

Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

22. Section 33.12 is amended by revising paragraph (a) to read as follows:

§ 33.12 Changes after certification.

(a)(1) Application shall be made as for an original certificate, requesting that the existing certification be extended to cover the proposed changes, and shall be accompanied by drawings, specifications, and related data showing the changes in detail.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and

evaluation results and the statement of product compliance from the NRTL.

PART 35—[AMENDED]

23. Section 35.6 is amended by revising paragraph (a) to read as follows:

§ 35.6 Applications.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application, in duplicate, accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees; and all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence concerning it shall be sent to Approval and Certification Center, Box 201 B, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

(3) An applicant may request testing and evaluation to other testing and evaluation requirements which have been determined by MSHA to be equivalent under § 6.20 of this chapter.

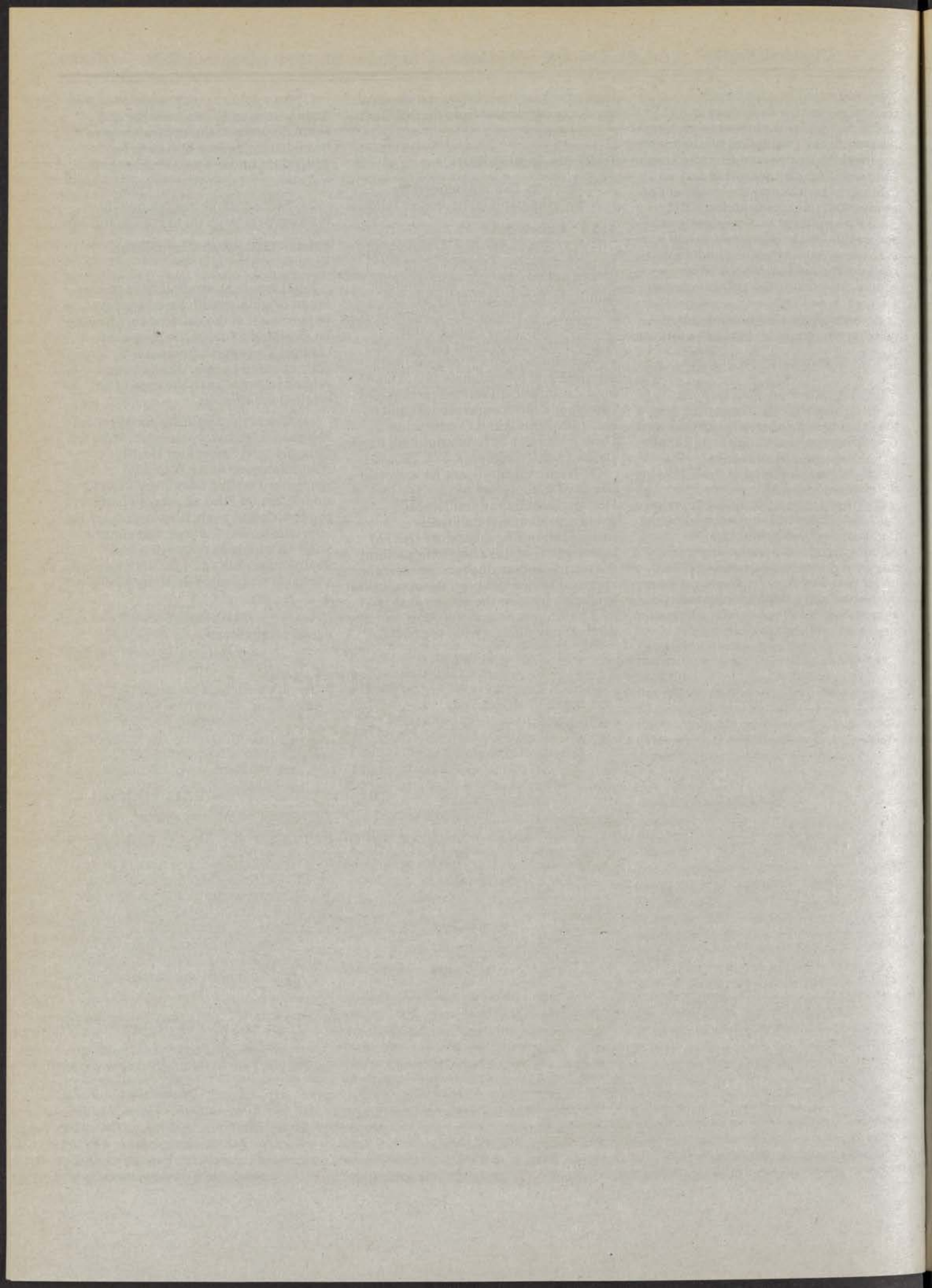
24. Section 35.12 is amended by revising paragraph (a) to read as follows:

§ 35.12 Changes after certification.

(a)(1) Application shall be made, as for an original certificate of approval, requesting that the existing certification be extended to cover the proposed change. The application shall be accompanied by specifications and related material as in the case of an original application.

(2) Where the applicant for approval has used a laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) under part 6 of this chapter to perform the testing and evaluation necessary for approval under this part, the application shall also include the testing and evaluation results and the statement of product compliance from the NRTL.

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Wednesday
November 30, 1994

Part III

**Department of
Education**

34 CFR Part 674, et al.

Federal Perkins Loan Program, Federal
Work-Study Programs, and Federal
Supplemental Educational Opportunity
Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 675, and 676

RIN 1840 AB71

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

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs). These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA). These regulations also seek to improve the efficiency of the campus-based programs, to reduce the administrative burden for institutions where possible, and to enhance opportunities for postsecondary education.

EFFECTIVE DATE: These regulations take effect on July 1, 1995 and apply to the 1995-96 and subsequent award years. However, affected parties do not have to comply with the information collection requirements in § 674.34(e) until the Department of Education publishes in the *Federal Register* the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT:

1. For the Federal Perkins Loan Program: Sylvia R. Ross, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4018), Washington, DC 20202-5447. Telephone: (202) 708-8242; or

2. For the FWS and FSEOG Programs: Kathy S. Cause, U.S. Department of Education, 600 Independence Avenue, S.W., (Regional Office Building 3, Room 4018), Washington, DC 20202-5447. Telephone: (202) 708-4690.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These amendments revise the existing campus-based program regulations. The campus-based programs are authorized as

follows: Federal Perkins Loan—20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421-429; FWS—42 U.S.C. 2751-2756b; FSEOG—20 U.S.C. 1070b-1070b-3. These regulations implement the provisions of the National and Community Service Act of 1990 (Pub. L. 101-610), enacted November 16, 1990, the Crime Control Act of 1990 (Pub. L. 101-647), enacted November 29, 1990, the Higher Education Amendments of 1992 (Pub. L. 102-325), enacted July 23, 1992 (Amendments), the Higher Education Technical Amendments of 1993 (Pub. L. 103-208), enacted December 20, 1993 (Technical Amendments), the Improving America's Schools Act of 1994 (Pub. L. 103-382), enacted October 20, 1994, and the Bankruptcy Reform Act of 1994 (Pub. L. 103-394), enacted October 22, 1994.

On June 22, 1994, the Secretary published a notice of proposed rulemaking (NPRM) in the *Federal Register* (59 FR 32264-32287). The NPRM included a discussion of major issues surrounding the proposed changes that will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues can be found.

Campus-Based Programs

The Secretary proposed to amend the definition of "undergraduate student" to remove the restriction that did not allow an undergraduate student to receive Federal Perkins Loan or FWS assistance if he or she has already earned a baccalaureate or first professional degree. The proposal provided that a student is not ineligible for assistance under the Federal Perkins Loan or FWS programs because he or she has previously received a baccalaureate or professional degree (page 32264).

The Secretary proposed to amend the allocation and reallocation procedures for the campus-based programs to provide that if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the next fiscal year for that program reduced by the dollar amount returned (pages 32264-32265).

The Secretary proposed to amend the criteria for selection of students for campus-based assistance to ensure that independent students and students attending an institution on a less-than-full-time basis would be equitably provided financial assistance (page 32265).

The Secretary proposed to amend the overaward threshold provisions for the campus-based programs (page 32265).

To reduce burden for both the student and the institution, the Secretary proposed to allow an institution to disburse funds under the Federal Perkins Loan and FSEOG programs to a student when he or she is no longer enrolled if the assistance was awarded while the student was still an eligible student (page 32265).

Federal Perkins Loan Program

The Secretary proposed to remove the definitions of "Default rate", "Defaulted principal amount outstanding", and "Matured loans", and add the definitions of "Disposable income", "Enter repayment", "Making of a loan", and "Satisfactory arrangements to repay the loan" (pages 32265-32266).

The Secretary proposed to amend the reallocation formula for the Federal Perkins Loan Program, and to establish an appeals process by which the anticipated collections requirement may be waived for institutions with "low default rates" (page 32266).

The Secretary proposed to add a new section to the regulations to establish the Federal Perkins Loan cohort default rate and penalties for an institution with a high cohort default rate for the 1994-95 award year and subsequent award years (page 32266).

The Secretary proposed to add a new section to the regulations to describe the measures that institutions with high default rates must use to establish a default reduction plan (page 32266).

The Secretary proposed establishment of the Expanded Lending Option as necessary to implement statutory provisions under the Amendments and the Technical Amendments (page 32266).

The Secretary proposed to amend the Program Participation Agreement to implement the increase in the capital contribution requirements as required by the Amendments, and to include new reporting requirements containing information for determining an institution's cohort default rate (pages 32266-32267).

The Secretary proposed to amend the student eligibility requirements to implement statutory provisions under the Amendments (page 32267).

The Secretary proposed to amend the maximum loan limits to reflect statutory changes (page 32267).

The Secretary proposed to remove all references to the term "endorser" to reflect the statutory change that provides that all Federal Perkins Loans are to be made without security or endorsement (page 32267).

The Secretary proposed to incorporate the new statutory requirement that an

institution report loan disbursements to a national credit bureau (page 32267).

In accordance with statutory changes, the Secretary proposed to provide for the transfer of up to 25 percent of an institution's Federal Capital Contribution (FCC) allotment for an award year to either or both the FSEOG and FWS programs (page 32267).

The Secretary proposed to delete the promissory note from the existing regulations and to provide the note in a "Dear Colleague" letter. In addition, the Secretary proposed to delete the defense of infancy provision (page 32267).

In accordance with statutory changes, the Secretary proposed to allow an institution to increase the minimum monthly repayment amount to \$40. In addition, the Secretary proposed to establish forbearance of principal and interest where circumstances warrant it, and to authorize an institution to compromise on the repayment of a loan (page 32267).

The Secretary proposed to revise the regulations to reflect statutory changes in the deferment provisions (pages 32267-32268).

The Secretary proposed to amend the regulations to incorporate new statutory loan disclosure requirements that must be met during a borrower's exit interview (page 32268).

To reduce burden for both the borrower and the institution, the Secretary proposed to allow a borrower to elect to repay his loan by means of the electronic transfer of funds from the borrower's bank account (page 32268).

To reduce institutional burden, the Secretary proposed to eliminate skip-tracing as a required due diligence step (page 32268).

In accordance with statutory changes, the Secretary proposed to revise loan collection and litigation procedures to require institutions to report defaulted loans to any one of the credit bureaus with which the Secretary has an agreement. In addition, the Secretary proposed to amend the regulations to reflect the elimination of the statute of limitations on litigating to recover amounts owed on defaulted accounts (page 32268).

In accordance with statutory changes, the Secretary proposed to eliminate the 50-percent limitation on the number of Title 1 schools in a State that meet the eligibility criteria and provided that teaching in any Title 1 school that meets the eligibility criteria now qualifies a borrower for a loan cancellation. This change will increase the opportunities for receiving loan cancellations and encourage more teachers to teach in low-income schools (pages 32268-32269).

The Secretary proposed to expand the loan cancellation employment provisions (page 32269).

The Secretary proposed to amend the definition of permanent and total disability to include the inability of the borrower to attend an institution because of an impairment that is expected to continue indefinitely or result in death (page 32269).

Federal Work-Study Programs

In accordance with statutory amendments and consistent with the Secretary's desire to promote community service activities, the Secretary proposed to amend the purpose of the FWS program to include an encouragement to students receiving program assistance to participate in community service activities (page 32269).

The Secretary proposed to add a new definition of "low-income individual" for purposes of community services (page 32269).

The Secretary proposed to amend the program participation agreement to include assurances that (1) employment under the program may be used to support programs for supportive services to students with disabilities, and (2) institutions will inform all eligible students of the opportunity to perform community service and will consult with local nonprofit, governmental, and community-based organizations to identify community service opportunities. In identifying community service opportunities, the Secretary expects institutions to consult with their students (page 32269).

In accordance with statutory changes, the Secretary proposed to amend several provisions governing use of FWS funds. First, institutions participating in the Work-Colleges program would be allowed to use FWS funds for meeting costs of the Work-Colleges program. Second, the institutional administrative expense allowance for work-study for community service learning would be eliminated. Third, the amount of an institution's allocation under the FWS programs that may be transferred to the FSEOG program would be increased from 10 percent to 25 percent. Fourth, an institution would have additional carry-back authority to pay students who work during the summer. Fifth, an institution would be required to use 5 percent of the total FWS Federal funds granted to the institution to compensate students employed in community service activities for the 1994-95 award year and subsequent award years (page 32269).

In accordance with statutory changes, the Secretary proposed to provide that

a student employed by a proprietary institution and performing community services is no longer also required to be furnishing student services (pages 32269-32270).

In accordance with statutory changes, the Secretary proposed to increase the Federal share of FWS compensation paid to a student employed other than by a for-profit organization to 75 percent (page 32270).

As a result of statutory changes the Secretary proposed to remove the "Community Service-Learning Program" from the regulations (page 32270).

Job Location and Development (JLD) Program

The Secretary proposed to combine the regular JLD program to expand off-campus job opportunities and the "Community Services" JLD program to locate and develop community services jobs for students into one program. The Secretary further proposed to expand the statement of purpose for the JLD program to include the encouragement of participation in community service activities. The Secretary also proposed to allow an institution to use the lesser of \$50,000 or 10 percent of its FWS allocation to establish or expand a JLD program (page 32270).

The Secretary, in accordance with amended section 446(a) of the HEA, proposed to eliminate the authority for institutions to enter into agreements with nonprofit organizations and limit institutions to working with other institutions for the purpose of developing jobs (page 32270).

Work-Colleges Program

In accordance with the Amendments, the Secretary proposed to add the new "Work-Colleges program" to the regulations (page 32270).

Federal Supplemental Educational Opportunity Grant Program

The Secretary proposed to amend the allocation and reallocation provisions for unexpended FSEOG funds (page 32270-32271).

The Secretary proposed to eliminate an institution's authority to transfer FSEOG funds to the FWS program as necessary to implement statutory provisions (page 32271).

The Secretary proposed to increase the maximum FSEOG award that an institution may award a student per academic year from \$4,000 to \$4,400 for a student studying abroad (page 32271).

The Secretary proposed that the Federal share of FSEOG awards will not exceed 75 percent effective for award years beginning on or after July 1, 1993

as necessary to implement statutory changes (page 32271).

Substantive Changes to the NPRM

The following discussion describes the significant changes since publication of the NPRM and the manner in which certain critical provisions will be initially implemented. They are discussed in the order in which they appear in the text of the regulations. The changes that apply to more than one program are described first followed by descriptions of changes that pertain to only a specific program.

Student Assistance General Provisions

Section 668.57 Acceptable Documentation

In the June 22, 1994 NPRM, the Secretary proposed to amend § 668.57(c) to require the signature of one parent instead of both parents when verifying the number of family household members enrolled in postsecondary institutions for a dependent applicant. If only one parent's income is considered in the title IV, HEA aid awarding process, that is the parent who must sign. Otherwise, either parent may sign. This burden reduction provision will be addressed in the Student Assistance General Provisions final regulations governing verification of all title IV programs which will provide that either parent may sign, regardless of which parent's income is reported.

Federal Perkins Loan, FWS, and FSEOG Programs

Sections 674.10, 675.10, and 676.10 Selection of Students

In the June 22, 1994 NPRM the Secretary proposed to amend §§ 674.10, 675.10, and 676.10 to state that if an institution's FSEOG allocation, FWS grant, or Federal Perkins Loan FCC is directly or indirectly based in part on the financial need of less-than-full-time or independent students and if the need of all of these students exceeds 5 percent of the total need of all students at an institution, then at least 5 percent of that allotment for FSEOG, 5 percent of that grant for FWS, or 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program must be made available to these students. The Department previously had stated in various documents that "make available" meant that an institution was required to actually "expend" the dollars for these students. In response to the public comments and as part of his efforts to reduce regulatory burden, the Secretary is revising the final regulations to provide that the

institution must "offer" the funds to less-than-full-time and independent students. The institution is not required to have actually disbursed the title IV funds to less-than-full-time and independent students.

Sections 674.14, 675.14, and 676.14 Overaward

A financial aid administrator may not award or disburse aid from a campus-based program if that aid, when combined with all other resources, would exceed the student's need. If the student receives additional resources at any time during the award year that were not considered in determining the student's eligibility for aid, and these resources combined with the expected financial aid will exceed the student's need, the amount in excess of the student's need is considered an overaward. Statutory provisions under the Amendments provided for a \$300 overaward threshold for FWS. In the June 22, 1994 NPRM, the Secretary proposed that, if a student has FWS, a \$300 overaward threshold for the three campus-based programs would be in effect; however, if a student only has an FSEOG or Federal Perkins Loan, the current \$200 overaward threshold would be the limit. In response to the public comments and as part of his efforts to reduce regulatory burden, the Secretary is providing a uniform \$300 overaward threshold for all the campus-based programs regardless of whether the student has been awarded FWS funds.

Federal Perkins Loan Program

Section 674.33 Repayment

Section 674.34 Deferment of Repayment

In the June 22, 1994 NPRM, the Secretary made proposals for the implementation of the statutory provisions governing forbearance of a borrower's repayment of a Federal Perkins loan and the deferment of repayment due to economic hardship reasons. The provisions contained in the NPRM paralleled the same provisions in the FFEL Program, as detailed in the FFEL Program NPRM, published on March 24, 1994. In response to the comments received on the FFEL Program NPRM, the Secretary made significant changes to the forbearance and economic hardship provisions in the final FFEL Program regulation, published on June 29, 1994. Those same changes have been made to the forbearance and economic hardship provisions in the Federal Perkins Loan program, as part of the Secretary's ongoing effort to reduce the institutional

burden of administering the title IV student aid programs. These changes include the revisions to the definition of "full-time employment" for purposes of granting an economic hardship deferment.

In accordance with amendments to the HEA made by the Improving America's Schools Act of 1994 (Pub. L. 103-382), the Secretary is revising the final regulations to include a new criterion under which a borrower may qualify for deferment of repayment due to economic hardship reasons.

Section 674.52 Cancellation Procedures

In accordance with amendments to the HEA made by the National and Community Service Act of 1990 (Pub. L. 101-610), the Secretary is revising the final regulations to include the provision that a borrower may not receive a benefit under subtitle D of title I of the National and Community Service Act of 1990 and a cancellation benefit under the Federal Perkins Loan program.

Federal Work-Study Program

Section 675.2 Definitions

Statutory provisions for community service under the Amendments provide that community service is designed to improve the quality of life for community residents, particularly low-income individuals. In the June 22, 1994 NPRM, the Secretary proposed to add a new definition of "low-income individual" for purposes of community service. In response to public comment and as part of the Secretary's efforts to reduce regulatory burden, the Secretary is not defining "low-income individual" in these regulations.

Work-Colleges Program

Sections 675.41-675.50

Section 448(f) of the HEA contains a separate authorization of appropriations for the Work-Colleges program. Therefore, a new § 675.42—*Allocation and Reallocation*, has been added to the regulations and all other sections of the Work-Colleges program regulations have been redesignated. Sections 675.46 and 675.47 contain paperwork requirements, and have been redesignated as § 675.47 and § 675.48.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 58 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Substantive issues are

discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comments and Responses

Sections 674.4, 675.4, and 676.4 Allocation and Reallocation

Comments: Three commenters suggested that the Secretary permit an institution, under certain circumstances, to appeal an allocation reduction because it returned more than 10 percent of its previous year's allocation. These commenters suggested that the Secretary allow an appeal during occurrences of natural disasters or situations in which enrollments are reduced because students are called to service in areas of hostility, such as the military mobilizations for "Operation Desert Storm."

Discussion: The Secretary believes that this provision of the proposed regulations adequately addresses situations in which these provisions may be waived. As stated in the preamble to the NPRM, the Secretary may waive these provisions in such circumstances as a natural disaster. Additionally, to assist institutions in their recovery from the effects of disasters, or to provide relief to students who have been called to military service in areas of hostility, the Secretary provides enforcement relief from regulatory requirements and provides guidance through "Dear Colleague" letters issued at the time of the natural disaster or the declaration of an area of hostility.

Changes: None.

Comments: One commenter stated that a literal interpretation of a reduction in an institution's allocation for the next fiscal year would require reductions in two award years. This commenter suggested that the term "fiscal year" be replaced by "award year" to make the provision easier to understand while still being in line with congressional intent.

