to permit appeals as to whether a requirement should be offered to the section 8(a) Program and as to whether the estimated fair market price as determined by the contracting agency is correct.

**B. Regulatory Flexibility Act**

The requirements of the Act were addressed by the Small Business Administration in the development of its regulations implementing the Business

Opportunity Development Reform Act of 1988, Pub. L. 100-656, published in the Federal Register on August 21, 1989 (54 FR 34692).

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because this rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

**D. Public Comments**

On June 28, 1989, a proposed rule was published in the Federal Register (54 FR 27310). Comments received were considered by the Councils in the development of this final rule.

**List of Subjects in 48 CFR Parts 5, 6, 19,  
and 52**

Government procurement.

Dated: October 25, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

**Federal Acquisition Circular**

[Number 84-52]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-52 is effective October 31, 1989.

Richard H. Hopf III,

Associate Director for Acquisition Policy  
S.J. Evans,

Associate Administrator for Procurement,  
National Aeronautics and Space  
Administration.

Eleanor Spector,

Assistant Secretary of Defense for  
Procurement, Department of Defense.

Federal Acquisition Circular (FAC) 84-52 amends the Federal Acquisition Regulation as specified below:

**Item-Competitive Thresholds**

FAR parts 5, 6, subparts 19.2 and 19.8, and part 52 are amended to implement subsection 303(b) of the Business Opportunity Development Reform Act of 1988, Pub. L. 100-656, which requires that acquisitions offered for award pursuant to section 8(a) of the Small Business Act be awarded on the basis of competition restricted to eligible program participants if (a) there is a reasonable expectation that at least two eligible program participants will submit offers and that award can be made at a fair market price, and (b) anticipated award price of the contract (including options) will exceed \$5,000,000 in the

case of a contract opportunity assigned a standard industrial classification code for manufacturing and \$3,000,000 (including options) in the case of all other contract opportunities. In addition, Part 19 is revised to implement subsection 303(d) of Pub. L. 100-656 to permit appeals by SBA as to whether a requirement should be offered to the section 8(a) Program and as to whether the estimated fair market price as determined by the contracting agency is correct.

Therefore, 48 CFR Parts 5, 6, 19, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 5, 6, 19, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

**PART 5—PUBLICIZING CONTRACT  
ACTIONS**

2. Section 5.202 is amended by revising paragraph (a)(4) to read as follows:

**5.202 Exceptions.**

(a) \* \* \*

(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see 5.205(e)), or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

3. Section 5.205 is amended by adding paragraph (e) to read as follows:

**5.205 Special situations.**

(e) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under Supart 19.8, the contracting officer shall transmit a synopsis of the proposed contract action to the CBD in accordance with 5.207. The synopsis may be transmitted to the CDB concurrent with submission of the agency offering (see 19.804-2) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the Standard Industrial Classification (SIC) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental or transitional stage; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) Program.

**PART 6—COMPETITION REQUIREMENTS**

4. Section 6.204 is added to read as follows:

**6.204 Section 8(a) competition.**

(a) To fulfill statutory requirements relating to section 8(a) of the Small Business Act, as amended by Pub. L. 100-656, contracting officers may limit competition to eligible 8(a) contractors (see Subpart 19.8).

(b) No separate justification or determination and findings is required under this part to limit competition to eligible 8(a) contractors.

5. Section 6.302-5 is amended by revising paragraph (b)(4) to read as follows:

**6.302-5 Authorized or required by statute.**

(b) \* \* \*  
(4) Sole source awards under the 8(a) Program—15 U.S.C. 637 (see subpart 19.8).

\* \* \* \* \*

**PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS**

6. Section 19.202-6 is amended by revising paragraph (b) to read as follows:

**19.202-6 Determination of fair market price.**

\* \* \* \* \*

(b) For 8(a) contracts, both with respect to meeting the requirement at 19.806(b) and in order to accurately estimate the current fair market price, contracting officers shall follow the procedures at 19.807.

7. Subpart 19.8 is revised to read as follows:

**Subpart 19.8—Contracting With the Small Business Administration (The 8(a) Program)**

- Sec.
- 19.800 General.
- 19.801 Definitions.
- 19.802 Selecting concerns for the 8(a) Program.
- 19.803 Selecting acquisitions for the 8(a) Program.
- 19.804 Evaluation, offering, and acceptance.
- 19.804-1 Agency evaluation.

- Sec.
- 19.804-2 Agency offering.
- 19.804-3 SBA acceptance.
- 19.804-4 Repetitive acquisitions.
- 19.805 Competitive 8(a).
- 19.805-1 General.
- 19.805-2 Procedures.
- 19.806 Pricing the 8(a) contract.
- 19.807 Estimating the fair market price.
- 19.808 Contract negotiation.
- 19.808-1 Sole source.
- 19.808-2 Competitive.
- 19.809 Preaward considerations.
- 19.810 SBA appeals.
- 19.811 Preparing the contracts.
- 19.811-1 Sole source.
- 19.811-2 Competitive.
- 19.811-3 Contract clauses.
- 19.812 Contract administration.

**Subpart 19.8—Contracting With the Small Business Administration (the 8(a) Program)**

**19.800 General.**

(a) Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for program participation. The SBA's subcontractors are referred to as "8(a) contractors."

(b) Contracts may be awarded to the SBA for performance by eligible 8(a) firms on either a sole source or competitive basis.

(c) When, acting under the authority of the program, the SBA certifies to an agency that the SBA is competent and responsible to perform a specific contract, the contracting officer is authorized, in the contracting officer's discretion, to award the contract to the SBA based upon mutually agreeable terms and conditions.

**19.801 Definitions.**

*Local buy requirement*, as used in this subpart, means a supply or service purchased to meet the specific needs of one user in one location.

*National buy requirement*, as used in this subpart, means a supply or service purchased to meet the needs of one or more users in two or more locations where supply control, inventory management, or acquisition responsibility have been assigned to a central contracting activity.

**19.802 Selecting concerns for the 8(a) Program.**

Selecting concerns for the 8(a) Program is the responsibility of the SBA and is based on the criteria established in 13 CFR 124.101-113.

**19.803 Selecting acquisitions for the 8(a) Program.**

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) concerns to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways—

(a) The SBA advises an agency contracting activity through a search letter of an 8(a) firm's capabilities and asks the agency to identify acquisitions to support the firm's business plans. In these instances, the SBA will provide at least the following information in order to enable the agency to match an acquisition to the firm's capabilities.

(1) Identification of the concern and its owners.

(2) Background information on the concern, including any and all information pertaining to the concern's technical ability and capacity to perform.

(3) The firm's present production capacity and related facilities.

(4) The extent to which contracting assistance is needed in the present and the future, described in terms that will enable the agency to relate the concern's plans to present and future agency requirements.

(5) If construction is involved, the request shall also include the following:

(i) The concern's capabilities in and qualifications for accomplishing various categories of maintenance, repair, alteration, and construction work in specific categories such as mechanical, electrical, heating and air conditioning, demolition, building, painting, paving, earth work, waterfront work, and general construction work.

(ii) The concern's capacity in each construction category in terms of estimated dollar value (e.g., electrical, up to \$100,000).

(b) The SBA identifies a specific requirement for a particular 8(a) firm or firms and asks the agency contracting activity to offer the acquisition to the 8(a) Program for the firm(s). In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide—

(1) A clear identification of the acquisition sought; e.g., project name or number;

(2) A statement as to how any additional needed facilities will be provided in order to ensure that the firm will be fully capable of satisfying the agency's requirements;

(3) If construction, information as to the bonding capability of the firm(s); and

(4) Either—

(i) If sole source request—  
 (A) The reasons why the firm is considered suitable for this particular acquisition; e.g., previous contracts for the same or similar supply or service; and

(B) A statement that the firm is eligible in terms of SIC code, business support levels, and business activity targets; or,

(ii) If competitive, a statement that at least two 8(a) firms are considered capable of satisfying the agency's requirements and a statement that the firms are also eligible in terms of the SIC code, business support levels, and business activity targets. If requested by the contracting activity, SBA will identify at least two such firms and provide information concerning the firms' capabilities.

(c) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self marketing efforts of an 8(a) firm, identify a requirement for the 8(a) Program, they may offer on behalf of a specific 8(a) firm, for the 8(a) Program in general, or for 8(a) competition.

#### 19.804 Evaluation, offering, and acceptance.

##### 19.804-1 Agency evaluation.

In determining the extent to which a requirement should be offered in support of the 8(a) Program, the agency should evaluate—

(a) Its current and future plans to acquire the specific items or work that 8(a) contractors are seeking to provide, identified in terms of—

(1) Quantities required or the number of construction projects planned; and  
 (2) Performance or delivery requirements, including required monthly production rates, when applicable.