Discussion: The Secretary agrees with the commenter that the use of the term "fiscal year" in this context is confusing.

Changes: The language of this provision is changed to incorporate the concept of an "award year" allocation rather than "fiscal year."

Section 674.10, 675.10, and 676.10 Selection of Students

Comments: Several commenters noted that while sections 413C(d), 443(b)(3),

and 464(b)(2) of the HEA require most institutions to "make available" to less-than-full-time and independent students at least 5 percent of the FWS allotment, 5 percent of the FSEOG allotment, and 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program, the NPRM did not define the term "make available." These commenters were concerned that while most students would accept FSEOG as part of their award packages because it is grant money, institutions have no control over whether students will accept Federal Perkins loans or work to earn FWS funds. They believe that it would be very difficult for some institutions to meet this requirement if independent and part-time students have to accept, or even earn, 5 percent of the FWS allocation. One commenter stated that most students attending less-than-full-time are doing so because they are already working and therefore those students are not interested in FWS. The majority of the commenters suggested that the Secretary should interpret the statute in its use of the term "make available" to mean "offer" FWS, FSEOG, and Federal Perkins loans to students rather than "disburse" these funds.

One commenter noted that the wording between the FWS section and the FSEOG section is slightly different and recommended that it be consistent.

Discussion: The Secretary agrees that in some circumstances it may be difficult for an institution to actually disburse to less-than-full-time and independent students at least 5 percent of its FWS allotment, 5 percent of its FSEOG allotment, or 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program. Therefore, to accommodate these circumstances and prevent a burden on institutions to be responsible for what financial aid a student accepts, in interpreting amended sections 413C(d), 443(b)(3), and 464(b)(2) of the HEA, the Secretary considers the words "make available" to mean that the institutions must "offer" to less-than-full-time and independent students at least 5 percent of its FWS allotment, 5 percent of its FSEOG allotment, or 5 percent of the dollar amount of the loans made under the Federal Perkins Loan program if the need of all of these students exceeds 5 percent of the total need of all students at an institution.

Changes: The wording of this provision in the campus-based sections is changed to reflect that institutions must "offer" these campus-based funds to less-than-full-time and independent students. Also, the wording was revised

for consistency among the campus-based programs.

Sections 674.14, 675.14 and 676.14 Overaward

Comments: There were a number of comments on these sections, all in favor of the statutory provision that allows a student employed in the FWS program to earn up to \$300 for need-based employment in excess of his or her financial need before employment in the FWS program must be discontinued.

Several commenters recommended that the Secretary provide a uniform overaward threshold of \$300 for all recipients of campus-based aid to simplify the overaward calculation process and reduce administrative costs.

One commenter suggested that the proposed wording of these provisions is slightly ambiguous and subject to different interpretations. The commenter believed that the application of a uniform overaward threshold to all campus-based aid recipients will avoid any potential confusion.

Discussion: The Secretary has reevaluated his proposal in the June 22, 1994 NPRM. The statutory purpose of the FWS provision is to prevent aid administrators from being administratively burdened by having to make adjustments to financial aid packages when small amounts of overawards occur. The Secretary believes that the use of a uniform campus-based overaward threshold will further reduce the administrative burden for institutions without cost implications to the campus-based programs.

It is important to note that these provisions do not allow an institution to make campus-based awards in excess of the amount of the student's need. Although a threshold is allowed subsequent to the packaging of campus-based aid, the threshold does not allow an institution deliberately to award campus-based aid that, in combination with other resources, exceeds the student's financial need.

Changes: The Secretary has provided a uniform \$300 overaward threshold for all recipients of campus-based aid.

Federal Perkins Loan Program

Section 674.2 Definitions

Comments: While most commenters believed that the new definition of "disposable income" was necessary in order to be consistent with the FFEL Program and to establish eligibility for an economic hardship deferment or forbearance of payments, others believed the definition was unclear and needed further clarification.

Commenters were particularly concerned that alimony payments, child support payments, wage garnishment, and other similar items be considered deductions "required by law to be withheld."

Discussion: The term "disposable income" was defined in the NPRM as part of the proposed rules for the forbearance and the economic hardship deferment provisions. Forbearance and economic hardship are provisions common to all title IV loan programs, including the Federal Perkins Loan program, and the Secretary made the identical proposal for these two provisions in the FFEL Program NPRM, published on March 24, 1994. The Secretary received a number of comments on the proposed definition of "disposable income" in the FFEL Program NPRM and, as a result, decided that "total monthly gross income" was a term more easily understood than "disposable income." Consequently, the Secretary replaced "disposable income" with "total monthly gross income" in the final FFEL Program regulation. For a complete discussion of the reasons for making this change, see comment number 18 on page 33584 of the *Federal Register* published on June 29, 1994.

As part of the Department's effort to simplify the regulations and reduce burden at the institution, provisions that are common to both the Federal Perkins Loan program and the FFEL Program will have the same regulatory provisions, to the extent practicable. Therefore, in this final rule, the proposed rules for the Federal Perkins Loan program have been modified to reflect the forbearance and economic hardship provisions contained in the final FFEL Program regulation, published on June 29, 1994.

Changes: The definition of "disposable income" is removed and replaced by the definition of "total monthly gross income."

Comments: Several commenters believed that the definition of "making of a loan" needed to be expanded and clarified. Some commenters stated that the Secretary should define when a disbursement has been made to the borrower as part of the definition of "making of a loan." The commenters believed that without this clarification there would be inconsistencies among institutions and additional tracking mechanisms would be required.

Discussion: The issue of when funds are considered to be disbursed applies to all of the title IV programs, not just to the Federal Perkins Loan program. The Secretary is aware that the current title IV disbursement policies are applied inconsistently by institutions

and is preparing to issue final regulations on this and other "cash management" issues by December 1, 1994. The Secretary is making conforming changes to the Federal Perkins Loan program regulations in the "cash management" regulations to be issued by December 1, 1994.

Changes: None.

Comments: Several commenters believed that the Secretary should define when a promissory note should be signed by the borrower as part of the definition of "making of a loan." These commenters believed that Federal Perkins Loan borrowers should be able to sign the promissory note once, at the beginning of the academic year in which the award is made, and not each time a disbursement is made to the borrower.

Discussion: The Secretary is sensitive to the commenters' concerns and will evaluate situations in which an institution could require an annual signature on the promissory note. The Secretary is especially interested in evaluating the possibility of making this option available to those institutions that have demonstrated a high performance level and that have met the stricter cohort default rate requirements adopted for the Federal Perkins Loan program. The Secretary would like to note that an annual signature on the promissory note would necessitate the elimination of the "open-ended" Federal Perkins Loan promissory note. The "open-ended" promissory note, currently available only in the Federal Perkins Loan program, significantly reduces burden at the institution, by allowing an institution to make loans on the same promissory note for as long as the statutory provisions remain the same. Allowing only a "closed-ended" promissory note, as is done in the FFEL and FDSL programs, would result in a major increase in the number of promissory notes an institution would be required to maintain.

Changes: None.

Comments: A number of commenters felt strongly that the term "satisfactory arrangements to repay the loan" should be defined in terms of the impact on the borrower and the institution. Commenters believed that the requirement of 6 months of consecutive payments in this definition is too stringent, particularly when this definition is used to determine when to exclude loans from the cohort default rate calculation. Because of the window of time in the cohort default rate tracking period, one commenter believed it would be more equitable to consider the fact that the institution was able to establish a new repayment plan with the borrower as meeting the

criteria for satisfactory arrangements to repay the loans. Other commenters suggested a minimum of three consecutive monthly payments as the basis for excluding the loan from the cohort default rate. These commenters further stated that institutions do not have enough time to locate and contact the delinquent borrower, obtain the written agreement, and have 6 months of payments made prior to June 30. One commenter suggested that once the new written repayment agreement has been signed and all payments due by June 30 have been properly made by the borrower, institutions should be allowed to exclude that account from their cohort default rate.

Discussion: While the Secretary is sensitive to the concerns of the commenters, the Secretary does not agree that six consecutive months of payment is too stringent. In order to reduce the administrative burden at the institution, the Secretary is seeking ways to make the Federal Perkins Loan program consistent with the other title IV loan programs. Including six consecutive monthly payments in the definition of satisfactory arrangements to repay the loan is consistent with provisions in these programs.

Changes: None

Section 674.5 Cohort Default Rate and Penalties

Comments: Several commenters stated that while the definition of "loan rehabilitation" in § 674.5(e)(1) has limited benefit to the school in reducing a school's cohort default rate, it will be a benefit to the borrower whose loan is no longer considered to be in default. These commenters noted that a loan rehabilitated because the borrower has made 12 consecutive monthly payments is not removed from the school's cohort default rate. The commenters recommended that the definition be revised to allow for lump sum payments or up to a three-month payment plan. One commenter also invited the Secretary's consideration of allowing a quarterly repayment option and a reduction in the minimum payments required to consider the loan rehabilitated.

Discussion: While the Secretary is sensitive to the concerns of the commenters, the Secretary does not agree that the definition of a rehabilitated loan is too restrictive. Rehabilitating a loan gets the borrower out of default. Consequently, the borrower must establish a significant repayment history. Again, in order to reduce administrative burden at the institution, the provision is parallel to

similar provisions in the FFEL and FDSL programs.

Changes: None.

Comments: Several commenters were concerned that the credit bureau reporting requirement for rehabilitated defaulted loans in § 674.5(e)(2) was unclear. One commenter recommended including in the definition a requirement to report to the national credit bureau the date of the last payment, the unpaid principal balance, amount past due and date and amount of the last payment. Some commenters recommended that the phrase "no longer in default" should be clarified to mean that the record is not deleted from the borrower's credit history, when in fact it is only reported as a status change. One commenter also stated that the impact of "rehabilitated and no longer in default" affects the future disbursement of title IV aid and that the Secretary should not force the credit bureau to use unique, special definitions.

Discussion: The Secretary understands the concerns of these commenters and agrees that the requirements of this provision are unclear. In drafting the provision the Secretary intended that institutions report to one of the national credit bureaus the change in status of the defaulted loans. The Secretary did not intend that the default be eliminated from the credit bureau records. A default on any loan is an important component of an individual's credit history and credit bureaus are required to maintain such information on an individual's account for 7 years. The Secretary is concerned that a borrower who has made such a serious attempt to take care of his or her defaulted loan have as up-to-date and accurate record at the credit bureau as possible. Therefore, the status of the loan should be accurate on the credit bureau record. In response to the suggestion that additional data be provided to the credit bureau, the Secretary does not want to increase the burden at the institution by imposing additional reporting requirements on the institution. However, it should be noted that these national credit bureaus have standards that have been established by Associated Credit Bureaus (ACB), the industry's trade group. The Department has no regulatory authority over these bureaus' standards. Some of these national credit bureaus might require more than the Department requires, such as follow-up reporting of the borrower's declining balance as it is paid down or paid off. Further, some of their procedures are specifically for credit bureau purposes and more closely

in line with common U.S. business practice than with Federal regulations. For example, business practice considers a customer's account to be current up to 30 days past the due date of an invoice; whereas in the Federal Perkins Loan program, a borrower is considered to be in default when he or she fails to make an installment payment when due.

Changes: The language of this provision is changed to require an institution to report to a national credit bureau that a defaulted loan has been rehabilitated, rather than that a rehabilitated loan is no longer in default.

Section 674.6 Default Reduction Plan

Comments: One commenter argued that the Federal Perkins Loan program operates differently from the FFEL Program, and there is no statutory requirement that requires the Federal Perkins Loan program default reduction plan to parallel that of the FFEL Program. The commenter believed that institutions would have to install costly and burdensome tracking mechanisms in order to implement this provision.

Discussion: The Secretary agrees with the commenter that there is no statutory requirement that mandates similar default reduction plans for the Federal Perkins Loan Program and the FFEL Program. However, in the interest of minimizing increases to burden at the institution, it is the Secretary's intent to mirror similar provisions that have existed in other title IV programs for a number of years, such as the FFEL Program. The default reduction plan, as outlined in these provisions, has been in effect in the FFEL Program for many years and, thus, has been thoroughly tested. Since most institutions are already participating in the FFEL Program, the Secretary does not believe that this provision increases burden; rather, he believes it streamlines and improves the delivery of student aid. The Secretary reminds commenters that there is no requirement for a high default institution to implement this specific plan. Each institution has the option of developing its own plan, subject to approval by the Secretary.

Changes: None.

Comments: A few commenters suggested that the Secretary not include a provision in the default reduction plan that would require first-time borrowers to endorse their check and to "pick up" any remaining proceeds at the institution. Instead, because many institutions have Federal Perkins loan disbursement systems that do not involve the issuance of a check, they recommended that the borrower's loan

amount be credited directly to his or her student account and that any remaining proceeds also be credited to his or her student account, with one commenter recommending that the borrower be notified as to how he or she will receive his or her funds and that the loan funds will be disbursed 30 days after enrollment. One commenter objected to the requirement that the disbursement to a first-time borrower be delayed until 30 days after enrollment.

Discussion: The Secretary is sympathetic to the concerns of these commenters but does not agree with the comments to remove the delayed disbursement provision from the default reduction plan. The Secretary reminds the commenters that the purpose of the default reduction plan is to help institutions that have large numbers of their Federal Perkins loan borrowers in default to set up procedures and mechanisms to help keep their borrowers out of default. One aspect of keeping a borrower out of default is to require a face-to-face contact in order to finalize the processing of loan proceeds. This will help ensure that the borrower understands that he or she is receiving a loan and ensures to the institution that the borrower is really enrolling. In addition, delayed disbursement of loan proceeds ensures that the borrower is actually enrolled and continuing his or her studies before disbursing a loan, thus avoiding the situation in which a borrower drops out with a large debt that the borrower cannot repay.

Changes: None.

Comments: One commenter was particularly concerned about the intrusive nature of some of the requirements of the default reduction plan. This commenter felt that the ability to benefit provisions in the general provisions regulations should be sufficient to ensure that students "have a reasonable expectation of succeeding in their programs of study." This commenter wonders whether institutions with "open door" admissions policies would be required to revise these policies, and what an institution is to do if admissions policies are set by a Board of Trustees. This commenter also asserts that there is no evidence that monthly reviews of in-school status will improve an institution's default rate.

Discussion: In general, the Secretary does not agree with this commenter. The ability-to-benefit provisions in the Student Assistance General Provisions affords some protection but not all the needed protection. When an institution has a high cohort default rate, one of the first places to look for the cause is to look at who is being admitted to the

institution and into what program of study. Students should not be admitted if there is not a reasonable expectation of success. Moreover, it seems only logical that another procedure to follow for eliminating a potential cause of a high cohort default rate is to follow up on enrollment status to ensure that a student is still enrolled and, if not enrolled, to provide exit counseling to the student as soon as possible. The Secretary reminds the commenter that these provisions have been in effect in the FFEL Program for several years and have not had the intrusive effect on admissions policies or the burden of the increased reviews of enrollment status that the commenter fears.

Changes: None.

Section 674.7 Expanded Lending Option

Comments: One commenter stated that the phrase "in any academic year" as it relates to aggregate loan limits is confusing and should be deleted if it suggests that a student who does not borrow in his or her first year can borrow \$8,000 in his or her second year.

Discussion: The Secretary agrees.

Changes: This provision is revised to clarify the distinction between annual and aggregate loan limits.

Section 674.9 Student Eligibility

Comments: While several commenters supported the requirement to "reaffirm" a Federal Perkins loan debt previously canceled due to total and permanent disability, discharge in bankruptcy, or write-off, some of these commenters believed the term "reaffirmation" was a legal term requiring the reopening of the bankruptcy case, and the borrower should "agree" rather than "reaffirm" to repay any loan discharged in bankruptcy.

Discussion: "Reaffirmation," as it relates to this provision, would be the borrower's signature on a new repayment agreement. However, the Secretary has removed the provision in proposed section 674.9(g) that would have required the reaffirmation of Federal Perkins, Direct, or Defense loan amounts that had been discharged in bankruptcy as a prerequisite to further eligibility for additional Federal Perkins Loans. This phrase has been omitted from the final rules because it is no longer permissible by operation of law pursuant to the Bankruptcy Reform Act of 1994, P.L. 103-394.

Section 313 of the Bankruptcy Reform Act of 1994 added a new subsection (c) to 11 U.S.C. Section 525, to provide that the Department and other governmental units may no longer deny a loan, loan guarantee, or loan insurance to a person

solely because that person has filed for or received a discharge in bankruptcy, has had a student loan discharged in bankruptcy, or has not paid a student loan that has been judicially determined to be dischargeable in bankruptcy. The Secretary interprets this provision to mean that once a debtor has filed for bankruptcy relief, or had a Federal Perkins Loan, or other student loan, discharged or determined to be dischargeable by a Bankruptcy Court, the bankruptcy may be considered as evidence of an adverse credit history but cannot be the basis for denial of future participation in the Federal Perkins Loan, or other student loan programs. Conforming changes will be made to 34 CFR 668.7(e).

Section 674.9(e) of the current regulations states that a student's failure to meet payment obligations on a previous loan, including a loan discharged in bankruptcy, is evidence that the student is unwilling to repay the loan. Because the Secretary is concerned that section 674.9(e) might be used to deny a student's eligibility for a Federal Perkins Loan based solely on the student's having had a prior loan discharged in bankruptcy, the Secretary is removing the phrase regarding a bankruptcy discharge from the regulations. However, schools may continue to consider the student's post-bankruptcy credit history in determining willingness to repay the loan.

Changes: The Secretary is deleting the requirement that a borrower must reaffirm a loan discharged in bankruptcy before regaining eligibility for further title IV loans. Also, the Secretary is removing the phrase regarding a bankruptcy discharge from the "willingness to repay" provision.

Comments: Another commenter objected to the provision that disabled individuals should have to reaffirm past loans to reestablish eligibility. The commenter believed that disabled individuals should be judged solely on a "snapshot" of their present condition and circumstances; requiring reaffirmation would place yet another obstacle in the way of disabled individuals who wish to further their education. The commenter went further to say he thought this requirement would violate the spirit of the Americans With Disabilities Act.

Discussion: The Secretary is sensitive to this commenter's concerns. The Secretary, as part of the Department's ongoing effort to reduce the administrative burden in the loan programs, will no longer require reaffirmation of a title IV loan as a student eligibility requirement for a

borrower whose loan was canceled due to permanent and total disability. However, a borrower who has had a loan canceled for this reason will still be required to obtain a physician's statement attesting that his or her condition has improved, and agree that any new loans may not be canceled for this reason, unless the condition substantially deteriorates.

Changes: The Secretary is eliminating the requirement that a borrower reaffirm a Federal Perkins loan canceled due to total and permanent disability in order for the borrower to be eligible for further Federal Perkins loans.

Section 674.16 Making and Disbursing Loans

Comments: Several commenters objected to the requirement that the borrower must sign for each advance of funds on the promissory note. Instead, the commenters felt that the borrower should sign for the advance of funds on the promissory note at the beginning of each academic year.

Discussion: Due to the legally binding nature of the promissory note and the potential for loan defaults requiring the enforcement of loans in court, the Secretary will continue to require the borrower to sign for each advance of funds for the Federal Perkins Loan program. The Secretary asks the commenters to refer to the previous discussion of this issue in response to the comments on the definition of "making of a loan" in § 674.2.

Changes: None.

Comments: One commenter supported the study abroad provisions, but three commenters felt clarification was needed to indicate that a borrower may sign his or her note in advance, but not be required to sign for each loan disbursement while enrolled in a study abroad program. One commenter suggested deleting this provision.

Discussion: The Secretary intended that this provision allow an institution the option of obtaining from a borrower enrolled in a study abroad program his or her signature on the promissory note in advance for each disbursement of a Federal Perkins. The Secretary made this exception as part of his ongoing effort to reduce administrative burden at the institution. The Secretary does not agree that the regulations are unclear or that clarification is needed regarding loan disbursements made to borrowers who are studying abroad. As stated in the proposed language, " * * * the borrower may not be required to sign for any advance of funds made while the borrower is studying abroad if obtaining the borrower's signature would pose an undue hardship on the institution."

Changes: None.

Comments: One commenter pointed out that small institutions are having difficulty reporting small volumes of loans to a national credit bureau, because these credit bureaus do not want to deal with small volumes. This commenter suggested that the Department demand procedures for reporting small volumes as part of any agreement between the Department and the national credit bureaus.

Discussion: The Secretary will look into what administrative steps he can take to address this situation. In the interim, small schools may want to consider joining together and report their loans cooperatively.

Changes: None.**Section 674.18 Use of funds**

Comments: One commenter stated that § 674.18 should reference the allowable transfer by an institution participating in the Work-Colleges program of any portion of its FCC allocation for an award year to the Work-Colleges program. Another commenter indicated that the proposed § 674.18(c) provided for the new transfer of up to 25 percent of the FCC allocation for the FWS program or FSEOG program, or both. However, the commenter believed that the section should include the type of restrictions that appear in § 675.18(f) of the FWS regulations.

Discussion: The Secretary agrees that for clarity and consistency, the regulations should note all the transfers allowed and the restrictions on those transfers of funds.