(b) Its current and future plans to acquire items or work similar in nature and complexity to that specified in the business plan;

(c) Problems encountered in previous acquisitions of the items or work from the 8(a) contractors and/or other contractors;

(d) The impact of any delay in delivery;

(e) Whether the items or work have previously been acquired using small business set-asides; and

(f) Any other pertinent information about known 8(a) contractors, the items, or the work. This includes any information concerning the firms' capabilities. When necessary, the contracting agency shall make an

independent review of the factors in 19.803(a) and other aspects of the firms' capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) Program.

##### 19.804-2 Agency offering.

(a) After completing its evaluation, the agency shall notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work. The notification must identify the timeframes within which prime contract and subcontract actions must be completed in order for the agency to meet its responsibilities. The notification must also contain the following information applicable to each prospective contract:

(1) A description of the work to be performed or items to be delivered, and a copy of the statement of work, if available.

(2) The estimated period of performance.

(3) The SIC code that applies to the principal nature of the acquisition.

(4) The anticipated dollar value of the requirement, including options, if any.

(5) Any special restrictions or geographical limitations on the requirement (for construction and services include the location of the work to be performed).

(6) Any special capabilities or disciplines needed for contract performance.

(7) The type of contract anticipated.

(8) The acquisition history, if any, of the requirement, including the names and addresses of any small business contractors which have performed this requirement during the previous 24 months.

(9) A statement that no solicitation for this specific acquisition has been issued as a small business set-aside or a small disadvantaged business set-aside, and that no other public communication (such as a notice in the Commerce Business Daily) has been made evidencing the contracting agency's clear intention to set aside the acquisition for small business or small disadvantaged business.

(10) Identification of any particular 8(a) concern designated for consideration, including a brief justification, such as—

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) Program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent.

(11) Bonding requirements, if applicable.

(12) Identification of all known 8(a) concerns which have expressed an interest in this specific requirement as a result of self-marketing, response to sources sought, or publication of advanced acquisition requirements.

(13) Identification of all SBA district or regional offices which have asked for the acquisition for the 8(a) Program.

(14) A recommendation, if appropriate, as to whether the acquisition should be competitive or sole source; and

(15) Any other pertinent and reasonably available data.

(b) An agency offering a local buy requirement should submit it to the SBA Regional Office for the geographical area where the user is located. An agency offering a national buy requirement should submit it to the Office of Program Development, Office of Minority Small Business and Capital Ownership Development, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

##### 19.804-3 SBA acceptance.

(a) Upon receipt of the contracting agency's offer, the SBA will determine whether to accept the requirement for the 8(a) Program. The SBA's decision whether to accept the requirement will be transmitted to the contracting agency in writing within 15 working days of receipt of the offer, unless the SBA requests, and the contracting agency grants, an extension.

(b) If the acquisition is accepted as a sole source, the SBA will advise the contracting activity of the 8(a) firm selected for negotiation. Generally, the SBA will accept a contracting activity's recommended source.

(c) If the acquisition is accepted for competition—(1) as a local buy requirement, the SBA will advise as to which of the SBA districts or regions the competition is restricted and provide the list of the 8(a) firms in those districts or regions which are eligible for the designated SIC code; or (2) as a national buy requirement, the SBA, if requested by the contracting activity, will identify at least two eligible sources and the contracting officer, in coordination with the small business specialist, will augment the source list based on results of the synopsis (see 5.205(e)) and other available information. The SBA will advise of any program participation stage restrictions. The SBA may limit competition to 8(a) concerns in the developmental stage of program participation; may limit competition to 8(a) concerns in the transitional stage; or may permit competition among firms in either stage.

**19.804-4 Repetitive acquisitions.**

In order for repetitive acquisitions to be awarded through the 8(a) Program, there must be separate offers and acceptances. This allows the SBA to revalidate a firm's eligibility, to evaluate the suitability of each acquisition as a competitive 8(a), and to determine whether the requirement should continue under the 8(a) Program.

**19.805 Competitive 8(a).****19.805-1 General.**

(a) Except as provided in paragraph (b) of this subsection, an acquisition offered to the SBA under the 8(a) Program shall be awarded on the basis of competition limited to eligible 8(a) firms if—

(1) There is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and that award can be made at a fair market price; and

(2) The anticipated award price of the contract, including options, will exceed \$5,000,000 for acquisitions assigned manufacturing standard industrial classification (SIC) codes and \$3,000,000 for all other acquisitions.

(b) Where an acquisition exceeds the competitive threshold, the SBA may accept the requirement for a sole source 8(a) award if—

(1) There is not a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers at a fair market price; or

(2) The SBA determines that an 8(a) concern owned and controlled by an economically disadvantaged Indian tribe is eligible and responsible and needs the acquisition for its business development.

(c) The SBA Association Administrator for Minority Small Business and Capital Ownership Development (AA/MSB&COD) may approve an agency recommendation for a competitive 8(a) award below the competitive thresholds. Such recommendations will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) firms are available for competition. In determining whether a recommendation to compete below the threshold will be approved, AA/MSB&COD will, in part, consider the extent to which the requesting agency is supporting the 8(a) Program on a noncompetitive basis. Agency recommendations for competition below the threshold may be included in the offering letter or may be submitted by separate correspondence through the SBA region or headquarters, depending

upon whether the acquisition is a local or national buy requirement.

**19.805-2 Procedures.**

(a) Competitive 8(a) acquisitions shall be conducted by contracting agencies by using sealed bids (see Part 14) or competitive proposals (see Part 15).

(b) Offers shall be solicited from those sources identified in accordance with the SBA instructions provided under 19.804-3.

(c) The SBA will determine the eligibility of the firms for award of the contract. Eligibility will be determined by the SBA as of the time of submission of initial offers which include price. Eligibility is based on section 8(a) Program criteria, e.g., whether the firm has the SIC code for the acquisition in its approved business plan, whether the firm is currently a small business under the SIC code, whether the firm is in the developmental or transitional stage (if the acquisition is restricted by stage), whether the firm is in conformance with the 8(a) support limitation set forth in its business plan, and whether the firm is in conformance with its 8(a) business activity targets.

(1) In sealed bid acquisitions, upon receipt of offers, the contracting officer will provide the SBA a copy of the solicitation, the estimated fair market price, and a list of offerors ranked in the order of their standing for award (i.e., first low, second low, etc.) with the total evaluated price for each offer, differentiating between basic requirements and any options. The SBA will consider the eligibility of the first low offeror. If the first low offeror is not determined to be eligible, the SBA will consider the eligibility of the next low offeror until an eligible offeror is identified. The SBA will determine the eligibility of the firms and advise the contracting officer within 5 working days after its receipt of the list of bidders. Once eligibility has been established by the SBA, the successful offeror will be determined by the contracting activity in accordance with normal contracting procedures.

(2) In negotiated acquisition, the SBA will determine eligibility when the successful offeror has been established by the agency and the contract transmitted for signature unless a referral has been made under 19.809, in which case the SBA will determine eligibility at that point.

(d) In any case in which a firm is determined to be ineligible, the SBA will notify the firm of that determination.

(e) The eligibility of an 8(a) firm for a competitive 8(a) award may not be challenged or protested by another 8(a) firm or any other party as part of a

solicitation or proposed contract award. Any party with information concerning the eligibility of an 8(a) firm to continue participation in the 8(a) Program may submit such information to the SBA in accordance with 13 CFR 124.111(c).

**19.806 Pricing the 8(a) contract.**

(a) The contracting officer shall price the 8(a) contract in accordance with Subpart 15.8. If required by Subpart 15.8, the SBA shall obtain certified cost or pricing data from the 8(a) contractor. If the SBA requests audit assistance to determine the reasonableness of the proposed price in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.

(b) An 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price.

(c) If requested by the SBA, the contracting officer shall make available the data used to estimate the fair market price.

(d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with 19.810.

**19.807 Estimating fair market price.**

(a) The contracting officer shall estimate the fair market price of the work to be performed by the 8(a) contractor.

(b) In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer shall use cost or price analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency.

(c) In estimating a fair market price for a repeat purchase, the contracting officer shall consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing costs, and other circumstances. Price indices may be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items may also be used.

**19.808 Contract negotiation.****19.808-1 Sole source.**

(a) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the agency may, after notifying the SBA, proceed with the acquisition from other sources.

(b) The 8(a) contractor should participate, whenever practicable, in negotiating the contract terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the 8(a) contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award and determining whether the 8(a) contractor shall be required to provide a performance bond.