Changes: The Secretary is including in the Federal Perkins Loan program under § 674.18 the authority for participating institutions to transfer FCC funds to the Work-Colleges program and the restrictions on the FCC funds transferred to other programs.

Section 674.19 Fiscal Procedures and Records

Comments: A few commenters felt that the provision of the proposed rule that describes the types of records to be included in the repayment history of the borrower should include "copies of computer records."

Discussion: The Secretary does not agree with the commenters. The current regulations already provide, in § 674.19(e)(4)(v), that an institution may keep its records in computer format, which would include the computer records held by an institution's servicer. Source documents supporting records in computer format must also be maintained. The Secretary recognizes the predominance of computer

servicing, but, in order for computer records to substitute for hard copies of these records, the Secretary would need to develop specifications, for example, regarding electronic signatures, which he is not doing at this time. Because of the need to enforce Federal Perkins loans through the judicial system, the Secretary requires the hard copy supporting documentation.

Changes: None.**Section 674.31 Promissory Note**

Comments: One commenter objected to the proposal that institutions be required to use the promissory note developed by the Secretary with no changes, saying that the proposal was in direct violation of the statute. Many commenters supported the provision but felt that some discretion should be retained with the format of the promissory note, as long as they retain the text provided by the Department. Another commenter recommended including language in this provision that would clarify that "stated options" (such as the minimum repayment) are not considered modifications for the purposes of this subsection. One of these commenters pointed out that it could use an NCR form by putting the signatures on the front of the form with all the text on the back, thereby allowing the borrower to pull one copy off the back for his or her records. Another of these commenters wondered whether the institution could still add the provision telling borrowers that their academic transcript would be withheld in the event of a default.

Discussion: The promissory note is a key document in any legal action and serves as a permanent record for reaffirmation of any loans and, therefore, must remain as developed by the Secretary. Optional elements, such as the minimum monthly repayments, have been provided for institutions to use at their own discretion and will continue to be provided as options in the text of the promissory note. As such, the Secretary does not need to provide regulatory language to support the continuation of the optional language. The Secretary intends the text of the Department's Federal Perkins loan promissory note to remain unchanged. The "text" includes the order of the provisions and the placement of the signatures. These may not be changed. The current regulations have provided that the note approved by the Secretary may not have substantive changes made to it. Withholding the official academic transcript is in violation of the Family Educational Rights and Privacy Act (FERPA), regardless of whether the borrower has signed such a provision in

his or her promissory note. Such a provision may not be included in the promissory note. The institution may change only the format of the note, e.g., the type, style, and paper size.

Changes: None.**Section 674.33 Repayment**

Comments: Many commenters supported the forbearance provision. Several commenters felt that the proposed wording in section 674.33(d)(2) indicates that the minimum period of forbearance is 12 months and should be modified to read "at intervals of up to 12 months." One commenter requested clarification of "disposable income" and "poverty line." Another commenter suggested additional documentation to the Federal tax return for the purposes of documenting "disposable income." Another commenter felt this provision should make reference to the national service award.

Discussion: For a discussion of these issues as they relate to making provisions in the Federal Perkins Loan program comparable to similar provisions in the FFEL Program, the Secretary asks the commenters to refer to the discussion of the definition of "disposable income" under § 674.2. The "poverty line" is determined in accordance with section 673(2) of the Community Service Block Grant Act, and information on the poverty line may be obtained by calling the Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, (202) 690-6141. The Secretary does not have the statutory authority to extend forbearance to borrowers serving in National Community Service jobs. However, the Secretary strongly encourages institutions to use their discretion, allowed under these regulatory provisions, to grant forbearance to borrowers serving in National Community Service jobs.

Changes: The forbearance provision is amended to match the final FFEL Program regulatory provisions for forbearance, where appropriate.

Section 674.34 Deferral of Repayment

Comments: Many commenters disagreed with the Secretary's proposal that if an institution no longer qualifies as an institution of higher education, the borrower's deferral ends on the date the institution ceases to qualify. The commenters argued that the borrower's eligibility should not be affected by circumstances that are beyond the borrower's control. The unanticipated cessation of a deferral would also

pose an undue hardship on the borrower. One commenter suggested that to expect a borrower or an institution and its third party servicer to monitor another institution's qualification as an institution of higher education throughout the borrower's deferment period would be unduly burdensome for the institution and the servicer.

One commenter agreed that borrowers who attend institutions that do not qualify as institutions of higher education should not receive deferments; however, this requirement should be eased for borrowers who begin an academic year at an eligible institution that subsequently loses its eligibility sometime during that academic year. The commenters suggested that, at a minimum, the borrowers should be granted a continuation of their deferment to the end of the academic year in which they are enrolled. A few commenters suggested that a borrower should continue to be eligible for a deferment for the remainder of the deferment period.

Discussion: While the Secretary understands these concerns, the Secretary does not agree with the commenters. The statute is clear that a student must be attending an institution of higher education (IHE). The Secretary feels that very few borrowers would be in the situation in which an initially-eligible IHE would lose its eligibility. However, the Secretary is not requiring the deferment-granting institution to closely monitor this situation. Rather, in order to not unduly increase burden at the institution, the Secretary requires that if the deferment-granting institution becomes aware that an institution is no longer an IHE, the borrower's deferment must be terminated. This borrower then qualifies for a 6-month post-deferment grace period, which effectively reduces the impact on the borrowers.

Changes: None.

Comments: One commenter was concerned that dental residents would be ineligible for a "student" deferment because medical interns and residents are no longer eligible for deferments. This commenter noted that dental residents often receive little or no stipends, and a significant number pay tuition. This commenter suggested that § 674.34(b)(2) be changed to include dental residents as eligible borrowers for a "student" deferment, as has been done in the FFEL and FDSL programs regulations.

Discussion: The Secretary agrees with the commenters.

Changes: A change has been made to include dental residents as eligible for a "student" deferment.

Comments: One commenter recommended that the Secretary include in this section the same hardship deferment provisions as are included in redesignated § 674.35(i), § 674.36(e), and § 674.37(e). The commenter believes that this would provide the opportunity for institutions to maintain their maximum flexibility in working with borrowers.

Discussion: The Secretary feels that any benefits that accrued to borrowers under the "old" hardship deferment are now available under forbearance. Also, there is no statutory authorization for such a deferment in the Federal Perkins Loan program.

Changes: None.

Comments: One commenter recommended that the regulations include a definition for the minimum period during which a borrower must be enrolled in school in order to qualify for the 6-month post-deferment grace period after ceasing to be enrolled. This commenter suggested that the borrower be required to complete the enrollment period.

Discussion: The Secretary is quite interested in this issue and understands that there is a wide variety of interpretations of the applicability of the 6-month post-deferment grace period. As the Secretary understands it, institutions are granting the 6-month post-deferment grace period in one of four ways: (1) granting a 6-month post-deferment grace period regardless of the period of time the borrower is enrolled, even if it is only for one day; (2) granting a 6-month post-deferment grace period (and also a "student" deferment) only after the enrollment records are finalized, usually 5 or 6 weeks into the term; (3) granting the 6-month post-deferment grace period only if the borrower is enrolled longer than the borrower's repayment billing period; or (4) requiring the borrower to complete the enrollment period.

The statute requires granting the post-deferment grace period for "any period" the borrower qualifies for a deferment, and a borrower qualifies for a "student" deferment for "any period" of enrollment as at least a half-time student. Therefore, any institution that is granting post-deferment grace periods under the first condition is in compliance with the Federal Perkins Loan program regulations. All other institutions need to modify the procedures used for determining eligibility for post-deferment grace periods and also student deferments. While the statute allows an institution

much discretion in administering the Federal Perkins Loan program, the granting of deferments and post-deferment grace periods to qualified non-defaulted borrowers and the granting of cancellation benefits to qualified borrowers are not at the institution's discretion. These provisions are an entitlement to the borrower once the borrower has provided a written request and acceptable documentation to the institution. The Secretary expects to revisit this issue, should the Secretary find that there is widespread abuse by borrowers of this benefit.

Changes: None.

Comments: A few commenters suggested that the language in § 674.34 should read "interest should not accrue" instead of "interest does not accrue" for consistency with other sections.

Discussion: The Secretary does not agree. Each provision in the current regulations governing the 6-month post-deferment grace period contains the language, "interest does not accrue."

Changes: None.

Section 674.38 Deferment Procedures

Comments: Several commenters felt the proposal to require defaulted borrowers to make "satisfactory arrangements" to repay the loan as one of the conditions to be met in order to be granted a deferment would be unfair to the borrowers and impossible to accomplish in many cases because a borrower is in "default" the first day a payment is missed. Several commenters felt the provisions in the current regulations should be maintained.

Discussion: The Secretary agrees that implementation of this provision as written in the proposed rule is unfair to borrowers and agrees that the current regulatory provision should be maintained. The Secretary reminds the commenters that § 674.37(a)(2) provides the option to an institution to declare a borrower in default if the borrower fails to supply a deferment request and documentation. The fact that a borrower is in "default" the first day after a payment is missed is more significant for the cohort default rate calculation. The borrower still has the opportunity to respond to the demand letters before being reported to a national credit bureau, for example, even though this borrower would be counted as a default for purposes of the cohort default rate calculation.

Changes: The Secretary is withdrawing the proposed language in favor of the current language of § 674.37(b).

Section 674.39 Postponement of Loan Repayment

Comments: A few commenters felt that postponement of loan repayment in anticipation of cancellation should reflect loans made before "July 23, 1992" not before "July 1, 1992."

Discussion: There is a typographical error in this section. The date should be "July 1, 1993." The Secretary has included this date to provide for those borrowers who are eligible for cancellation benefits but are not eligible for the new deferment provisions (borrowers whose loans were made on or after July 23, 1992, but before July 1, 1993).

Changes: The Secretary will change this section to reflect "July 1, 1993."

Section 674.43(a)(3) Billing Procedures

Comments: While several commenters supported the Secretary's proposal to amend section 674.43 to allow a borrower to elect to repay his or her Federal Perkins loan by means of the electronic transfer of funds from the borrower's bank account, they felt the Secretary should modify this proposal even further to allow for annual notification to the borrower regardless of the repayment frequency. These commenters felt that this requirement was too burdensome.

Discussion: The Secretary agrees. Using the electronic method of repaying a loan is quite similar to the coupons system, and no statement of account is required under this system. However, the borrower has the remaining coupons to demonstrate the amount still due on the loan. This does not exist under the electronic system, and the borrower needs to be kept apprised of the status of his or her account. This statement of account needs to be no more frequent than annually. As part of the Secretary's effort to be mindful of the burden imposed by regulations on the institution, the Secretary is reducing burden in this provision by requiring only an annual statement of account.

Changes: The Secretary is amending this provision to allow for an annual statement of account.

Section 674.45 Collection Procedures

Comments: While a few commenters strongly supported the provision in this section that preempts state collection laws as they relate to allowing a collection agency to collect a Federal Perkins loan if the collection agency is not physically located in the state, they also recommended that the Secretary apply similar language to billing procedures, § 674.43.

Discussion: The Secretary is not aware of any state law that prohibits a

collection agency from billing a borrower if that collection agency does not have residence in that particular state. Moreover, the Secretary has not been informed of any problem with a state that is prohibiting the billing of borrowers in this circumstance. Until such time as a problem develops, the Secretary sees no reason to add this provision.

Changes: None.

Section 674.47 Costs Chargeable to the Fund

Comments: There were a number of comments on this section, and they all recommended that institutions should be allowed to write-off non-defaulted small balances, in amounts of less than \$25. The commenters felt that collecting on small balance loans is not cost-effective and this change would ease the paperwork and administrative burdens.

Discussion: While it has been a longstanding policy, and, more recently, a regulatory provision, at the Department to allow institutions to write off defaulted accounts with balances of less than \$25.00, it is not the policy to allow, nor do the current regulations allow, the write-off of non-defaulted loans, regardless of the size of the balance. This issue cannot be addressed in this final regulation, because the Secretary is required to provide the public an opportunity to make proposals and to provide comments in this area. However, the Secretary is sensitive to the issue raised by these commenters and will revisit this issue at a later date.

Changes: The Secretary is making a minor modification to the language of this provision to incorporate the word "defaulted."

Section 674.51 Special Definitions

Comments: A large number of commenters objected to the definition of medical technician, because it excluded physical therapists, who are an integral component in providing health care services. One commenter also suggested that the Secretary provide the institutions with job titles for positions that qualify such as medical technicians.

Discussion: The Secretary regrets any confusion that this section might have caused the commenters. The NPRM used the term "allied health professional" which became confused with the American Medical Association's *Twenty-Eight Allied Health Careers*. These twenty-eight careers are those areas in which the American Medical Association (AMA) accredits programs and only comprise a small proportion of "allied health

professions." "Allied health professional" is a generic term used to designate a large group of health-related personnel who assist, facilitate, or complement the work of physicians and other specialists in the health care system. "Allied health professionals" range from therapists and counselors to health care assistants. The Secretary intends "allied health professional" to be interpreted in its generic sense. The Secretary's intent was to include those health care professionals who might be working full-time except that the employment takes the form of part-time employment at more than one facility as well as those health care professionals who might be providing health care services in an environment that would not qualify as a health care facility (such as a school), or who might be working in a private facility. The Secretary believes that Congress did not intend to exclude any qualified nurses or medical technicians, as long as they are working full-time and providing health care services. The Secretary will not provide a list of "allied health professions" because the list of professions is too lengthy and does not remain static. The Secretary provides further clarification of issues such as this in the *Student Financial Aid Handbook*.

Changes: The Secretary is revising sections 674.51(i), 674.51(m), 674.52(b), and 674.56(a) for clarity to ensure that all qualifying nurses and medical technicians will receive cancellation benefits.

Federal Work-Study Programs**Section 675.2 Definitions****Low-Income Individual**

Comments: Four commenters responded to the Secretary's proposal to define "low-income individual" for the purpose of community service under the FWS program. The commenters wanted either clarification or elimination of the definition.

One commenter acknowledged that the Secretary had been asked to clarify the meaning of low-income clientele in reference to individuals served through a community service program; however, the commenter believed that the proposed language adds another layer of eligibility to FWS program administration. This commenter also believed that the proposed definition of "low-income individual" unduly encumbers the FWS community service concept and strongly suggested that a much more simplified approach be considered.

Another commenter suggested that efforts to increase participation in community service activities through

the FWS program might be hampered if institutions were required to verify the income levels of clientele served by various community organizations.

Discussion: The Secretary has taken these comments under consideration and has determined that at this time there is no need to burden institutions with a formal definition of "low-income individual" for purposes of providing community service under the FWS program. There is no requirement under the statute that a particular number or proportion of the individuals must be low-income persons. However, the Secretary reminds institutions of the statutory emphasis placed on the human, educational, environmental, and public safety needs of low-income individuals.

Changes: The Secretary has deleted this definition from the final regulations for the FWS program.

Community Services

Comments: One commenter requested that more clarity be provided on whether the service has to be "direct" under the community service component of the FWS program. Several commenters were concerned that the Secretary's interpretation of the meaning of providing community service as being "hands-on" or "direct contact" will do a great disservice to student workers by eliminating many behind-the-scenes jobs. In general, commenters believed that a successful community services agency requires all types of jobs to operate efficiently and that clerical jobs serve an important function in any organization.

Discussion: The Secretary did not propose in the NPRM a change to the definition of "community services." The Secretary reminds the commenters that the current definition of "community services" in § 675.2 does not require that the service provided by the FWS student must be "direct" to be considered community service. The job duties must include providing services that are designed to improve the quality of life for community residents or solve particular problems related to their needs. In determining whether the service is community service, the institution must always consider whether the service provided by the FWS student primarily benefits the community as opposed to the agency or institution.

The Secretary at this time is leaving flexibility to the institutions in determining what jobs provide service to the community. This approach is adopted to minimize the burden on institutions in administering the

community service component of the FWS program.

The Secretary encourages institutions to develop jobs that instill a sense of social responsibility in the students and touch the lives of community residents in a meaningful and lasting way. The Secretary believes that the best way to provide "community services" is for the students' jobs to put them in "direct" contact where possible with the recipients of the services or involve some type of "hands on" service in the community. However, the Secretary does not intend to indicate that certain activities are more important than others or that only jobs that have "direct" contact with community members are acceptable. For example, an FWS student working for a "meals on wheels" program for the elderly may prepare those meals without any "direct" contact with the community recipients, yet the service is very important in meeting the needs of the elderly.

Changes: None.

Section 675.4 Allocation and Reallocation

Comments: Three commenters discussed the proposal required by section 442(e) of the HEA that only an institution that uses at least 10 percent of its total amount of FWS Federal funds granted to compensate students employed in community service are eligible for reallocated FWS funds and that all the reallocated FWS funds must be used for community service. One of these commenters suggested that the Secretary should clarify this proposal in the regulations. The other two commenters expressed the concern that the provision that requires institutions to have a fair-share shortfall in order to receive these reallocated supplemental FWS funds presents a disincentive to institutions, with no shortfall, to strive for the 10 percent figure.

The commenters suggested that the Secretary consider an alternative to the current process of awarding unexpended funds. They would like to see the fair-share requirement changed to consider also those institutions that meet or exceed the 10 percent rule, but do not have a shortfall. In addition, one of these commenters further noted that the use of the reallocated funds should not be restricted to community service wages. Instead, since the institution had already done 100 percent above the requirement, it should be allowed to use reallocated funds in any FWS program or for administrative costs.

Discussion: Under current FWS regulations in § 675.4, the Secretary allocates and reallocates funds to

institutions participating in the FWS program in accordance with section 442 of the HEA. Therefore, this provision will not be codified in the regulations. Under section 442 of the HEA, the Secretary reallocates funds on a *pro rata* basis, i.e., the amount of an institution's fair-share shortfall as a percentage of the fair-share shortfalls of all participating institutions with an unmet FWS request. The Secretary continues to believe this position to be the most equitable formula for awarding unexpended funds. The statutory provision that mandates this new rule for receipt of unexpended FWS funds, section 442(e)(1) of the HEA, provides that these funds will only go to institutions that expend at least 10 percent of their total amount of FWS funds (initial and supplemental) to employ students in community service jobs, and that the reallocated FWS funds must also be used only for that purpose. Congress amended this section to encourage students to participate in community service activities.

Changes: None.

Section 675.8 Program Participation Agreement

Comments: Several commenters believed that the jobs performed by an institution's FWS students that provide support services solely to the institution's own students with disabilities should be counted toward meeting the community service requirements under the FWS program. Many commenters believed that not to do this would cause an undue hardship for the institution. One commenter questioned why under the FWS program it is permissible to develop programs that support services to an institution's own students with disabilities yet under the community service component this is not allowed. Two commenters asked for consistency between the program participation agreement and the community service definition concerning the meaning of support services to students with disabilities.

Discussion: Section 441(c) of the HEA under the definition of community service states that an institution may include as part of its community service component support services to students with disabilities. Section 443(b)(9) of the HEA requires institutions under the program participation agreement to assure that employment under the FWS program may be used to support programs for supportive services to students with disabilities.

The Secretary believes the intention of the community service requirement in the statute is for an institution's FWS students to work with elementary and

secondary school students as well as students attending other postsecondary institutions, and provide services to the disabled, and not just for an institution to provide services solely to its own students with disabilities. As allowed by section 443(b)(9) of the HEA, an institution may use FWS funds to provide support services to its own institutional students with disabilities. However, to be providing community service in accordance with section 441(c) of the HEA, the FWS students providing the service must be providing the service to students with disabilities in the community. The fact that the FWS students also provide the services to the institution's own students with disabilities would not necessarily prevent the job from being considered community service.

Changes: The definition of "community services" in § 675.2 has been revised to emphasize that the support services must be provided to students other than an institution's own students to satisfy the community service component of the FWS program. No changes have been made to § 675.8.

Section 675.18 Use of Funds

Community Service Waiver

Comments: Section 443(b)(2)(A) of the HEA provides that for the 1994-95 award year and succeeding award years, an institution shall use at least 5 percent of the total amount of FWS Federal funds granted to such institution to compensate students employed in community service, except that the Secretary may waive this requirement if the Secretary determines that enforcing it would cause hardship for students at an institution.

In the NPRM, the Secretary requested comments regarding the conditions under which the Secretary should grant waivers of this provision. Some commenters believed that means and costs of transportation are major issues the Secretary needs to consider in granting a waiver. The commenters believed that students from low-income backgrounds do not have cars, and some institutions are located in areas that have no public transportation. One commenter believed that there are many institutions located in rural areas and that community service jobs may not be accessible. Some commenters believed it would be a hardship on institutions that could only locate community service jobs with agencies that could not afford to pay a portion of the non-Federal share. Other commenters wanted the Department to regulate the criteria that the Secretary would use to determine this waiver. One commenter

expressed concern for the safety of students providing community service in some locations. This same commenter noted that performance of community service might conflict with student class schedules. One commenter believed that private technical universities have very few degree programs offered that are geared toward community service and that placements in this area are somewhat rare.

Discussion: Section 443(b)(2)(A) of the amended HEA mandates that at least 5 percent of an institution's total amount of Federal FWS funds granted must be used to compensate students employed in community service jobs, unless the Secretary waives the requirement.

Based on public comment, the Secretary does not foresee many instances in which a waiver would be granted. However, to allow flexibility to consider factors that are valid reasons for a waiver, the Secretary is not specifying the specific circumstances that would receive a waiver. The fact that it may be difficult for the institution to comply with this provision is not a basis for granting a waiver. The Secretary will consider providing more specific regulatory guidance on this issue as he gains more experience in processing these kinds of waiver requests.

Changes: The language in § 675.18(h) has been revised to emphasize that to receive a waiver, an institution must demonstrate that the 5 percent requirement would cause a hardship for students at the institution.

Administrative Cost Allowance

Comments: Two commenters requested that the additional Administrative Cost Allowance (ACA) available for the expired Community Service Learning program be continued for the community service component under the FWS program. These commenters believed that the regular campus-based ACA provided institutions was already fully utilized and the additional expenses incurred for the new community service mandate will have to be absorbed by the institutions. One commenter believed that the statute should be interpreted to allow use of up to 10 percent of the entire campus-based ACA for the purpose of paying the costs for community service, but no more than the portion of the ACA attributable to the FWS program. The commenter wanted the flexibility to be given to the institutions in using the ACA at no additional cost to the Federal government.

Discussion: The Amendments changed sections 447 and 489(a) of the

HEA to eliminate the special ACA for work-study for community service learning. In accordance with the requirements of the HEA, the Secretary removed the special ACA from § 675.18(b)(5). However, the Amendments did amend section 447 of the HEA to permit an institution to use up to 10 percent of the funds available for the institution's regular campus-based ACA and attributable to the institution's FWS program expenditures to cover expenses incurred for its program of community service. The Secretary, in accordance with the requirements of the HEA, further amended § 675.18(b)(5) to provide an institution with this authority.

Changes: None.

Subpart C—Work-Colleges Program

Authorization of Appropriations

Comments: One commenter suggested that under the Work-Colleges subpart of the regulations the Department should provide for the allocation and reallocation of funds as it does under § 675.4 of the FWS program regulations even though no funds are appropriated.

Discussion: The Secretary will implement the allocation and reallocation process for the Work-Colleges program based on the institutions' requests. The funds will be allocated and reallocated based on each institution's approved request for Federal funds for the Work-Colleges program as a percent of the total of such approved requests for all applicant institutions.

Changes: This section is amended to add an allocation and reallocation process.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements were identified and explained in the NPRM.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

The Secretary has also determined that this regulatory action does not

unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Paperwork Reduction Act of 1980

Section 674.34(e) contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the U.S. Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review.

Waiver of Proposed Rulemaking

In addition to the changes made to these regulations based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include changes made by the Improving America's Schools Act of 1994 (Pub. L. 103-382), and the Bankruptcy Reform Act of 1994 (Pub. L. 103-394), enacted subsequent to publication of the notice of proposed rulemaking.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory changes into the regulations, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 5532(b)(B) that public comment on the regulations is unnecessary and contrary to the public interest.

Assessment of Educational Impact

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

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

List of Subjects

34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 675

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

34 CFR Part 676

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

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

Dated: November 21, 1994.

Richard W. Riley,
Secretary of Education.

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

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087ii and 20 U.S.C. 421-429, unless otherwise noted.

2. Section 674.2(b) is amended by removing the definitions of *Default rate*, *Defaulted principal amount*, *outstanding*, and *Matured loans*; by revising the definition of *Undergraduate student*; and by adding, in alphabetical order, the definitions of *Enter repayment*, *Making of a loan*, *National credit bureau*, *Satisfactory arrangements to repay the loan*, *Total monthly gross income* and *Undergraduate student* to read as follows:

§ 674.2 Definitions.

* * * * *

(b) * * *

Enter repayment: The day following the expiration of the initial grace period or the day the borrower waives the initial grace period. This date does not change if a forbearance, deferment, or cancellation is granted after the borrower enters repayment.

* * * * *

Making of a loan: When the borrower signs for an advance of loan funds and those funds are disbursed.

* * * * *

National credit bureau: Any one of the national credit bureaus with which the Secretary has an agreement.

* * * * *

Satisfactory arrangements to repay the loan: The establishment of a new written repayment agreement and the making of one payment each month for six consecutive months.

* * * * *

Total monthly gross income: The gross amount of income received by the borrower from employment (either full-time or part-time) and from other sources.

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

* * * * *

3. Section 674.4 is amended by revising paragraph (b) and by adding new paragraphs (e) and (f) to read as follows:

§ 674.4 Allocation and reallocation.

* * * * *

(b) The Secretary reallocates Federal capital contributions to institutions participating in the Federal Perkins Loan program by—

(1) Reallocating 80 percent of the total funds available in accordance with section 462(j) of the HEA; and

(2) Reallocating 20 percent of the total funds available in a manner that best carries out the purposes of the Federal Perkins Loan program.

* * * * *

(e) *Unexpended funds.* (1) If an institution returns more than 10 percent of its allocation for an award year, the Secretary will reduce the institution's allocation for the second succeeding award year by the dollar amount returned.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (e)(1) of this section to be contrary to the interest of the program only if the institution returned more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

(f) *Anticipated collections.* (1) For the purposes of calculating an institution's share of any excess allocation, an institution's anticipated collections are equal to the amount that was collected during the second year preceding the beginning of the award period multiplied by 1.21.

(2) The Secretary may waive the provision of paragraph (f)(1) of this section for any institution that has a cohort default rate that does not exceed 7.5 percent.

4. A new § 674.5 is added to read as follows:

§ 674.5 Federal Perkins Loan program cohort default rate and penalties.

(a) *Default penalty.* If an institution's cohort default rate meets the following levels, a default penalty is imposed on the institution as follows:

(1) If the institution's cohort default rate equals or exceeds 15 percent, the institution must establish a default reduction plan in accordance with § 674.6.

(2) If the institution's cohort default rate equals or exceeds 20 percent, but is less than 25 percent, the institution's FCC is reduced by 10 percent.

(3) If the institution's cohort default rate equals or exceeds 25 percent, but is less than 30 percent, the institution's FCC is reduced by 30 percent.

(4) If the institution's cohort default rate equals or exceeds 30 percent, the institution's FCC is reduced to zero.

(b) *Cohort default rate.* (1) The term "cohort default rate" means, for any award year in which 30 or more current and former students at the institution enter repayment on a loan received for attendance at the institution, the percentage of those current and former students who enter repayment in that award year on the loans received for attendance at that institution who default before the end of the following award year.

(2) In determining the number of students who default before the end of the following award year, the Secretary excludes any loans that, due to improper servicing or collection, would result in an inaccurate or incomplete calculation of the cohort default rate.

(3) For any award year in which less than 30 current and former students at the institution enter repayment on a loan received for attendance at the institution, the "cohort default rate" means the percentage of those current and former students who entered repayment on loans received for attendance at that institution in any of the three most recent award years and who defaulted on those loans before the end of the award year immediately following the year in which they entered repayment.

(c) *Defaulted loans to be included in the cohort default rate.* For purposes of calculating the cohort default rate under paragraph (b) of this section—

(1) A borrower must be included only if the borrower's default has persisted for at least—

(i) 240 consecutive days for loans repayable in monthly installments; or

(ii) 270 consecutive days for loans repayable in quarterly installments;

(2) A loan is considered to be in default if a payment is made by the institution of higher education, its

owner, agency, contractor, employee, or any other entity or individual affiliated with the institution, in order to avoid default by the borrower;

(3)(i) Any loan that is in default, but on which the borrower has made satisfactory arrangements to repay the loan, or any loan that has been rehabilitated before the end of the following award year is not considered to be in default for purposes of the cohort default rate calculation; and

(ii) In the case of a student who has attended and borrowed at more than one institution, the student and his or her subsequent repayment or default are attributed to the institution for attendance at which the student received the loan that entered repayment in the award year; and

(4) Improper servicing or collection means the failure of the institution to comply with subpart C of this part.

(d) *Locations of the institution.* (1) A cohort default rate of an institution applies to all locations of the institution as it exists on the first day of the award year for which the rate is calculated.

(2) A cohort default rate of an institution applies to all locations of the institution from the date the institution is notified of that rate until the institution is notified by the Secretary that the rate no longer applies.

(3) For an institution that changes status from a location of one institution to a free-standing institution, the Secretary determines the cohort default rate based on the institution's status as of July 1 of the award year for which a cohort default rate is being calculated.

(4)(i) For an institution that changes status from a free-standing institution to a location of another institution, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both the former free-standing institution and the other institution. This cohort default rate applies to the new consolidated institution and all of its current locations.

(ii) For free-standing institutions that merge, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from both of the institutions that are merging. This cohort default rate applies to the new, consolidated institution.

(iii) For an institution that changes status from a location of one institution to a location of another institution, the

Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the number of students who default during the applicable award years from both of the institutions in their entirety, not limited solely to the respective locations.

(5) For an institution that has a change in ownership that results in a change in control, the Secretary determines the cohort default rate based on the combined number of students who enter repayment during the applicable award year and the combined number of students who default during the applicable award years from the institution under both the old and new control.

(e) *Loan rehabilitation.* (1) A loan is considered rehabilitated only after the borrower has executed a new written repayment agreement and has made one payment each month for 12 consecutive months.

(2) Within 30 days of the date of the rehabilitation, the institution shall report the rehabilitation to the same national credit bureau to which it originally reported this defaulted loan.

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

5. A new § 674.6 is added to read as follows:

§ 674.6 Default reduction plan.

(a) *General.* An institution with a cohort default rate that equals or exceeds 15 percent shall establish and implement a plan designed to reduce defaults by its students in the future. The institution shall submit to the Secretary by December 31 of the calendar year in which the cohort default rate was calculated—

(1) A written description of the default reduction plan;

(2) A statement indicating that the institution agrees to comply with the required measures in paragraph (b) of this section; or

(3) For an institution that is participating in the Federal Family Education Loan Program and has in place a default reduction plan for that program, a statement indicating that the institution agrees to apply that plan to the Federal Perkins Loan program.

(b) *Required measures.* The default reduction plan required under this section must include a description of the measures to be taken by the institution to reduce defaults. The institution shall explain how it plans to implement the following measures:

(1) Revise admission policies and screening practices, consistent with applicable State law, to ensure that

students enrolled in the institution, especially those who are not high school graduates or those who are in need of substantial remedial work, have a reasonable expectation of succeeding in their programs of study.

(2) Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, including—

(i) Providing academic counseling and other support services to students on a regular basis, at a time and location that is convenient for the students involved;

(ii) Publicizing the availability of the academic counseling and other support services;

(iii) Establishing procedures to identify academically high-risk students and schedule those students for immediate counseling services; and

(iv) Maintaining records identifying those students who receive academic counseling.

(3) Attempt to reduce its withdrawal rate by conforming with that accrediting agency's standards of satisfactory progress and with those described in 34 CFR 668.14, and improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with its academic accrediting agency.

(4) Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution. Reviews must be conducted each month.

(5) Expand its job placement program for its students by—

(i) (A) Increasing contacts with local employers, counseling students in job search skills, and

(B) Exploring with local employers the feasibility of establishing internship and cooperative education programs;

(ii) Attempting to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program in consultation with the cognizant accrediting body; and

(iii) Establishing a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

(6) Remind the borrower of the importance of the repayment obligation and of the consequences of default and update the institution's records regarding the borrower's employer and

employer's address as part of the contacts with the borrower under § 674.42(b).

(7) Obtain from the borrower at the time of a borrower's admission to the institution information regarding references and family members beyond those provided on the loan application to provide the institution or its agent with a variety of ways to locate a borrower who later relocates without notifying the institution.

(8) Explain to a prospective student that the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any Federal Perkins Loan.

(9) Use a written test and intensive additional counseling for those borrowers who fail the test to ensure the borrower's comprehension of the terms and conditions of the loan including those described in §§ 674.16 and 674.42(a) as part of the initial loan counseling and the exit interview.

(10) During the exit interview provided to a Federal Perkins Loan borrower—

(i) Explain the use by institutions of outside contractors to service and collect loans;

(ii) Provide general information on budgeting of living expenses and other aspects of personal financial management; and

(iii) Provide guidance on the preparation of correspondence to the borrower's institution or agent and completion of deferment and cancellation forms.

(11) Use available audio-visual materials such as videos and films to enhance the effectiveness of the initial and exit counseling.

(12) Conduct an annual comprehensive self-evaluation of its administration of the title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

(13) Delay loan disbursements to first-time borrowers for 30 days after enrollment.

(14) Require first-time borrowers to endorse their loan check at the institution and to pick up at the institution any loan proceeds remaining after deduction of institutional charges.

(Approved by the Office of Management and Budget under control number 1840-0535) (Authority: 20 U.S.C. 1087bb)

6. A new § 674.7 is added to read as follows:

§ 674.7 Expanded lending option (ELO).

(a) To participate in the expanded lending option in any award year, an

eligible institution shall enter into a special ELO participation agreement with the Secretary. The agreement provides that the institution shall—

(1) Deposit ICC equal to 100 percent of the FCC described in § 674.8(a)(1) for that award year into the Fund;

(2) Maintain a cohort default rate that is equal to or less than 15 percent; and

(3) Have participated in the Federal Perkins Loan program for at least two years.

(b) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow in any academic year is—

(1) \$4,000 for a student who has not successfully completed a program of undergraduate education; and

(2) \$6,000 for a graduate or professional student.

(c) The aggregate maximum amount of Federal Perkins and Direct Loans an eligible student who attends an institution that participates in the ELO may borrow is—

(1) \$8,000 for a student who has not successfully completed two years of a program leading to a bachelor's degree;

(2) \$20,000 for a student who has successfully completed two years of a program leading to a bachelor's degree but who has not received the degree; and

(3) \$40,000 for a graduate or professional student.

(d) The maximum annual amounts described in paragraph (b) of this section and the aggregate maximum amounts described in paragraph (c) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(e) For each student, the maximum annual amounts described in paragraphs (b) and (d) of this section and the aggregate maximum amounts listed in paragraphs (c) and (d) of this section include any amount borrowed previously by that student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

(f) The institution shall deposit into its Fund an amount required under paragraph (a)(1) of this section whether or not the institution makes loans in the amount authorized under paragraphs (b) and (c) of this section.

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

7. Section 674.8 is amended by revising paragraph (a)(2); by

redesignating paragraphs (a)(3) through (a)(6) as paragraphs (a)(4) through (a)(7) respectively; by adding a new paragraph (a)(3); by revising paragraph (c); and by republishing the OMB control number to read as follows:

§ 674.8 Program participation agreement.

- (a) * * *
- (2) Except as provided in paragraph (a)(1) of § 674.7—
- (i) ICC equal to at least three-seventenths of the FCC described in paragraph (a)(1) of this section in award year 1993–94; and
- (ii) ICC equal to at least one-third of the FCC described in paragraph (a)(1) of this section in award year 1994–95 and succeeding award years;
- (3) ICC equal to the amount of FCC described in paragraph (a)(1) of § 674.7 for an institution that has been granted permission by the Secretary to participate in the ELO under the Federal Perkins Loan program;

(c) The institution shall submit an annual report to the Secretary containing information that determines its cohort default rate that includes—

- (1) For institutions in which 30 or more of its current or former students first entered repayment in an award year—
- (i) The total number of borrowers who first entered repayment in the award year; and
- (ii) The number of those borrowers in default by the end of the following award year; or
- (2) For institutions in which less than 30 of its current or former students entered repayment in an award year—
- (i) The total number of borrowers who first entered repayment in any of the three most recent award years; and
- (ii) The number of those borrowers in default before the end of the award year immediately following the year in which they entered repayment.

(Approved by the Office of Management and Budget under control number 1840–0535)

8. Section 674.9 is amended by revising paragraph (b); by removing the word “and” after the semicolon in paragraph (d)(2); by removing the phrase “, including a loan discharged in bankruptcy,” from paragraph (e); by removing the period at the end of paragraph (e) and adding, in its place, a semicolon; and by adding new paragraphs (f), (g), (h), and (i) to read as follows:

§ 674.9 Student eligibility.

(b) Is enrolled or accepted for enrollment as an undergraduate, graduate, or professional student at the institution, whether or not engaged in a program of study abroad approved for credit by the home institution;

(f) Provides to the institution a driver's license number, if any, at the time of application for the loan;

(g) Reaffirms any Federal Perkins, Direct, or Defense loan amount that previously was written off (if the amount of the write-off exceeded \$25); and

(h)(1) In the case of a borrower whose previous loan was canceled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(2) Signs a statement acknowledging that any new Federal Perkins or Direct loan the borrower received cannot be canceled in the future on the basis of any present impairment, unless that condition substantially deteriorates.

(i) For purposes of this section, reaffirmation means the acknowledgment of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

- (1) Signing a new promissory note or new repayment agreement; or
- (2) Making a payment on the loan.

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

9. Section 674.10 is amended by revising paragraph (b); and by republishing the OMB control number to read as follows:

§ 674.10 Selection of students for loans.

(b) If an institution's allocation of FCC is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of the dollar amount of those loans made under this part.

(Approved by the Office of Management and Budget under control number 1840–0535)

10. Section 674.12 is revised to read as follows:

§ 674.12 Loan maximums.

(a) The maximum annual amount of Federal Perkins Loans and Direct Loans an eligible student who attends an

institution that does not participate in the ELO may borrow in any academic year is—

(1) \$3,000 for a student who has not successfully completed a program of undergraduate education; and

(2) \$5,000 for a graduate or professional student.

(b) The aggregate maximum amount of Federal Perkins Loans and Direct Loans an eligible student who attends an institution that does not participate in the ELO may borrow is—

(1) \$15,000 for a student who has not successfully completed a program of undergraduate education; and

(2) \$30,000 for a graduate or professional student.

(c) The maximum annual amounts described in paragraph (a) of this section and the aggregate maximum amounts described in paragraph (b) of this section may be exceeded by 20 percent if the student is engaged in a program of study abroad that is approved for credit by the home institution at which the student is enrolled and that has reasonable costs in excess of the home institution's cost of attendance.

(d) For each student, the maximum annual amounts described in paragraphs (a) and (c) of this section and the aggregate maximum amounts described in paragraphs (b) and (c) of this section, include any amounts borrowed previously by the student under title IV, part E of the HEA at any institution, including any amounts that may have been repaid to the Fund at any institution.

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

§ 674.13 [Amended]

11. Section 674.13 is amended by removing the words “or endorser” after the word “borrower” in paragraph (b)(1)(ii).

12. Section 674.14 is amended by removing the words “Guaranteed Student Loans” and adding, in its place, the words “Federal Family Education Loan” in paragraph (b)(1)(ii); by removing the words “and need-based ICLs” after the words “Direct Loans” in paragraph (b)(1)(x); by adding the words “or Federal” before the word “PLUS”, by removing the comma after the words “PLUS loan”, and by removing the words “or non-need-based ICL” before the word “as” in paragraph (b)(3); and by revising paragraphs (c) introductory text, (c)(1), (c)(2), and (c)(3) to read as follows:

§ 674.14 Overaward.

(c) *Treatment of resources in excess of need.* An institution shall take the

following steps if it learns that a student has received additional resources not included in the calculation of Direct or Federal Perkins Loan eligibility that would result in the student's total resources exceeding his or her financial need by more than \$300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than \$300, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than \$300, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) If the student's total resources still exceed his or her need by more than \$300, after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than \$300 as an overpayment.

13. Section 674.16 is amended by revising paragraph (a)(1)(ii); by revising paragraph (a)(1)(x); by revising paragraph (d); by redesignating paragraphs (g) and (h) as paragraphs (h) and (i) respectively; by adding a new paragraph (g); by adding the word "Federal" before the words "Perkins Loan program" in redesignated paragraph (h); by adding a new paragraph (j); and by republishing the OMB control number to read as follows:

§ 674.16 Making and disbursing loans.

(a)(1) * * *

(ii) The principal amount of the loan and a statement that the institution will report the amount of the loan to a national credit bureau at least annually.

(x) A definition of default and the consequences to the borrower, including a statement that the institution may report the default to a national credit bureau.

(d)(1) The institution may advance the loan proceeds to the borrower directly by check or by crediting his or her account with the institution. The institution shall notify the student of the amount he or she can expect to receive and of how and when that amount will be paid. In either case, the borrower

must sign for each advance of funds on the promissory note, except as provided in paragraph (d)(2) of this section.

(2)(i) In the case of a borrower enrolled in a study-abroad program approved for credit by the home institution in which the borrower is enrolled, the borrower may not be required to sign for any advance of funds made while the borrower is studying abroad if obtaining the borrower's signature would pose an undue hardship on the institution.

(ii) The institution shall properly document the reason for not obtaining the borrower's signature.

(g)(1) An institution may disburse Federal Perkins Loan funds in accordance with paragraphs (g)(2) and (3) of this section after the student has ceased to be enrolled.

(2) A disbursement described in paragraph (g)(1) of this section may be made—

(i) Only if the loan is awarded to the student while he or she is still an eligible student; and

(ii) Only if the loan funds are used to cover documented educational costs to the student that are normally included in a borrower's cost of attendance under section 472 of the HEA for the payment period for which the loan was intended and the student was actually enrolled.