**19.808-2 Competitive.**

In competitive 8(a) acquisitions subject to Part 15, the contracting officer conducts negotiations directly with the competing 8(a) firms.

**19.809 Preaward considerations.**

The contracting officer should request a preaward survey of the 8(a) contractor whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer should refer the matter to the SBA for its consideration in deciding whether SBA should certify that it is competent and responsible to perform. This is not a referral for Certificate of Competency consideration under Subpart 19.6. Within 15 working days of the receipt of the referral or a longer period agreed to by the SBA and the contracting activity, the SBA Assistant Regional Administrator for Minority Small Business and Capital Ownership Development in the regional office which services the 8(a) firm will advise the contracting officer as to the SBA's willingness to certify its competency to perform the contract using the 8(a) concern in question as its subcontractor. The contracting officer shall proceed with the acquisition and award the contract to another appropriately selected 8(a) offeror if the SBA has not certified its competency within 15 working days (or a longer mutually agreeable period.)

**19.810 SBA appeals.**

(a) The following matters may be submitted by the SBA Administrator for determination to the agency head if the

SBA and the contracting officer fail to agree on them:

(1) The decision not to make a particular acquisition available for award under the 8(a) Program.

(2) The terms and conditions of a particular sole source acquisition to be awarded under the 8(a) Program.

(3) The estimated fair market price.

(b) Notification of a proposed referral to the agency head by the SBA must be received by the contracting officer within 5 working days after the SBA is formally notified of the contracting officer's decision. The SBA shall provide the agency Director for Small and Disadvantaged Business Utilization a copy of this notification. The SBA must provide the request for determination to the agency head within 20 working days of the SBA's receipt of the adverse decision. Pending issuance of a decision by the agency head, the contracting officer shall suspend action on the acquisition. Action on the acquisition need not be suspended if the contracting officer makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States will not permit waiting for a decision.

(c) If the SBA appeal is denied, the decision of the agency head shall specify the reasons for the denial, including the reasons why the selected firm was determined incapable of performance, if appropriate. The decision shall be made a part of the contract file.

**19.811 Preparing the contracts.****19.811-1 Sole source.**

(a) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer shall use the Standard Form 28 as the award form, except for construction contracts, in which case the Standard Form 1442 shall be used as required in 36.701(b).

(b) The agency shall prepare the contract that the SBA will award to the 8(a) contractor in accordance with agency procedures, as if the agency were awarding the contract directly to the 8(a) contractor, except for the following.

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5) (as appropriate) as the authority for use of other than full and open competition.

(2) Appropriate clauses shall be included, as necessary, to reflect that the contract is between the SBA and the 8(a) contractor.

(3) The following items shall be inserted by the SBA—

(i) The SBA contract number.  
(ii) The effective date.  
(iii) The typed name of the SBA's contracting officer.

(iv) The signature of the SBA's contracting officer.

(v) The date signed.

(4) The SBA will obtain the signature of the 8(a) contractor prior to signing and returning the prime contract to the contracting officer for signature. The SBA will make every effort to obtain signatures and return the contract, and any subsequent bilateral modification, to the contracting officer within a maximum of 10 working days.

(5) If the contract is for construction work, it shall include requirements of the Miller Act with respect to performance and payment bonds (see part 28).

(c) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in 19.811-1(a) and (b), use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document shall contain the information in 19.811-1(b) (1), (2), (3), and (5). Appropriate blocks on the Standard Form (SF) 26 or 1442 will be asterisked and a continuation sheet appended which includes the following:

(1) Agency acquisition office, prime contract number, name of agency contracting officer and lines for signature, date signed, and effective date.

(2) The SBA office, the SBA contract number, name of the SBA contracting officer, and lines for signature and date signed.

(3) Name and lines for the 8(a) contractor's signature and date signed.

(d) Prior to award of contract actions in excess of \$100,000, the SBA shall provide the contracting activity with the competing contractor certifications required by 3.104-9 from its 8(a) contractor. The contracting activity's contracting officer shall maintain the list required by 3.104-9 and complete the contracting officer certification.

**19.811-2 Competitive.**

(a) The contract will be prepared in accordance with 14.407-1(d), except that appropriate blocks on the Standard Form 26 or 1442 will be asterisked and a continuation sheet appended which includes the following:

(1) The agency contracting activity, prime contract number, name of agency contracting officer, and lines for

signature, date signed, and effective date.