(3) The institution shall document in the student's file the reason for the late disbursement.

(j) An institution shall report to any one national credit bureau—

(1) The amount of each disbursement;

(2) The date the disbursement was made; and

(3) Information as specified in section 430A of the Act.

(Approved by the Office of Management and Budget under control number 1840-0535)

14. Section 674.18 is amended by adding a new paragraph (c) to read as follows:

§ 674.18 Use of funds.

(c) *Transfer of funds.* (1) An institution may transfer up to 25 percent of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Federal Work-Study program or Federal Supplemental Educational Opportunity Grant program, or to both.

(2) An institution may transfer up to the total of the sum of its initial and supplemental Federal Perkins Loan allocations for an award year to the Work-Colleges program.

(3) An institution shall use transferred funds according to the requirements of the program to which they are transferred.

(4) An institution shall report any transferred funds on the Fiscal Operations Report required under § 674.19(d).

(5) An institution shall transfer back to the Federal Perkins Loan program any funds unexpended at the end of the award year that it transferred to the FWS program, the FSEOG program, or the Work-Colleges program from the Federal Perkins Loan program.

15. Section 674.19 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 674.19 Fiscal procedures and records.

(e) * * *

(2) * * *

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

16. Section 674.31 is amended by removing paragraph (a)(2); by redesignating paragraph (a)(3) as paragraph (a)(2); by revising redesignated paragraph (a)(2)(ii)(A); by adding a new paragraph (a)(2)(iii); by revising paragraphs (b)(6) and (b)(10); and by republishing the OMB control number to read as follows:

§ 674.31 Promissory note.

(a) * * *

(2) * * *

(ii) * * *

(A) The note requires the signature of the borrower on each page; or

(iii) The promissory note must state the exact amount of the minimum monthly repayment amount if the institution chooses the option under § 674.33(b).

(b) * * *

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

(10) *Disclosure of information.* The promissory note must state that—

(i) The institution shall disclose to any one national credit bureau the amount of the loan made to the borrower, along with other relevant information;

(ii) If the borrower defaults on the loan, the institution shall disclose that the borrower has defaulted on the loan, along with other relevant information, to the same national credit bureau to which it originally reported the loan; and

(iii) If the borrower defaults on the loan and the loan is assigned to the Secretary for collection, the Secretary may disclose to a national credit bureau that the borrower has defaulted on the loan, along with other relevant information.

* * * * *

(Approved by the Office of Management and Budget under control number 1840-0535)

17. Section 674.33 is amended by redesignating paragraph (a)(3) as paragraph (a)(4); by adding a new paragraph (a)(3); by revising paragraph (b); by revising paragraph (c)(1); and by adding new paragraphs (d) and (e) to read as follows:

§ 674.33 Repayment.

(a) * * *

(3) If the installment payment for all loans made to a borrower by an institution is not a multiple of \$5, the institution may round that payment to the next highest dollar amount that is a multiple of \$5.

* * * * *

(b) *Minimum monthly repayment*—(1) *Minimum monthly repayment option.* (i) An institution may require a borrower to pay a minimum monthly repayment if—

(A) The promissory note includes a minimum monthly repayment provision specifying the amount of the minimum monthly repayment; and

(B) The monthly repayment of principal and interest for a 10-year repayment period is less than the minimum monthly repayment; or

(ii) An institution may require a borrower to pay a minimum monthly repayment if the borrower has received loans with different interest rates at the same institution and the total monthly repayment would otherwise be less than the minimum monthly repayment.

(2) *Minimum monthly repayment of loans from more than one institution.* If a borrower has received loans from more than one institution, the following rules apply:

(i) If the total of the monthly repayments is equal to at least the minimum monthly repayment, no institution may exercise a minimum monthly repayment option.

(ii) If only one institution exercises the minimum monthly repayment option when the monthly repayment would otherwise be less than the minimum repayment option, that

institution receives the difference between the minimum monthly repayment and the repayment owed to the other institution.

(iii) If each institution exercises the minimum repayment option, the minimum monthly repayment must be divided among the institutions in proportion to the amount of principal advanced by each institution.

(3) *Minimum monthly repayment of both Defense and Direct or Federal Perkins loans from one or more institutions.* If the total monthly repayment is less than \$30 and the monthly repayment on a Defense loan is less than \$15 a month, the amount attributed to the Defense loan may not exceed \$15 a month.

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

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

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

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

(6) *Minimum monthly repayment rates.* For the purposes of this section, the minimum monthly repayment rate is—

(i) \$15 for a Defense loan;

(ii) \$30 for a Federal Perkins loan made before October 1, 1992, or for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has an outstanding balance of principal or interest owing on any loan made under this part; or

(iii) \$40 for a Federal Perkins loan made on or after October 1, 1992, to a borrower who, on the date the loan is made, has no outstanding balance of principal or interest owing on any loan made under this part.

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

(c) *Extension of repayment period*—

(1) *Hardship.* The institution may

extend a borrower's repayment period due to prolonged illness or unemployment.

* * * * *

(d) *Forbearance.* (1) Forbearance means the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously were scheduled.

(2) Upon receipt of a written request and supporting documentation, the institution shall grant the borrower forbearance of principal and, unless otherwise indicated by the borrower, interest renewable at intervals of up to 12 months for periods that collectively do not exceed three years.

(3) The terms of forbearance must be agreed upon, in writing, by the borrower and the institution.

(4) In granting a forbearance under this section, an institution shall grant a temporary cessation of payments, unless the borrower chooses another form of forbearance subject to paragraph (d)(1) of this section.

(5) An institution shall grant forbearance if—

(i) The amount of the payments the borrower is obligated to make on title IV loans each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower's total monthly gross income;

(ii) The institution determines that the borrower should qualify for the forbearance due to poor health or for other acceptable reasons; or

(iii) The Secretary authorizes a period of forbearance due to a national military mobilization or other national emergency.

(3) Before granting a forbearance to a borrower under paragraph (d)(2)(i) of this section, the institution shall require the borrower to submit at least the following documentation:

(i) Evidence showing the amount of the most recent total monthly gross income received by the borrower; and

(ii) Evidence showing the amount of the monthly payments owed by the borrower for the most recent month for the borrower's title IV loans.

(4) Interest accrues during any period of forbearance.

(e) *Compromise of repayment.* (1) An institution may compromise on the repayment of a defaulted loan if—

(i) The institution has fully complied with all due diligence requirements specified in subpart C of this part; and

(ii) The student borrower pays in a single lump-sum payment—

(A) 90 percent of the outstanding principal balance on the loan under this part;

(B) The interest due on the loan; and
(C) Any collection fees due on the loan.

(2) The Federal share of the compromise repayment must bear the same relation to the institution's share of the compromise repayment as the Federal capital contribution to the institution's loan Fund under this part bears to the institution's capital contribution to the Fund.

§§ 674.34 through 674.39 [Redesignated as §§ 674.35 through 674.40]

18. Sections 674.34 through 674.39 are redesignated as §§ 674.35 through 674.40 respectively and a new § 674.34 is added to read as follows:

§ 674.34 Deferment of repayment—Federal Perkins loans and Direct loans made on or after July 1, 1993.

(a) The borrower may defer making scheduled installment repayment on a Federal Perkins loan or a Direct loan made on or after July 1, 1993, during the periods described in this section.

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

(i) Enrolled and in attendance as a regular student in at least a half-time course of study at an eligible institution;

(ii) Enrolled and in attendance as a regular student in a course of study that is part of a graduate fellowship program approved by the Secretary;

(iii) Engaged in graduate or post-graduate fellowship-supported study (such as a Fulbright grant) outside the United States; or

(iv) Enrolled in a course of study that is part of a rehabilitation training program for disabled individuals approved by the Secretary as described in paragraph (g) of this section.

(2) No borrower is eligible for a deferment under paragraph (b)(1) of this section while serving in a medical internship or residency program, except for a residency program in dentistry.

(3) The institution of higher education at which the borrower is enrolled does not need to be participating in the Federal Perkins Loan program for the borrower to qualify for a deferment.

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

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

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

(c)(1) The borrower of a Federal Perkins loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59, and 674.60.

(2) The borrower of a Direct loan need not repay principal, and interest does not accrue, for any period during which the borrower is engaged in service described in §§ 674.53, 674.54, 674.56, 674.57, 674.58, and 674.59.

(d) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is seeking and unable to find full-time employment.

(e) The borrower need not repay principal, and interest does not accrue, for any period not to exceed 3 years during which the borrower is suffering an economic hardship. To qualify for this deferment, the borrower must provide documentation satisfactory to the institution showing that the borrower—

(1) Has been granted an economic hardship deferment under either the FDSL or FFEL programs for the period of time for which the borrower has requested an economic hardship deferment for his or her Federal Perkins loan;

(2) Is receiving payment under a federal or state public assistance program, such as Aid to Families with Dependent Children, Supplemental Security Income, Food Stamps, or state general public assistance;

(3) Is working full-time and earning a total monthly gross income that does not exceed the greater of—

(i) The monthly earnings of an individual earning the minimum wage described in section 6 of the Fair Labor Standards Act of 1938; or

(ii) An amount equal to 100 percent of the poverty line for a family of two, as determined in accordance with section 673(2) of the Community Service Block Grant Act;

(4) Is not receiving total monthly gross income that exceeds twice the amount specified in paragraph (e)(3) of this section and, after deducting an amount equal to the borrower's monthly payments on federal postsecondary education loans, as determined under paragraph (e)(8) of this section, the remaining amount of that income does not exceed the amount specified in paragraph (e)(3) of this section; or

(5) Is working full-time and has a Federal educational debt burden that equals or exceeds 20 percent of the

borrower's adjusted gross income and the difference between the borrower's adjusted gross income minus such burden is less than 220 percent of the greater of—

(i) The annual earnings of an individual earning the minimum wage under section 6 of the Fair Labor Standards Act of 1938; or

(ii) the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act) applicable to a family of two.

(6) For a deferment granted under paragraph (e)(4) of this section, the institution shall require the borrower to submit at least the following documentation to qualify for an initial period of deferment—

(i) Evidence showing the amount of the borrower's most recent total monthly gross income, as defined in section 674.2; and

(ii) Evidence that would enable the institution to determine the amount of the monthly payments that would have been owed by the borrower during the deferment period to other entities for federal postsecondary education loans in accordance with paragraph (e)(8) of this section.

(7) To qualify for a subsequent period of deferment that begins less than one year after the end of a period of deferment under paragraphs (e) (3) or (4) of this section, the institution shall require the borrower to submit a copy of the borrower's federal income tax return if the borrower filed a tax return within eight months prior to the date the deferment is requested.

(8) For purposes of paragraphs (e)(3) and (e)(5) of this section, a borrower is considered to be working full-time if the borrower is expected to be employed for at least three consecutive months at 30 hours per week.

(9) In determining a borrower's eligibility for an economic hardship deferment under paragraph (e) of this section, the institution shall count only the monthly payment amount (or a proportional share if the payments are due less frequently than monthly) that would have been owed on a federal postsecondary education loan if the loan had been scheduled to be repaid in 10 years from the date the borrower entered repayment, regardless of the length of the borrower's actual repayment schedule or the actual monthly payment amount (if any) that would be owed during the period that the borrower requested an economic hardship deferment.

(f) To qualify for a deferment for study as part of a graduate fellowship program

pursuant to paragraph (b)(1)(ii) of this section, a borrower must provide the institution certification that the borrower has been accepted for or is engaged in full-time study in the institution's graduate fellowship program.

(g) To qualify for a deferment from study in a rehabilitation training program, pursuant to paragraph (b)(1)(iv) of this section, the borrower must be receiving, or be scheduled to receive, services under a program designed to rehabilitate disabled individuals and must provide the institution with the following documentation:

(1) A certification from the rehabilitation agency that the borrower is either receiving or scheduled to receive rehabilitation training services from the agency.

(2) A certification from the rehabilitation agency that the rehabilitation program—

(i) Is licensed, approved, certified, or otherwise recognized by one of the following entities as providing rehabilitation training to disabled individuals—

(A) A State agency with responsibility for vocational rehabilitation programs;

(B) A State agency with responsibility for drug abuse treatment programs;

(C) A State agency with responsibility for mental health services programs;

(D) A State agency with responsibility for alcohol abuse treatment programs; or

(E) The Department of Veterans Affairs; and

(ii) Provides or will provide the borrower with rehabilitation services under a written plan that—

(A) Is individualized to meet the borrower's needs;

(B) Specifies the date on which the services to the borrower are expected to end; and

(C) Is structured in a way that requires a substantial commitment by the borrower to his or her rehabilitation. The Secretary considers a substantial commitment by the borrower to be a commitment of time and effort that would normally prevent an individual from engaging in full-time employment either because of the number of hours that must be devoted to rehabilitation or because of the nature of the rehabilitation.

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

(i) The borrower need not pay principal and interest does not accrue until six months after completion of any period during which the borrower is in

deferment under paragraphs (b), (c), (d), (e), (f), and (g) of this section.

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

19. Redesignated § 674.35 is amended by revising the heading of the section; by revising paragraph (a); by adding the word "Federal" before the words "Perkins Loan" in paragraph (b)(2); by revising paragraph (c)(5)(iii); and by republishing the OMB control number to read as follows:

§ 674.35 Deferment of repayment—Federal Perkins loans made before July 1, 1993.

(a) The borrower may defer repayment on a Federal Perkins Loan made before July 1, 1993, during the periods described in this section.

* * * * *

(c) * * *

(5) * * *

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

(Approved by the Office of Management and Budget under control number 1940-0535)

* * * * *

20. Redesignated § 674.36 is amended by revising the heading of the section; by revising paragraph (a); by adding the word "Federal" before the words "Perkins Loan program" in paragraph (b)(2); and by revising paragraph (c)(4)(iii) to read as follows:

§ 674.36 Deferment of repayment—Direct loans made on or after October 1, 1980, but before July 1, 1993.

(a) The borrower may defer repayment on a Direct Loan made on or after October 1, 1980, but before July 1, 1993, during the periods described in this section.

* * * * *

(c) * * *

(4) * * *

(iii) The borrower does not receive compensation that exceeds the rate prescribed under section 6 of the Fair Labor Standards Act of 1938 (the Federal minimum wage), except that the tax-exempt organization may provide health, retirement, and other fringe benefits to the volunteer that are substantially equivalent to the benefits offered to other employees of the organization.

* * * * *

21. Redesignated § 674.38 is amended by adding a new paragraph (d) to read as follows:

§ 674.38 Deferment procedures.

* * * * *

(d) The institution shall determine the continued eligibility of a borrower for a deferment at least annually.

22. Redesignated § 674.39 is amended by adding the word "Federal" before the word "Perkins" in paragraph (b) and by revising the heading of the section to read as follows:

§ 674.39 Postponement of loan repayments in anticipation of cancellation—loans made before July 1, 1993.

* * * * *

§ 674.41 [Amended]

23. Section 674.41 is amended by removing the words "or any endorser" after the words "the borrower" in paragraph (a)(2); by removing paragraph (b); and by redesignating paragraph (c) as (b).

24. Section 674.42 is amended by revising paragraph (a)(1)(ii); by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5) respectively; by adding a new paragraph (a)(3); and by republishing the OMB control number to read as follows:

§ 674.42 Contact with the borrower.

(a) * * *

(1) * * *

(ii) The borrower's rights to forbearance, deferment, cancellation, or postponement of repayment and the procedures for filing for those benefits.

* * * * *

(3) The institution shall require the borrower to provide to the institution during the exit interview—

(i) The borrower's expected permanent address after leaving the institution, regardless of the reason for leaving;

(ii) The name and address of the borrower's expected employer after leaving the institution;

(iii) The name and address of the borrower's next of kin; and

(iv) Any corrections in the institution's records relating to the borrower's name, address, social security number, personal references, and driver's license number.

* * * * *

(Approved under the Office of Management and Budget under control number 1840-0581)

25. Section 674.43 is amended by adding a new paragraph (a)(3) to read as follows:

§ 674.43 Billing procedures.

(a) * * *

(3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank account, the institution shall send to the borrower an annual statement of account.

26. Section 674.44 is amended by revising paragraph (a)(3) and by revising paragraph (d)(1) to read as follows:

§ 674.44 Address searches.

(a) * * *

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

* * * * *

(d) * * *

(1) The loan is recovered through litigation;

* * * * *

27. Section 674.45 is amended by revising paragraph (a)(1); by revising paragraph (b); by revising paragraph (d); by adding a new paragraph (g); and by republishing the OMB control number to read as follows:

§ 674.45 Collection procedures.

(a) * * *

(1) Report the defaulted account to any one national credit bureau; and

* * * * *

(b) An institution shall report to the same national credit bureau to which it originally reported the default, according to the reporting procedures of the national credit bureau, any changes in account status and shall respond within one month of its receipt to any inquiry from any credit bureau regarding the information reported on the loan amount.

* * * * *

(d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make annual attempts to collect from the borrower until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

* * * * *

(g) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the

requirements or frustrate the purposes of this section.

* * * * *

(Approved by the Office of Management and Budget under control number 1840-0581)

28. Section 674.46 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 674.46 Litigation procedures.

(a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine at least annually whether—

* * * * *

29. Section 674.47(g) is amended by revising paragraph (g) to read as follows:

§ 674.47 Costs Chargeable to the Fund.

* * * * *

(g) *Write-offs of defaulted accounts.*

(1) An institution may write off a defaulted account with a balance of less than \$25.00, including outstanding principal, accrued interest, collection costs, and late charges.

(2) An institution that writes off a defaulted account under this paragraph may no longer include the amount of the account as an asset of the Fund.

30. Section 674.48 is amended by revising paragraph (c)(4)(iii); by revising paragraph (d)(1)(iii); and by republishing the OMB control number to read as follows:

§ 674.48 Use of contractors to perform billing and collection or other program activities.

* * * * *

(c) * * *

(4) * * *

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days; and

* * * * *

(d) * * *

(1) * * *

(iii) Deposits those funds received directly from the borrower immediately in an institutional trust account that must be an interest-bearing account if those funds will be held for longer than 45 days, after deducting its fees if authorized to do so by the institution; and

* * * * *

(Approved by the Office of Management and Budget under control number 1840-0581)

31. Section 674.49 is amended by revising paragraph (a); by removing paragraph (g); by redesignating paragraph (h) as paragraph (g); by removing redesignated paragraph (g)(3);

by revising redesignated paragraph (g)(1) introductory text; and by republishing the OMB control number to read as follows:

§ 674.49 Bankruptcy of borrower.

(a) *General.* If an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of meeting of creditors, the institution and its agents shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower.

* * * * *

(g) *Termination of collection and write-off.* (1) An institution shall terminate all collection action and write off a loan if it receives—

* * * * *

(Approved by the Office of Management and Budget under control number 1840-0581)

32. Section 674.50 is amended by revising paragraph (c)(10), and the OMB control number to read as follows:

§ 674.50 Assignment of defaulted loans to the United States.

* * * * *

(c) * * *

(10) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(1) of this section if the institution has a cohort default rate that is equal to or greater than 20 percent as of June 30 of the second year preceding the submission period.

* * * * *

(Approved by the Office of Management and Budget under control number 1840-0535)

33. Section 674.51 is amended by revising paragraph (c); by redesignating paragraphs (g), (h), and (i) as paragraphs (o), (p), and (q) respectively; by redesignating paragraph (f) as paragraph (j); by redesignating paragraphs (d) and (e) as paragraphs (f) and (g) respectively; by revising redesignated paragraphs (q)(3)(i), (ii), (iii), and (iv); and by adding new paragraphs (d), (e), (h), (i), (k), (l), (m), (n), (q)(3)(v) and (r) to read as follows:

§ 674.51 Special definitions.

* * * * *

(c) *Title I Children:* Children of ages 5 through 17 who are counted under section 1124(c)(1) of the Elementary and Secondary Education Act of 1965, as amended.

(d) *Children and youth with disabilities:* Children and youth from ages 3 through 21, inclusive, who require special education and related services because they have disabilities as defined in section 602(a)(1) of the Individuals with Disabilities Education Act.

(e) *Early intervention services.* Those services defined in section 672(2) of the Individuals with Disabilities Education Act that are provided to infants and toddlers with disabilities.

(h) *High-risk children:* Individuals under the age of 21 who are low-income or at risk of abuse or neglect, have been abused or neglected, have serious emotional, mental, or behavioral disturbances, reside in placements outside their homes, or are involved in the juvenile justice system.

(i) *Infants and toddlers with disabilities:* Infants and toddlers from birth to age 2, inclusive, who need early intervention services for specified reasons, as defined in section 672(1) of the Individuals with Disabilities Education Act.

(k) *Low-income communities:* Communities in which there is a high concentration of children eligible to be counted under title I of the Elementary and Secondary Education Act of 1965, as amended.

(l) *Medical technician:* An allied health professional (working in fields such as therapy, dental hygiene, medical technology, or nutrition) who is certified, registered, or licensed by the appropriate State agency in the State in which he or she provides health care services. An allied health professional is someone who assists, facilitates, or complements the work of physicians and other specialists in the health care system.

(m) *Nurse:* A licensed practical nurse, a registered nurse, or other individual who is licensed by the appropriate State agency to provide nursing services.

(n) *Qualified professional provider of early intervention services:* A provider of services as defined in section 672(2) of the Individuals with Disabilities Education Act.

(q) ***
(3) ***

(i) Speech and language pathology and audiology;

(ii) Physical therapy;

(iii) Occupational therapy;

(iv) Psychological and counseling services; or

(v) Recreational therapy.

(r) *Teaching in a field of expertise:* The majority of classes taught are in the borrower's field of expertise.

34. Section 674.52 is amended by adding a heading to paragraph (b); by redesignating paragraph (b)(1) as (b)(1)(i); by adding new paragraph (b)(1)(ii); by adding a heading to

paragraph (c); by revising paragraph (d); and by adding new paragraph (e) to read as follows:

§ 674.52 Cancellation procedures.

(b) *Part-time employment.* (1)(i) ***

(ii) An institution may refuse a request for cancellation based on a claim of simultaneous employment as a nurse or medical technician in two or more facilities if it cannot determine easily from the documentation supplied by the borrower that the combined employment is full-time. However, it shall grant the cancellation if one facility official certifies that a nurse or medical technician worked full-time for a full year.

(c) *Cancellation of a defaulted loan.*

(1) ***

(d) *Concurrent deferment period.* (1) For loans made prior to July 1, 1993, the Secretary considers a borrower's loan deferment under §§ 674.35, 674.36, and 674.37 to run concurrently with any period for which a cancellation for military, Peace Corps, or ACTION program service is granted.

(2) For loans made on or after July 1, 1993, the Secretary considers a borrower's loan deferment under § 674.34 to run concurrently with any period for which a cancellation under §§ 674.53, 674.56, or 674.57 is granted.

(e) *National community service.* No borrower who has received a benefit under subtitle D of title I of the National and Community Service Act of 1990 may receive a cancellation under this subpart.

§§ 674.53 and 674.54 [Redesignated as §§ 674.54 and 674.55]

§§ 674.55 through 674.60 [Redesignated as §§ 674.58 through 674.63]

35. Sections 674.55 through 674.60 are redesignated as §§ 674.58 through 674.63 respectively; §§ 674.53 and 674.54 are redesignated as §§ 674.54 and 674.55 respectively; and a new § 674.53 is added to read as follows:

§ 674.53 *Teacher cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.*

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made on or after July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualified for funds, in that year, under title I of

the Elementary and Secondary Education Act of 1965, as amended, and (ii) Has been selected by the Secretary based on a determination that more than 30 percent of the school's total enrollment is made up of title I children.

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

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

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

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

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

(5) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section in subsequent years.

(6) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching in special education.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time special education teacher of infants, toddlers, children, or youth with disabilities, in a public or other nonprofit elementary or secondary school system.

(c) *Cancellation for full-time teaching in fields of expertise.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for full-time teaching in mathematics, science, foreign languages, bilingual education, or any other field of expertise where the

State education agency determines that there is a shortage of qualified teachers.

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

(2) *Cancellation rates are—*

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

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

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

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

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

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

36. Redesignated § 674.54 is amended by revising the heading of the section; by revising paragraph (a)(1); by removing paragraph (a)(2); by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(2) and (a)(3) respectively; by removing the term "Chapter 1" and adding in its place "title I" in redesignated paragraph (a)(2); by adding new paragraphs (a)(4) and (a)(5); by revising paragraph (b)(1); and by revising the authority citation to read as follows:

§ 674.54 Teacher cancellation—Federal Perkins loans and Direct loans made before July 23, 1992.

(a) *Cancellation for full-time teaching in an elementary or secondary school serving low-income students.* (1) An institution shall cancel up to 100 percent of the outstanding loan balance on a Federal Perkins loan or a Direct loan made before July 23, 1992, for full-time teaching in a public or other nonprofit elementary or secondary school that—

(i) Is in a school district that qualifies for funds, in that year, under title I of the Elementary and Secondary Education Act of 1965, as amended; and

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

* * * * *

(4) A teacher, who performs service in a school that meets the requirement of paragraph (a)(1) of this section in any year and in a subsequent year fails to meet these requirements, may continue to teach in that school and will be eligible for loan cancellation pursuant to paragraph (a) of this section, in subsequent years.

(5) If a list of eligible institutions in which a teacher performs services under paragraph (a)(1) of this section is not available before May 1 of any year, the Secretary may use the list for the year preceding the year for which the determination is made to make the service determination.

(b) *Cancellation for full-time teaching of the handicapped.* (1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made before July 23, 1992, for full-time teaching of handicapped children in a public or other nonprofit elementary or secondary school system.

* * * * *
(Authority: 20 U.S.C. 1087ee)

37. Redesignated section 674.55 is amended by revising paragraph (b)(1)(i); by removing paragraph (b)(2); by redesignating paragraphs (b)(3), (b)(4), (b)(5), and (b)(6) as paragraphs (b)(2), (b)(3), (b)(4), and (b)(5), respectively; and by removing the term "Chapter 1" and adding in its place "title I" in redesignated paragraph (b)(2)(ii) to read as follows:

(b) * * *

(1) * * *

(i) Is in a school district that qualifies for funds in that year under title I of the Elementary and Secondary Education Act of 1965, as amended; and

* * * * *

38. A new § 674.56 is added to read as follows:

§ 674.56 Employment cancellation—Federal Perkins loans and Direct loans made on or after July 23, 1992.

(a) *Cancellation for full-time employment as a nurse or medical technician.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins or Direct loan made on or after July 23, 1992, for full-time employment as a nurse or medical technician providing health care services.

(b) *Cancellation for full-time employment in a public or private*

nonprofit child or family service agency. An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for service as a full-time employee in a public or private nonprofit child or family service agency who is providing, or supervising the provision of, services to high-risk children who are from low-income communities and the families of such children.

(c) *Cancellation for service as a qualified professional provider of early intervention services.* An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after July 23, 1992, for the borrower's service as a full-time qualified professional provider of early intervention services in a public or other nonprofit program under public supervision by the lead agency as authorized in section 676(b)(9) of the Individuals With Disabilities Education Act.

(d) *Cancellation rates.* (1) To qualify for cancellation under paragraphs (a), (b), and (c) of this section, a borrower must work full-time for 12 consecutive months.

(2) *Cancellation rates are—*

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

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

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

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

39. A new § 674.57 is added to read as follows:

§ 674.57 Cancellation for law enforcement or corrections officer service—Federal Perkins loans and Direct loans for loans made on or after November 29, 1990.

(a)(1) An institution shall cancel up to 100 percent of the outstanding balance on a borrower's Federal Perkins loan or Direct loan made on or after November 29, 1990, for full-time service as a law enforcement or corrections officer for an eligible employing agency.

(2) An eligible employing agency is an agency—

(i) That is a local, State, or Federal law enforcement or corrections agency;

(ii) That is public-funded; and
(iii) The principal activities of which pertain to crime prevention, control, or reduction or the enforcement of the criminal law.

(3) Agencies that are primarily responsible for enforcement of civil, regulatory, or administrative laws are ineligible employing agencies.

(4) A borrower qualifies for cancellation under this section only if the borrower is—

(i) A sworn law enforcement or corrections officer; or

(ii) A person whose principal responsibilities are unique to the criminal justice system.

(5) To qualify for a cancellation under this section, the borrower's service must be essential in the performance of the eligible employing agency's primary mission.

(6) The agency must be able to document the employee's functions.

(7) A borrower whose principal official responsibilities are administrative or supportive does not qualify for cancellation under this section.

(b)(1) To qualify for cancellation under paragraph (a) of this section, a borrower shall work full-time for 12 consecutive months.

(2) Cancellation rates are—

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

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

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

(Authority: 20 U.S.C. 465)

40. Redesignated § 674.58 is amended by adding the word "Federal" before the words "Perkins loan" in paragraph (a) introductory text.

41. Redesignated § 674.61 is amended by revising paragraph (b)(2) to read as follows:

§ 674.61 Cancellation for death or disability.

(b) * * *

(2) Permanent and total disability is the inability to work and earn money or to attend an institution because of an

impairment that is expected to continue indefinitely or result in death.

* * * * *

42. Redesignated § 674.63 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 674.63 Reimbursement to institutions for loan cancellation.

(a) *Reimbursement for Defense loan cancellation.* (1) The Secretary pays an institution each award year its share of the principal and interest canceled under §§ 674.55 and 674.59(a).

* * * * *

(b) *Reimbursement for Direct and Federal Perkins loan cancellation.* The Secretary pays an institution each award year the principal and interest canceled from its student loan fund under §§ 674.53, 674.54, 674.56, 674.57, 674.58, 674.59(b), and 674.60. The institution shall deposit this amount in its Fund.

* * * * *

Appendices A through D [Removed]

43. Appendix A to Part 674—Promissory Note—Perkins Loan is removed.

44. Appendix B to Part 674—Promissory Note—Direct Loan is removed.

45. Appendix C to Part 674—Promissory Note—Perkins Loan—Less Than Half-Time Student Borrower is removed.

46. Appendix D to Part 674—Promissory Note—Direct Loan—Less Than Half-Time Student Borrower is removed.

47. In 34 CFR part 674 add the word "Federal" before the word "Perkins" in the following places:

§ 674.1 [Amended]

(a) Section 674.1 (a) and (b)(1).

§ 674.2 [Amended]

(b) Section 674.2(a) (two times) and in the definitions of "Fund", "Initial grace period", and "Student loan" in paragraph (b).

§ 674.3 [Amended]

(c) Section 674.3 (a) and (b).

§ 674.4 [Amended]

(d) Section 674.4(a).

§ 674.8 [Amended]

(e) Section 674.8 introductory text.

§ 674.9 [Amended]

(f) Section 674.9 introductory text.

§ 674.14 [Amended]

(g) Section 674.14 (a)(1), (a)(2) introductory text, (b)(1)(x).

§ 674.17 [Amended]

(h) Section 674.17 (a) and (b)(1) introductory text.

§ 674.18 [Amended]

(i) Section 674.18 (a), (b)(1) (two times), (b)(2)(i), (b)(3), and (b)(4).

§ 674.19 [Amended]

(j) Section 674.19 (a)(1), (a)(3)(i), (b) heading, (b)(1) introductory text, (b)(1)(ii), (b)(3), (b)(4) introductory text, (d)(4), and (e)(4)(iv).

§ 674.20 [Amended]

(k) Section 674.20(b).

§ 674.31 [Amended]

(l) Section 674.31 (b)(2)(i)(B), (b)(5)(ii)(A), and (b)(7)(ii).

§ 674.42 [Amended]

(m) Section 674.42(b)(1)(i).

§ 674.46 [Amended]

(n) Section 674.46(a)(1)(i).

§ 674.2 [Amended]

48. In § 674.2(a), remove the term "College Work-Study (CWS) Program" and add the term "Federal Work-Study (FWS) Program" in alphabetical order.

49. In 34 CFR part 674, remove the term "CWS" and add, in its place, the term "FWS" in the following places:

§ 674.18 [Amended]

(a) Section 674.18 (b)(2)(i), (b)(3), and (b)(4).

§ 674.19 [Amended]

(b) Section 674.19(d)(4).

§ 674.2 [Amended]

50. In § 674.2(a), remove the term "Supplemental Educational Opportunity Grant (SEOG) Program" and add the term "Federal Supplemental Educational Opportunity Grant (FSEOG) Program" in alphabetical order.

51. In 34 CFR part 674, remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

§ 674.18 [Amended]

(a) Section 674.18 (b)(2)(i) and (b)(4).

§ 674.19 [Amended]

(b) Section 674.19(d)(4).

§ 674.14 [Amended]

52. In 34 CFR part 674, remove the term "SEOGs" and add, in its place, the term "FSEOGs" in § 674.14(b)(1)(iv).

§ 674.2 [Amended]

53. In § 674.2(a), remove the term "Guaranteed Student Loan (GSL) Program" and add the term "Federal Family Education Loan (FFEL) programs" in alphabetical order.

§ 674.2 [Amended]

54. In § 674.2(a), remove the term "Pell Grant" and add the term "Federal Pell Grant" in alphabetical order.

55. In 34 CFR part 674, add the term "Federal" before the term "Pell Grant" in the following places:

§ 674.9 [Amended]

(a) Section 674.9 (d)(1) and (d)(2).

§ 674.14 [Amended]

(b) Section 674.14(b)(1)(i) (two times).

§ 674.15 [Amended]

(c) Section 674.15(c)(2).

§ 674.2 [Amended]

56. In § 674.2(a), remove the term "Income Contingent Loan (ICL) Program".

§ 674.2 [Amended]

57. In § 674.2(a), remove the terms "PLUS Program" and "SLS Program" and add the terms "Federal PLUS Program" and "Federal SLS Program" in alphabetical order.

§ 674.14 [Amended]

58. In § 674.14(b)(3), add the term "Federal" before the term "Supplemental Loan for Students (SLS)".

PART 675—FEDERAL WORK-STUDY PROGRAMS

1. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2571-2756b, unless otherwise noted.

2. The title of part 675 is revised to read as follows:

3. The heading for subpart A is amended by removing the term "College Work-Study Program" and adding, in its place, the term "Federal Work-Study Program".

4. Section 675.1 is amended by revising paragraph (a) to read as follows:

§ 675.1 Purpose and identification of common provisions.

(a) The Federal Work-Study (FWS) program provides part-time employment to students attending institutions of higher education who need the earnings to help meet their costs of postsecondary education and encourages students receiving FWS assistance to participate in community service activities.

* * *

5. Section 675.2, paragraph (b) is amended by revising the definitions of *Community services* and *Undergraduate student* to read as follows:

§ 675.2 Definitions.

* * *

(b) * * *

Community services: Services which are identified by an institution of higher education, through formal or informal consultation with local nonprofit, governmental, and community-based organizations, as designed to improve the quality of life for community residents, particularly low-income individuals, or to solve particular problems related to their needs. These services include—

(1) Such fields as health care, child care, literacy training, education (including tutorial services), welfare, social services, transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, rural development, and community improvement;

(2) Work in service opportunities or youth corps as defined in section 101 of the National and Community Service Act of 1990, and service in the agencies, institutions and activities designated in section 124(a) of that Act;

(3) Support services to students (other than an institution's own students) with disabilities; and

(4) Activities in which a student serves as a mentor for such purposes as—

- (i) Tutoring;
- (ii) Supporting educational and recreational activities; and
- (iii) Counseling, including career counseling.

* * *

Undergraduate student: A student enrolled at an institution of higher education who is in an undergraduate course of study which usually does not exceed four academic years, or is enrolled in a four to five academic year program designed to lead to a first degree. A student enrolled in a program of any other length is considered an undergraduate student for only the first four academic years of that program.

6. Section 675.4 is amended by revising the introductory text of paragraph (d) and adding new paragraph (e) to read as follows:

§ 675.4 Allocation and reallocation.

* * *

(d) *Authority to expend funds.* Except as specifically provided in § 675.18, paragraphs (c), (d), and (g), an institution may not use funds allocated or reallocated for an award year—

* * *

(e) *Unexpended funds.* (1) If an institution returns more than 10 percent of its allocation for an award year, the Secretary will reduce the institution's allocation for the second succeeding award year by the dollar amount returned.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (e)(1) of this section to be contrary to the interest of the program only if the institution returns more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

7. Section 675.8 is amended by removing the word "and" after paragraph (d); by removing the period after paragraph (e) and adding, in its place, a semicolon; and adding new paragraphs (f) and (g) to read as follows:

§ 675.8 Program participation agreement.

* * *

(f) Assure that employment under this part may be used to support programs for supportive services to students with disabilities; and

(g) Inform all eligible students of the opportunity to perform community services and consult with local nonprofit, governmental, and community-based organizations to identify those opportunities.

* * *

8. Section 675.10 is amended by revising the heading of the section; by revising paragraph (c); and by revising the OMB control number to read as follows:

§ 675.10 Selection of students for FWS employment.

* * *

(c) *Part-time and independent students.* If an institution's allocation of FWS funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of its allocation under this part.

* * *

(Approved by the Office of Management and Budget under control number 1840-0535)

9. Section 675.14 is amended by removing the words "Guaranteed Students Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS"; by removing the comma after the words

"PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); by removing the dollar figure "\$200" and adding, in its place, the dollar figure "\$300" in paragraphs (c) introductory text, (c)(1), and (c)(2); and by revising paragraph (d)(2) to read as follows:

§ 675.14 Overaward.

(d) * * *

(2) Notwithstanding the provisions of paragraph (d)(1) of this section, an institution may provide additional FWS funding to a student whose need has been met until that student's cumulative earnings from all need-based employment occurring subsequent to the time his or her financial need has been met exceed \$300.

10. Section 675.18 is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5) respectively; by removing paragraph (f)(4); by adding a new paragraph (a)(3); by revising paragraphs (b)(3), (b)(5), and (f)(1); and by adding new paragraphs (g) and (h) to read as follows:

§ 675.18 Use of funds.

(a) * * *

(3) Meeting the cost of a Work-Colleges program under subpart C;

(b) * * *

(3) However, the institution shall not include, when calculating the allowance in paragraph (b)(1) of this section, the amount of loans made under the Federal Perkins Loan program it assigns to the Secretary under section 463(a)(6) of the HEA.

(5) An institution may use up to 10 percent of the allowance in paragraph (b) of this section, that is attributable to the institution's expenditures under the FWS program, to pay the administrative costs of conducting its program of community service. These costs may include the costs of—

(i) Developing mechanisms to assure the academic quality of a student's experience;

(ii) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(iii) Collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990, in the planning, development, and administration of these programs.

(f) Transfer funds to FSEOG. (1) Beginning with the 1993–94 award year,

an institution may transfer up to 25 percent of the sum of its initial and supplemental FWS allocations for an award year to its FSEOG program.

(g) Carry back funds for summer employment. An institution may carry back and expend in the previous award year any portion of its initial and supplemental FWS allocations for the current award year to pay student wages earned on or after May 15 of the previous award year but prior to the beginning of the current award year.

(h) Community service. (1) For the 1994–95 award year and subsequent award years, an institution shall use at least 5 percent of the sum of its initial and supplemental FWS allocations for an award year to compensate students employed in community service activities.

(2) An institution may request in writing from the Secretary a waiver of the requirement in paragraph (h)(1) of this section. The Secretary approves a waiver only if the Secretary determines that an institution has demonstrated that enforcing the requirement in paragraph (h)(1) of this section would cause a hardship for students at the institution.

11. Section 675.21 is amended by revising paragraph (b) to read as follows:

§ 675.21 Institutional employment.

(b) A proprietary institution may employ a student to work for the institution, but only in jobs that—

(1) Are in community services as defined in § 675.2; or

(2) Are on campus and that—

(i) Involve the provision of student services as defined in § 675.2

(ii) To the maximum extent possible, complement and reinforce the educational program or vocational goals of the student; and

(iii) Do not involve the solicitation of potential students to enroll at the proprietary institution.

12. Section 675.26 is amended by revising paragraphs (a)(1), (2), and (3) to read as follows:

§ 675.26 FWS Federal share limitations.

(a)(1) The Federal share of FWS compensation paid to a student employed other than by a private for-profit organization, as described in § 675.23, may not exceed 75 percent for the 1993–94 award year and subsequent award years unless the Secretary approves a higher share under paragraph (d) of this section.

(2) The Federal share of the compensation paid to a student employed by a private for-profit organization may not exceed 50 percent.

(3) An institution may not use FWS funds to pay a student after he or she has, in addition to other resources, earned \$300 or more over his or her financial need.

§ 675.28 [Removed]

13. Section 675.28 is removed.

14. The heading for subpart B is amended by removing the "s" from the word "Programs".

15. Section 675.31 is revised to read as follows:

§ 675.31 Purpose.

The purpose of the Job Location and Development program is to expand off-campus job opportunities for students who are enrolled in eligible institutions of higher education and want jobs, regardless of their financial need, and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756)

16. Section 675.32 is revised to read as follows:

§ 675.32 Program description.

An institution may expend up to the lesser of \$50,000 or 10 percent of its FWS allocation and reallocation for an award year to establish or expand a program under which the institution, separately or in combination with other eligible institutions, locates and develops jobs, including community service jobs, for currently enrolled students.

(Authority: 42 U.S.C. 2756)

17. Section 675.34 is amended by revising the heading of the section; by revising paragraph (a); by revising paragraph (c); and by republishing the OMB control number to read as follows:

§ 675.34 Multi-institutional job location and development programs.

(a) An institution participating in the FWS program may enter into a written agreement to establish and operate job location programs for its students with other participating institutions.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

(Approved by the Office of Management and Budget under control number 1840–0535)

18. Section 675.35 is amended by adding the word "in" before the word "accordance" in paragraph (b)(1); by revising paragraphs (b)(3)(i) and (b)(3)(v); and by republishing the OMB control number to read as follows:

§ 675.35 Agreement.