(2) The SBA office, the SBA subcontract number, name of the SBA contracting officer and lines for signature and date signed.

(b) For contract actions in excess of \$100,000, the contracting activity's contracting officer shall obtain the competing contractor certifications as required by 3.104-9 directly from the 8(a) firm(s). The contracting activity's contracting officer shall maintain the list required by 3.104-9 and complete the contracting officer certification.

(c) The process for obtaining signatures shall be as specified in 19.811-1(b)(4).

#### 19.811-3 Contract clauses.

(a) The contracting officer shall insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

(b) The contracting officer shall insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

(c) The contracting officer shall insert the clause at 52.219-17, Section 8(a) Award, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805 and in sole source awards which utilize the alternative procedure in 19.811-1(c).

(d) The contracting officer shall insert the clause at 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805.

(1) The clause at 52.219-18 with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts/regions pursuant to 19.804-3.

(2) The clause at 52.219-18 with its Alternate II will be used when competition is to be limited to 8(a) concerns within a specific stage of 8(a) Program participation (i.e., developmental or transitional) pursuant to 19.804-3.

(e) The contracting officer shall insert the clause at 52.219-14, Limitations or Subcontracting, in any solicitation and contract resulting from this subpart.

#### 19.812 Contract administration.

(a) The contracting officer shall assign contract administration functions, as

required, based on the location of the 8(a) contractor (see DoD Directory of Contract Administration Services Components (DoD 4105.59-H)).

(b) The agency shall distribute copies of the contract(s) in accordance with Part 4. All contracts and modifications, if any, shall be distributed to both the SBA and the firm in accordance with the timeframes set forth in 4.201.

(c) To the extent consistent with the contracting activity's capability and resources, 8(a) contractors furnishing requirements shall be afforded production and technical assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Section 52.219-11 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(OCT 1989)"; by removing the words "Delegates to the . . ." and inserting "Except for novation agreements and advance payments, delegates to the . . ." in paragraph (c) of the clause; and by removing the derivation line following "(End of clause)" to read as follows:

#### 52.219-11 Special 8(a) Contract Conditions.

As prescribed in 19.811-3(a), insert the following clause:

\* \* \* \* \*

9. Section 52.219-12 is amended by revising the introductory text; by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(OCT 1989)"; by revising paragraph (b)(2) of the clause; by removing the derivation line following "(End of clause)"; and by removing Alternate I to read as follows:

#### 52.219-12 Special 8(a) Subcontract Conditions.

As prescribed in 19.811-3(b), insert the following clause:

\* \* \* \* \*

(b)(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the ..... [insert name of contracting agency] with complete authority to take any action on behalf of the Government under the terms and conditions of this contract.

\* \* \* \* \*

10. Section 52.219-17 is added to read as follows:

#### 52.219-17 Section 8(a) Award.

As prescribed in 19.811-3(c), insert the following clause:

#### Section 8(a) Award (Oct 1989)

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 837(a)).

(2) Except for novation agreements and advance payments, delegates to the ..... [insert name of contracting activity] the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; provided, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(End of clause)

11. Section 52.219-18 is added to read as follows:

#### 52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in 19.811-3(d), insert the following clause:

#### NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (OCT 1989)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) SIC code ..... is specifically included in the Offeror's approved business plan;

(2) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(3) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror certifies that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d) Agreement. A manufacturer or regular dealer submitting an offer in its own name

agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

(\*Insert SIC code assigned to the acquisition by the contracting activity.)

*Alternate I* (OCT 1989). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following subparagraph (a)(4) to paragraph (a) of the clause:

(4) The offeror's approved business plan is on the file and serviced by \_\_\_\_\_.

\_\_\_\_\_ (\*Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA).

*Alternate II* (OCT 1989). If the competition is to be limited to 8(a) concerns within a particular program participation stage, add the following subparagraph (a)(4) to paragraph (a) of the clause. When used in conjunction with Alternate I, this subparagraph should be renumbered (a)(5).

(4) The offeror is in the \_\_\_\_\_ stage of 8(a) Program participation. (\*Contracting Officer completes by inserting the appropriate stage of participation as identified by SBA (i.e., developmental or transitional).)

*Alternate III* (OCT 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502(b), substitute the following paragraph (d) for paragraph (d) of the basic clause:

(d) *Agreement*. A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.

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