* * * * *

(b) * * *

(3) * * *

(i) The institution will not use program funds to locate and develop jobs at an eligible institution;

* * * * *

(v) If the institution uses Federal funds to contract with another institution, suitable performance standards will be part of that contract.

* * * * *

(Approved by the Office of Management and Budget under control number 1840-0535)

19. A new subpart C is added to part 675 to read as follows:

* * * * *

Subpart C—Work-Colleges Program

Sec.

675.41 Special definitions.

675.42 Allocation and reallocation.

675.43 Purpose.

675.44 Program description.

675.45 Allowable costs, Federal share, and institutional share.

675.46 Unallowable costs.

675.47 Multi-institutional work-colleges arrangements.

675.48 Agreement.

675.49 Procedures and records.

675.50 Termination and suspension.

* * * * *

Subpart C—Work-Colleges Program**§ 675.41 Special definitions.**

The following definitions apply to this subpart:

(a) *Work-college*: The term "work-college" means an eligible institution that—

(1) Is a public or private nonprofit institution with a commitment to community service;

(2) Has operated a comprehensive work-learning program for at least two years;

(3) Requires—

(i) All resident students who reside on campus to participate in a comprehensive work-learning program; and

(ii) The provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and

(4) Provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

(b) *Comprehensive student work-learning program*: A student work/service program that—

(1) Is an integral and stated part of the institution's educational philosophy and program;

(2) Requires participation of all resident students for enrollment, participation, and graduation;

(3) Includes learning objectives, evaluation, and a record of work performance as part of the student's college record;

(4) Provides programmatic leadership by college personnel at levels comparable to traditional academic programs;

(5) Recognizes the educational role of work-learning supervisors; and

(6) Includes consequences for nonperformance or failure in the work-learning program similar to the consequences for failure in the regular academic program.

(Authority: 42 U.S.C. 2756b)

§ 675.42 Allocation and reallocation.

The Secretary allocates and reallocates funds based on each institution's approved request for Federal funds for the Work-Colleges program as a percent of the total of such approved requests for all applicant institutions.

(Authority: 42 U.S.C. 2756b)

§ 675.43 Purpose.

The purpose of the Work-Colleges program is to recognize, encourage, and promote the use of comprehensive work-learning programs as a valuable educational approach when it is an integral part of the institution's educational program and a part of a financial plan that decreases reliance on grants and loans and to encourage students to participate in community service activities.

(Authority: 42 U.S.C. 2756b)

§ 675.44 Program description.

(a) An institution that satisfies the definition of "work-college" in § 675.41(a) and wishes to participate in the Work-Colleges program must apply to the Secretary at the time and in the manner prescribed by the Secretary.

(b) An institution may expend funds separately, or in combination with other eligible institutions, to provide work-learning opportunities for currently enrolled students.

(c) For any given award year, Federal funds allocated and reallocated for that award year under sections 442 and 462 of the HEA may be transferred for the purpose of carrying out the Work-Colleges program to provide flexibility in strengthening the self-help-through-work element in financial aid packaging.

(Authority: 42 U.S.C. 2756b)

§ 675.45 Allowable costs, Federal share, and institutional share.

(a) *Allowable costs*. An institution participating in the Work-Colleges program may use its allocated and reallocated program funds to carry out the following activities:

(1) Support the educational costs of qualified students through self-help payments or credits provided under the work-learning program within the limits of part F of title IV of the HEA.

(2) Promote the work-learning-service experience as a tool of postsecondary education, financial self-help, and community service-learning opportunities.

(3) Carry out activities in sections 443 or 446 of the HEA.

(4) Administer, develop, and assess comprehensive work-learning programs including—

(i) Community-based work-learning alternatives that expand opportunities for community service and career-related work; and

(ii) Alternatives that develop sound citizenship, encourage student persistence, and make optimum use of assistance under the Work-Colleges program in education and student development.

(b) *Federal share of allowable costs*. An institution, in addition to the funds allocated and reallocated for this program, may use transferred funds provided under its Federal Perkins Loan or its FWS program to pay allowable costs.

(c) *Institutional share of allowable costs*. An institution must match Federal funds made available for this program on a dollar-for-dollar basis from non-Federal sources. The institution shall keep records documenting the amount and source of its share.

(Authority: 42 U.S.C. 2756b)

§ 675.46 Unallowable costs.

An institution participating in the Work-Colleges program may not use its allocated and reallocated program funds and transferred funds provided under its Federal Perkins Loan or its FWS program to pay costs related to the purchase, construction, or alteration of physical facilities or indirect administrative costs.

(Authority: 42 U.S.C. 2756b)

§ 675.47 Multi-institutional work-colleges arrangements.

(a) An institution participating in the Work-Colleges program may enter into a written agreement with another participating institution to promote the work-learning-service experience.

(b) The agreement described in paragraph (a) of this section must—
(1) Designate the administrator of the program; and

(2) Specify the terms, conditions, and performance standards of the program.

(c) Each institution shall retain responsibility for the proper disbursement of the Federal funds it contributes under an agreement with other eligible institutions.

(Approved by the Office of Management and Budget under control number 1840-0535)
(Authority: 42 U.S.C. 2756b)

§ 675.48 Agreement.

To participate in the Work-Colleges program, an institution shall enter into an agreement with the Secretary. The agreement provides that, among other things, the institution shall—

(a) Assure that it will comply with all the appropriate provisions of the HEA and the appropriate provisions of the regulations;

(b) Assure that it satisfies the definition of "work-college" in § 675.41(a);

(c) Assure that it will match the Federal funds according to the requirements in § 675.45(c); and

(d) Assure that it will use funds only to carry out the activities in § 675.45(a).

(Approved by the Office of Management and Budget under control number 1840-0535)
(Authority: 42 U.S.C. 2756b)

§ 675.49 Procedures and records.

In administering a Work-Colleges program under this subpart, an institution shall comply with the applicable provisions of this part 675.

(Authority: 42 U.S.C. 2756b)

§ 675.50 Termination and suspension.

Procedures for termination and suspension under this subpart are governed by applicable provisions found in 34 CFR part 668, subpart G of the Student Assistance General Provisions regulations.

(Authority: 42 U.S.C. 2756b)

§ 675.4 [Amended]

20. In 34 CFR part 675 remove the term "College Work-Study" before the word "program" and add, in its place, the term "FWS" in § 675.4(a).

21. In 34 CFR part 675 remove the term "CWS" and add, in its place, the term "FWS" in the following places:

§ 675.3 [Amended]

(a) Section 675.3(a) and (b).

§ 675.4 [Amended]

(b) Section 675.4(d)(1) (two times).

§ 675.8 [Amended]

(c) Section 675.8 introductory text, (b), (c), and (e).

§ 675.9 [Amended]

(d) Section 675.9 introductory text.

§ 675.10 [Amended]

(e) Section 675.10(a).

§ 675.14 [Amended]

(f) Section 675.14 (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(3), (c) introductory text, and (d)(1) (three times).

§ 675.15 [Amended]

(g) Section 675.15(a) introductory text.

§ 675.16 [Amended]

(h) Section 675.16(a)(3), (a)(4), (b)(1), (b)(2), and (b)(3).

§ 675.17 [Amended]

(i) Section 675.17.

§ 675.18 [Amended]

(j) Section 675.18(a) introductory text, (a)(1), redesignated (a)(5), (b)(1), (b)(2)(i), (b)(4), (c)(1) and (2), and (d).

§ 675.19 [Amended]

(k) Section 675.19(a)(1), (a)(3)(i) introductory text, (a)(3)(ii), and (b)(4) (two times).

§ 675.20 [Amended]

(l) Section 675.20(a) heading and introductory text, (b)(1), (c) heading, and (c)(2) introductory text.

§ 675.22 [Amended]

(m) Section 675.22(b) heading.

§ 675.23 [Amended]

(n) Section 675.23(a) (two times), and (b)(2)(ii).

§ 675.24 [Amended]

(o) Section 675.24 heading, (a)(1), and (b).

§ 675.25 [Amended]

(p) Section 675.25(a)(1) and (2), and (b).

§ 675.26 [Amended]

(q) Section 675.26 heading and (d)(2)(ii).

§ 675.27 [Amended]

(r) Section 675.27(a)(1) (two times), (a)(3), and (b).

§ 675.33 [Amended]

(s) Section 675.33(b).

§ 675.35 [Amended]

(t) Section 675.35(a).

§ 675.37 [Amended]

(u) Section 675.37(a).

§ 675.14 [Amended]

22. In 34 CFR part 675 remove the term "SEOGs" and add, in its place, the term "FSEOGs" in § 675.14(b)(1)(iv).

23. In 34 CFR part 675 remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

§ 675.18 [Amended]

(a) Section 675.18 redesignated (a)(5), (b)(2)(i), and (b)(4).

§ 675.19 [Amended]

(b) Section 675.19(b)(4).

§ 675.2 [Amended]

24. In § 675.2, paragraph (a) is amended by removing the term "Supplemental Educational Opportunity Grant (SEOG) program" and adding, the term "Federal Supplemental Educational Opportunity Grant (FSEOG) program" in alphabetical order.

Appendix B to Part 675 [Amended]

25. Appendix B to 34 CFR part 675 is amended by removing the term "College Work-Study program" and adding, in its place, "Federal Work-Study program", and removing the term "CWS" and adding, in its place, the term "FWS" each place these terms appear.

§ 675.2 [Amended]

26. In § 675.2(a) remove the term "Perkins Loan Program", and add the term "Federal Perkins Loan Program" in alphabetical order.

27. In 34 CFR part 675 add the word "Federal" before the word "Perkins" in the following places:

§ 675.14 [Amended]

(a) Section 675.14(b)(1)(x).

§ 675.18 [Amended]

(b) Section 675.18(b)(2)(i) and (b)(4).

§ 675.19 [Amended]

(c) Section 675.19(b)(4).

§ 675.2 [Amended]

28. In § 675.2(a) remove the term "Pell Grant Program" and add the term "Federal Pell Grant Program" in alphabetical order.

29. In 34 CFR part 675 add the word "Federal" before the word "Pell" in the following places:

§ 675.14 [Amended]

(a) Section 675.14(b)(1)(i) (two times) and (c)(2).

§ 675.15 [Amended]

(b) Section 675.15(c)(2).

§ 675.18 [Amended]

(c) Section 675.18(b)(4).

§ 675.2 [Amended]

30. In § 675.2(a) remove the term "Guaranteed Student Loan (GSL) Program" and add the term "Federal Family Education Loan (FFEL) programs" in alphabetical order.

§ 675.2 [Amended]

31. In § 675.2(a) remove the term "Income Contingent Loan Program".

§ 675.2 [Amended]

32. In § 675.2(a) add the term "Federal" before the terms "PLUS Program" and "SLS Program".

§ 675.14 [Amended]

33. In § 675.14(b)(3) add the term "Federal" before the term "Supplemental Loan for Students (SLS)".

§ 675.17 [Amended]

34. In § 675.17 remove the term "Programs" after the term "Development" and add the term "Program".

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

1. The authority citation for part 676 continues to read as follows:

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

§ 676.1 [Amended]

2. Section 676.1 is amended by removing the term "Supplemental Educational Opportunity Grant (SEOG) Program" and replacing it with the term "Federal Supplemental Educational Opportunity Grant (FSEOG) program" in paragraph (a).

3. Section 676.4 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e) respectively; by adding the words "Except as specifically provided in § 676.16(f), an" before the word "institution" in the introductory text of redesignated paragraph (e); revising paragraph (a); and by adding new paragraphs (b) and (f) to read as follows:

§ 676.4 Allocation and reallocation.

(a) The Secretary allocates funds to institutions participating in the FSEOG program in accordance with section 413D of the HEA.

(b) The Secretary reallocates funds to institutions participating in the FSEOG program in a manner that best carries out the purposes of the FSEOG program.

(f) *Unexpended funds.* (1) If an institution returns more than 10 percent of its allocation for an award year, the Secretary will reduce the institution's

allocation for the second succeeding award year by the dollar amount returned.

(2) The Secretary may waive the provision of paragraph (f)(1) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(3) The Secretary considers enforcement of paragraph (f)(1) of this section to be contrary to the interest of the program only if the institution returned more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

4. Section 676.10 is amended by revising paragraph (b) to read as follows:

§ 676.10 Selection of students for FSEOG awards.

(b) *Part-time and independent students.* If an institution's allocation of FSEOG funds is directly or indirectly based in part on the financial need demonstrated by students attending the institution as less-than-full-time or independent students, and if the total financial need of those students exceeds 5 percent of the total financial need of all students at the institution, the institution shall offer to those students at least 5 percent of its allocation under this part.

5. Section 676.14 is amended by removing the words "Guaranteed Student Loans" and adding, in its place, the words "Federal Family Education Loan" in paragraph (b)(1)(ii); by removing the words "and need-based ICLs" after the words "Direct Loans" in paragraph (b)(1)(x); by adding the words "or Federal" before the word "PLUS", by removing the comma after the words "PLUS loan", and by removing the words "or non-need-based ICL" before the word "as" in paragraph (b)(3); by revising paragraph (c); and by republishing the OMB control number to read as follows:

§ 676.14 Overaward.

(c) *Treatment of resources in excess of need.* An institution shall take the following steps when it learns that a student has received additional resources not included in the calculation of FSEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than \$300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated

when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than \$300, no further action is necessary.

(2) If no increased need is demonstrated, or the student's total resources still exceed his or her need by more than \$300, as recalculated pursuant to paragraph (c)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Federal Pell Grant).

(3) If the student's total resources still exceed his or her need by more than \$300, after the institution takes the steps required in paragraphs (c)(1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than \$300 as an overpayment.

(Approved by the Office of Management and Budget under control 1840-0535)

6. Section 676.16 is amended by redesignating paragraphs (f) and (g) as paragraphs (g) and (h) respectively; by adding a new paragraph (f); and by republishing the OMB control number to read as follows:

§ 676.16 Payment of an FSEOG.

(f)(1) An institution may disburse FSEOG funds after the student has ceased to be enrolled in accordance with paragraphs (f)(2) and (3) of this section.

(2) A disbursement described in paragraph (f)(1) of this section may be made—

(i) Only if the FSEOG is awarded to the student while he or she is still an eligible student; and

(ii) Only if the FSEOG funds is used to cover documented educational costs to the student that are normally included in a student's cost of attendance under section 472 of the HEA for the payment period for which the FSEOG was intended and the student was actually enrolled.

(3) The institution shall document in the student's file the reason for the late disbursement.

(Approved by the Office of Management and Budget under control number 1840-0535)

7. Section 676.18 is amended by removing paragraph (a)(3); by adding the word "and" after the semicolon in paragraph (a)(1); by removing the word "and" after the semicolon in paragraph (a)(2); by removing the semicolon in paragraph (a)(2) and adding, in its place,

a period; and by revising paragraph (c) to read as follows:

§ 676.18 Use of funds.

(c) *Transfer back of funds to FWS.* An institution shall transfer back to the FWS program any funds unexpended at the end of the award year that it transferred to the FSEOG program from the FWS program.

8. Section 676.20 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

§ 676.20 Minimum and maximum FSEOG award.

(a) An institution may award an FSEOG for an academic year in an amount it determines a student needs to continue his or her studies. However, except as provided in paragraph (c) of this section, an FSEOG may not be awarded for a full academic year that is—

- (1) Less than \$100; or
- (2) More than \$4,000.

(c) The maximum amount of the FSEOG may be increased from \$4,000 to as much as \$4,400 for a student participating in a program of study abroad that is approved for credit by the home institution, if reasonable costs for the study abroad program exceed the cost of attendance at the home institution.

9. Section 676.21 is amended by removing the words "Beginning with the 1989–90 award year", by removing the comma before the words "the Secretary", and by capitalizing the letter "t" in the word "the" before the word "Secretary" in paragraph (b) introductory text and by revising paragraph (a) to read as follows:

§ 676.21 FSEOG Federal share limitations.

(a) Except as provided in paragraph (b) of this section, for the 1993–94 award year and subsequent award years, the Federal share of the FSEOG awards made by an institution may not exceed 75 percent of the amount of FSEOG awards made by that institution.

10. In 34 CFR part 676 remove the term "SEOG" and add, in its place, the term "FSEOG" in the following places:

§ 676.3 [Amended]

- (a) Section 676.3(a) and (b).

§ 676.4 [Amended]

- (b) Section 676.4 redesignated (e)(1).

§ 676.8 [Amended]

- (c) Section 676.8 introductory text and (b).

§ 676.9 [Amended]

- (d) Section 676.9 introductory text.

§ 676.10 [Amended]

- (e) Section 676.10 heading, (a)(1), and (a)(2) (three times).

§ 676.14 [Amended]

- (f) Section 676.14(a)(1) (two times), (a)(2) introductory text, (a)(2)(i), (a)(3) (two times), and (d)(1) and (2).

§ 676.15 [Amended]

- (g) Section 676.15(a) introductory text.

§ 676.16 [Amended]

- (h) Section 676.16 heading, paragraph (a)(1), (a)(2) (three times), (b), (d)(1), (e)(1) introductory text, redesignated paragraphs (g) and (h).

§ 676.17 [Amended]

- (i) Section 676.17.

§ 676.18 [Amended]

- (j) Section 676.18(a) introductory text, (b)(1), (b)(2)(i), and (b)(4).

§ 676.19 [Amended]

- (k) Section 676.19(a)(1), (a)(2)(i) introductory text and (ii), and (b)(3).

§ 676.20 [Amended]

- (l) Section 676.20 heading and (b).

§ 676.21 [Amended]

- (m) Section 676.21 heading, (b)(2), and (c).

11. In 34 CFR part 676 remove the term "SEOGs" and add, in its place, the term "FSEOGs" in the following places:

§ 676.14 [Amended]

- (a) Section 676.14 (b)(1)(iv).

§ 676.21 [Amended]

- (b) Section 676.21(b) introductory text.

§ 676.2 [Amended]

12. In § 676.2(a) remove the term "Perkins Loan Program" and add the term "Federal Perkins Loan Program" in alphabetical order.

13. In 34 CFR part 676 add the term "Federal" before the term "Perkins" in the following places:

§ 676.14 [Amended]

- (a) Section 676.14(b)(1)(x).

§ 676.18 [Amended]

- (b) Section 676.18(b)(2)(i), (b)(3), and (b)(4).

§ 676.19 [Amended]

- (c) Section 676.19(b)(3).

§ 676.2 [Amended]

14. In § 676.2(a) remove the term "Pell Grant Program" and add the term "Federal Pell Grant Program" in alphabetical order.

15. In 34 CFR part 676 add the term "Federal" before the term "Pell" in the following places:

§ 676.10 [Amended]

- (a) Section 676.10(a)(1) and (2).

§ 676.14 [Amended]

- (b) Section 676.14(b)(1)(i).

§ 676.15 [Amended]

- (c) Section 676.15(c)(2).

§ 676.18 [Amended]

- (d) Section 676.18(b)(4).

16. In 34 CFR part 676 remove the "CWS" and add, in its place, "FWS" in the following places:

§ 676.18 [Amended]

- (a) Section 676.18(b)(2)(i), (b)(3), and (b)(4).

§ 676.19 [Amended]

- (b) Section 676.19(b)(3).

§ 676.2 [Amended]

17. In § 676.2(a) remove the term "College Work-Study (CWS) Program" and add the term "Federal Work-Study (FWS) Program" in alphabetical order.

18. In § 676.2(a) remove the term "Guaranteed Student Loan (GSL) Program" and add the term "Federal Family Education Loan (FFEL) programs" in alphabetical order.

19. In § 676.2(a) remove the term "Income Contingent Loan Program".

20. In § 676.2(a) remove the terms "PLUS Program" and "SLS Program" and add the terms "Federal PLUS Program" and "Federal SLS Program" in alphabetical order.

§ 676.14 [Amended]

21. In § 676.14(b)(3) add the word "Federal" before the term "Supplemental Loan for Students (SLS)".

[FR Doc. 94-29261 Filed 11-29-94; 8:45 am]

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Register

Wednesday
November 30, 1994

Part IV

Department of Education

34 CFR Part 682

Federal Family Education Loan Program;
Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AC09

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the Federal Family Education Loan (FFEL) Program regulations. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan Programs. These amendments are needed to implement certain changes made to the Higher Education Act of 1965, as amended (HEA), by the Omnibus Budget Reconciliation Act of 1993 (OBRA), enacted August 10, 1993, and by the Higher Education Technical Amendments of 1993, enacted December 20, 1993. These regulations also amend the FFEL Program regulations to permit a lender to issue a "master check" to an institution for purposes of disbursing Federal Stafford loan proceeds to an institution, to prohibit a subsequent holder of a loan to bill the Secretary for any applicable interest benefits or special allowance on a loan for which origination fees have not been paid, and to limit the collection charges that may be assessed a borrower with a defaulted loan that is paid off through loan consolidation. These regulations also clarify a change made to the HEA by the Improving America's Schools Act of 1994 (Pub. L. 103-382).

EFFECTIVE DATE: These regulations take effect July 1, 1995. However, affected parties do not have to comply with the information collection requirements in §§ 682.305, 682.401, 682.404, and 682.603 until the Department of Education publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas D. Laine, Program Specialist, Federal Family Education Loan Program Section, Loans Branch, U.S. Department of Education, 600 Independence Avenue, SW., room 4310, Regional Office Building 3, Washington, DC 20202-5343, telephone: (202) 708-8242. Individuals who use a

telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The FFEL Program regulations (34 CFR Part 682) govern the Federal Stafford Loan Program, the Federal Unsubsidized Stafford Loan Program, the Federal SLS Program, the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly the Guaranteed Student Loan programs).

The Secretary is amending 34 CFR Part 682 to implement changes made to the HEA by the Omnibus Budget Reconciliation Act of 1993 (OBRA) (Pub. L. 103-66) and the Higher Education Technical Amendments of 1993 (the Technical Amendments) (Pub. L. 103-208).

These amendments reflect changes made to the HEA by OBRA, such as the payment of lender referral fees to guaranty agencies, the reduction of the reinsurance coverage and reinsurance rates for a guaranty agency's losses on default claims and the reduction of insurance coverage a guaranty agency may pay on default claims.

These amendments also reflect changes to the HEA made by the Technical Amendments, such as a lender's obligation to rebate excess interest on certain Federal Stafford loans to either the borrower or the Secretary and require lenders to convert the interest rates on certain Federal Stafford loans to a variable interest rate.

These amendments also permit a lender to disburse Federal Stafford loan proceeds to a school via a master check, prohibit a subsequent holder of a loan to bill the Secretary for any applicable interest benefits or special allowance on a loan for which origination fees have not been paid, and limit the collection charges that may be assessed a borrower with a defaulted loan that is paid off through loan consolidation.

These amendments also exclude loans made under a guaranty agency's lender-of-last-resort program from the guaranty agency's reinsurance percentage determined under § 682.404.

On October 13, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for the FFEL Program in the **Federal Register** (59 FR 52038). The NPRM included a discussion of the issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion may be found:

- Returning excess interest to certain Stafford loan borrowers or the Secretary and converting the interest rate on certain Federal Stafford loans to a variable interest rate (page 52038);

- Disbursement of a Federal Stafford loan via a master check (page 52038);
- The obligation of an originating lender to pay origination fees to the Secretary (page 52039);

- Payment of a lender referral fee to each guaranty agency with whom the Secretary has a lender referral agreement in an amount equal to 0.5 percent of the principal amount of a loan made as a result of the agency's referral services (page 52039);

- The limitation of a guaranty agency to paying 98 percent of the unpaid principal balance of each loan on default claims on loans disbursed on or after October 1, 1993 (page 52039);

- The limitation of collection charges and late fees a guaranty agency may guarantee when a defaulted loan is consolidated (page 52039); and

- The rates at which the Secretary will reinsure a guaranty agency's default claims (page 52039).

Substantive Revisions to the Notice of Proposed Rulemaking

The Secretary has decided not to issue proposed section 682.418 which would implement section 428(n) of the HEA (State Share of Default Costs). As discussed below, the Secretary has determined that further consideration of the regulations is necessary.

- The final regulations have been revised to clarify that a borrower's loan proceeds disbursed via a master check are treated, for operational purposes, the same way as loan proceeds are treated that are disbursed via electronic funds transfer. These technical changes are reflected throughout the regulations.

- The final regulations have been revised to provide that a loan made under a guaranty agency's lender-of-last-resort program are not included in the guaranty agency's reinsurance rate determined under § 682.404.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 129 parties submitted comments on the proposed regulations. An analysis of the comments and changes made to the regulations that differ from the NPRM follows.

Major issues are grouped according to subject, with the reference to the appropriate sections of the regulations. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes, and suggested changes

the Secretary is not legally authorized to make under the applicable statutory authority are generally not addressed.

General

Comments: Some commenters noted that the proposed regulations did not reflect other changes made to the HEA as a result of OBRA and the Technical Amendments. The commenters expressed concern that the Department's decision not to reflect these statutory changes in the regulations would result in a delay in their implementation under the master calendar provisions of the HEA.

Discussion: The Secretary agrees that the statutory changes noted by the commenters should be incorporated into the FFEL regulations and is preparing a regulations package of technical corrections and self-implementing changes that the Department plans to publish shortly. As self-implementing provisions of the statute, these requirements are currently in effect.

Changes: None.

Comments: Many commenters asked the Secretary not to implement proposed section 682.418, which would implement the requirement in section 428(n) of the HEA, which requires States to pay a share of the costs of defaults in the FFEL Program. Many of the commenters raised concerns or questions about a number of the proposed regulatory provisions. In addition, some commenters informed the Secretary that the implementation of this rule in fiscal year 1995 would not give the States enough time to appropriate money to pay their fees and to enact laws under which they could pass a portion of their fees on to schools. Further, the commenters argued that the States would not be able to develop any criteria for exceptional mitigating circumstances that could be approved by the Secretary before the fee is due to the Secretary. In addition, many commenters argued that the formula prescribed by section 428(n) of the HEA would impose undue penalties on States and schools.

Discussion: Based on the comments received in response to the NPRM, the Secretary has determined that more time is needed to review and address the concerns raised by the commenters regarding implementation of section 428(n) of the HEA. Therefore, the Secretary has decided not to issue regulations implementing that provision at this time. The Secretary will further evaluate the statutory requirements and pursue further rulemaking during 1995 to implement section 428(n) of the HEA for fiscal year 1996. Moreover, the Secretary will exercise his authority

under section 432(a)(5) and (6) of the HEA to waive any fee a State would be responsible to pay under section 428(n) of the HEA for fiscal year 1995.

Changes: The Secretary has decided that more time is needed to review the concerns raised by the commenters and, therefore, is not publishing the final rule to implement section 428(n) of the HEA in these regulations. The Secretary expects to fully implement this provision in fiscal year 1996 and will publish the final regulations at a later date.

Section 682.202 Permissible Charges by Lenders to Borrowers

Comments: Many commenters suggested that the Secretary calculate a borrower's refund of excess interest paid on a Federal Stafford loan based on the ending principal balance of the loan for the quarter instead of the daily principal balance. The commenter noted that using the average daily principal balance of the loan for the quarter would be more burdensome to a lender than using the ending principal balance. Other commenters noted that the guidance in the regulations was not consistent with guidance the Department has previously issued.

Discussion: The Secretary is aware that using the average daily principal balance of a loan for a quarter requires a lender to track more information than if the lender used the ending principal balance of the loan. The Secretary is also aware that the regulatory provisions differ from the guidance the Department has issued with respect to rebates of excess interest. However, these regulations reflect the provisions that are contained in section 427A(i) of the HEA. The Secretary does not have the authority to change these statutory requirements.

Changes: None.

Comments: Many commenters suggested that the Secretary extend the 30-day period to credit the refund to 45 or 60 days. The commenters believed that a lender with a large volume of loans for which a refund was required may not be able to make the appropriate refunds within 30 days from the last day of the calendar year in which the quarter falls.

Discussion: The Secretary realizes that a lender that has a large number of loans for which a rebate is required may have difficulty making the appropriate refunds within the 30-day period. However, the 30-day time period is expressly mandated by section 427(i)(5) of the HEA. The Secretary does not have the authority to change this statutory requirement.

Changes: None.

Section 682.207 Due Diligence in Disbursing a Loan

Comments: A commenter suggested that a school, when receiving FFEL proceeds via check, should be given the option to receive those proceeds via a master check or individual checks. The commenter pointed out that the disbursement of FFEL Program loan proceeds via a master check will place the extra administrative burden and costs associated with processing the master check and cutting individual checks to borrowers at a school in cases when a school would otherwise endorse an individual loan check and deliver it to the borrower.

Discussion: The Secretary agrees with the commenter that disbursement of a loan proceeds via a master could impose such a burden. The Secretary agrees with the commenter that a school should be provided the authority to choose if it wishes loan proceeds to be disbursed via a master check.

Changes: A change has been made. The final regulations provide that FFEL Program loan proceeds may be disbursed via a master check if both the lender and school agree to the use of a master check.

Comments: Many commenters suggested that the Secretary should require a school to obtain a borrower's written authorization to release FFEL Program loan proceeds that are disbursed via a master check. The commenters believed that this is a necessary control to ensure that the borrowers are aware they are receiving their loan proceeds.

Discussion: The Secretary agrees with the commenters that requiring the borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made is a necessary control to ensure that a borrower is aware he or she is receiving the loan proceeds.

Changes: A change has been made. The final regulations have been amended in § 682.604 to require a borrower's written authorization for the release of his or her loan proceeds via a master check.

Section 682.305 Procedures for Payment of Interest Benefits and Special Allowance

Comments: Many commenters suggested that the Secretary notify a guaranty agency, or a new holder of a loan, that the originating lender has failed to pay the origination fees. The commenters argued that a guaranty agency or a new holder will not know if the origination fees have been paid on a loan.

Discussion: The Secretary does not agree with the commenters. The Secretary believes that the most practical way for a lender or guaranty agency to find out if the origination fees have been paid on a loan is through the lender selling the loan or the lender that is submitting the claim. It would not be practicable for the Secretary to verify if the origination fees have been paid on a loan every time a loan is sold or a default claim is filed. The Secretary is not informed by lenders when a loan is sold.

Changes: None.

Comments: Many commenters believed that a guaranty agency should not be penalized by loss of eligibility for reinsurance on a loan because a lender did not pay the origination fees. The commenters believed that the lender should be held responsible and be penalized for failing to pay the origination fees on loans that it has made.

Discussion: The Secretary does not agree with the commenters. It has been the longstanding policy of the Secretary that an FFEL Program loan is not eligible for reinsurance if the lender or agency has failed to comply with all Federal requirements with respect to the loan. However, the Secretary agrees with the commenters that a lender that fails to pay the origination fees should be penalized for failing to do so. The Secretary will take whatever action necessary against a lender to ensure that the origination fees are promptly being paid.

Changes: None.

Comments: Many commenters suggested that the Secretary amend this provision to permit a lender that purchases a loan to pay the origination fees to the Secretary. The commenters argued that many originating lenders sell their loans upon disbursement and have contractual agreements with the purchasing lenders that provide that the purchasing lender will pay the origination fees.

Discussion: The Secretary does not believe that such an amendment is necessary. The Secretary has promulgated this rule because, in many cases, such origination fees are not being paid to the Secretary. The Secretary believes that it is necessary to hold an originating lender responsible for such fees because this will decrease the incidence of origination fees not being paid to the Secretary. A purchasing lender may reimburse the originating lender for the origination fees.

Changes: None.

Section 682.401 Basic Program Agreement

Comments: Many commenters suggested that the Secretary provide in the regulations that a guaranty agency may (generally) not insure less than 98 percent of the unpaid principal balance of loans insured under its program. The commenters suggested this change because they believed this reflected the language of the HEA.

Discussion: The Secretary does not agree with the commenters. The Secretary believes that Congress intended to bar a guaranty agency from paying lenders more than 98 percent of the unpaid principal and accrued interest on default claims filed on loans made on or after October 1, 1993. The Secretary believes therefore it would be a misuse of a guaranty agency's reserve fund to pay more than 98 percent of the unpaid principal and interest on a defaulted loan.

Changes: None.

Comments: Many commenters suggested that the Secretary's limitation of collection costs that may be included in a Federal Consolidation Loan to 18.5 percent was unreasonable. The commenters believed that 18.5 percent would not cover the collection costs incurred on some loans. The commenters also argued that this provision debilitates the deterring effect collection costs have with respect to a borrower repaying his or her loan.

Discussion: The Secretary does not agree with the commenters that limiting collection costs to 18.5 percent of the borrower's outstanding balance is unreasonable. The Secretary wishes to clarify that this provision is intended to encourage a borrower with a defaulted loan to consolidate the loan in order to get the loan out of default and reestablish his or her eligibility for student financial aid. The Secretary believes that limiting the collection costs that may be included in a Federal Consolidation loan will provide an incentive for a borrower to get out of default.

Changes: None.

Waiver of Proposed Rulemaking

In addition to the changes made to part 682 based on public comment on the notice of proposed rulemaking, the Secretary has revised the regulations to include changes made by the Improving America's Schools Act of 1994 (Pub. L. 103-382), enacted subsequent to publication of the notice of proposed rulemaking.

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in

accordance with the Administrative Procedure Act, 5 U.S.C. 553. However, since these changes merely incorporate statutory changes into the regulations, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(3) that public comment on the regulations is unnecessary and contrary to the public interest.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action. The potential costs associated with these regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the Title IV, HEA programs effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of these regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Assessment of Educational Impact

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

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

List of Subjects in 34 CFR Part 682

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

Dated: November 22, 1994.

Richard W. Riley,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032, Federal Family Education Loan Program)

The Secretary proposes to amend part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

2. Section 682.202 is amended by adding new paragraphs (a)(6) and (a)(7) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) * * * **(6) Refund of excess interest paid on Stafford loans.**

(i) For a loan with an applicable interest rate of 10 percent made prior to July 23, 1992, and for a loan with an applicable interest rate of 10 percent made from July 23, 1992 through September 30, 1992, to a borrower with no outstanding FFEL Program loans—

(A) If during any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall calculate an adjustment and credit the adjustment as specified under paragraph (a)(6)(i)(B) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of the adjustment for a calendar quarter is equal to—

(1) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(2) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(3) Divided by 4;

(B) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall credit any amounts computed under paragraph (a)(6)(i)(A) of this section to—

(1) The Secretary, for amounts paid during any period in which the borrower is eligible for interest benefits;

(2) The borrower's account to reduce the outstanding principal balance as of the date the holder adjusts the borrower's account, provided that the borrower's account was not more than 30 days delinquent on that December 31; or

(3) The Secretary, for a borrower who on the last day of the calendar year is delinquent for more than 30 days.

(ii) For a fixed interest rate loan made on or after July 23, 1992 to a borrower with an outstanding FFEL Program loan—

(A) If during any calendar quarter, the sum of the average of the bond

equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the lender shall calculate an adjustment and credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(6)(ii)(C) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of an adjustment for a calendar quarter is equal to—

(1) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(2) Multiplied by the average daily principal balance of the loan (not including unearned interest added to principal); and

(3) Divided by 4;

(B) For any quarter or portion thereof that the Secretary was obligated to pay interest subsidy on behalf of the borrower, the holder of the loan shall refund to the Secretary, no later than the end of the following quarter, any excess interest calculated in accordance with paragraph (a)(6)(ii)(A) of this section;

(C) For any other quarter, the holder of the loan shall, within 30 days of the end of the calendar year, reduce the borrower's outstanding principal by the amount of excess interest calculated under paragraph (a)(6)(ii)(A) of this section, provided that the borrower's account was not more than 30 days delinquent as of December 31;

(D) For a borrower who on the last day of the calendar year is delinquent for more than 30 days, any excess interest calculated shall be refunded to the Secretary; and

(E) Notwithstanding paragraphs (a)(6)(ii)(B), (C) and (D) of this section, if the loan was disbursed during a quarter, the amount of any adjustment refunded to the Secretary or credited to the borrower for that quarter shall be prorated accordingly.

(7) Conversion to Variable Rate.

(i) A lender or holder shall convert the interest rate on a loan under paragraphs (a)(6)(i) or (ii) of this section to a variable rate.

(ii) The applicable interest rate for each 12-month period beginning on July 1 and ending on June 30 preceding each 12-month period is equal to the sum of—

(A) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to June 1; and

(B) 3.25 percent in the case of a loan described in paragraph (a)(6)(i) of this section or 3.10 percent in the case of a loan described in paragraph (a)(6)(ii) of this section.

(iii)(A) In connection with the conversion specified in paragraph (a)(6)(ii) of this section for any period prior to the conversion for which a rebate has not been provided under paragraph (a)(6) of this section, a lender or holder shall convert the interest rate to a variable rate.

(B) The interest rate for each period shall be reset quarterly and the applicable interest rate for the quarter or portion shall equal the sum of—

(1) The average of the bond equivalent rates of 91-day Treasury bills auctioned for the preceding 3-month period; and

(2) 3.25 percent in the case of loans as specified under paragraph (a)(6)(i) of this section or 3.10 percent in the case of loans as specified under paragraph (a)(6)(ii) of this section.

(iv)(A) The holder of a loan being converted under paragraph (a)(7)(iii)(A) of this section shall complete such conversion on or before January 1, 1995.

(B) The holder shall, not later than 30 days prior to the conversion, provide the borrower with—

(1) A notice informing the borrower that the loan is being converted to a variable interest rate;

(2) A description of the rate to the borrower;

(3) The current interest rate; and

(4) An explanation that the variable rate will provide a substantially equivalent benefit as the adjustment otherwise provided under paragraph (a)(6) of this section.

(v) The notice may be provided as part of the disclosure requirement as specified under § 682.205.

(vi) The interest rate as calculated under this paragraph may not exceed the maximum interest rate applicable to the loan prior to the conversion.

* * * * *

3. Section 682.207 is amended by removing the word "or" at the end of paragraph (b)(1)(ii)(A); removing the semicolon at the end of paragraph (b)(1)(ii)(B), and adding, in its place, a period and a new sentence; and removing the semicolon at the end of paragraph (b)(1)(v)(B)(1), and adding, in its place, a period and a new sentence; by adding a new paragraph (b)(1)(ii)(C) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b)(1) * * *

(ii) * * *

(B) * * * A disbursement made by electronic funds transfer must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement; or

(C) If the school and the lender agree, a master check from the lender to the eligible institution to a separate account maintained by the school as trustee for the lender. A disbursement made by a master check must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement;

(v) * * *

(B) * * *

(1) * * * A disbursement made by electronic funds transfer or master check must be accompanied by a list of the names, social security numbers, and loan amounts of the borrowers who are receiving a portion of the disbursement and the names and social security numbers of the students on whose behalf the parents are borrowing.

4. Section 682.300 is amended by revising paragraph (b)(2)(ii)(B), paragraph (c)(3)(ii), and paragraphs (c)(4) (i) and (ii) to read as follows:

§ 682.300 Payment of interest benefits on Stafford and Consolidation Loans.

(b) * * *

(2) * * *

(ii) * * *

(B) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school on or before that date;

(c) * * *

(3) * * *

(ii) In the case of a loan disbursed by electronic funds transfer or master check, 3 days prior to the first day of the period of enrollment or, if the loan is disbursed after the first day of the period of enrollment, 3 days after disbursement.

(4) * * *

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

5. Section 682.302 is amended by revising paragraphs (b)(3) (i) and (ii) and

paragraph (d)(1)(vi)(B) to read as follows:

§ 682.302 Payment of special allowance on FFEL loans.

* * * * *

(b) * * *

(3) * * *

(i) The disbursement check is returned uncashed to the lender or the lender is notified that the disbursement made by electronic funds transfer or master check will not be released from the restricted account maintained by the school; or

(ii) The check for the disbursement has not been negotiated before the 120th day after the date of disbursement or the disbursement made by electronic funds transfer or master check has not been released from the restricted account maintained by the school before that date.

* * * * *

(d) * * *

(1) * * *

(vi) * * *

(B) the loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school on or before that date; or

6. Section 682.305 is amended by revising paragraph (a)(4) to read as follows:

§ 682.305 Procedures for payment of interest benefits and special allowance.

(a) * * *

(4) If an originating lender sells or otherwise transfers a loan to a new holder, the originating lender remains liable to the Secretary for payment of the origination fees. The Secretary will not pay interest benefits or special allowance to the new holder or pay reinsurance to the guaranty agency until the origination fees are paid to the Secretary.

* * * * *

7. Section 682.401 is amended by revising paragraph (b)(10)(vi)(B)(3); adding new paragraphs (b)(10)(iii) and (b)(27); and by revising paragraph (b)(14) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(10) * * *

(vi) * * *

(B) * * *

(3) The loan proceeds disbursed by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have not been released from the restricted account maintained by the school.

(11) * * *

(iii) The Secretary will pay a lender referral fee to each guaranty agency with whom the Secretary has a lender referral agreement, an amount equal to 0.5 percent of the principal amount of a loan made as a result of the agency's referral service.

* * * * *

(14) *Guaranty liability.* The guaranty agency shall guarantee—

(i) 100 percent of the unpaid principal balance of each loan guaranteed for loans disbursed before October 1, 1993; and

(ii) Not more than 98 percent of the unpaid principal balance of each loan guaranteed for loans first disbursed on or after October 1, 1993.

* * * * *

(27) *Collection Charges and Late Fees on Defaulted FFEL loans being Consolidated.* A guaranty agency may not guarantee collection charges or late fees that exceed 18.5 percent of the outstanding principal and interest on a defaulted FFEL Program loan that is included in a Federal Consolidation loan.

* * * * *

8. Section 682.402 is amended by revising paragraphs (e)(3)(iv) introductory text, (e)(3)(iv)(A), the heading of paragraph (e)(8), paragraph (e)(8)(iii) introductory text, the heading of paragraph (e)(10) and paragraph (e)(10)(iii) introductory text to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

* * * * *

(e) * * *

(3) * * *

(iv) In the case of a borrower requesting a discharge because the school, without authorization of the borrower, endorsed the borrower's name on the loan check or signed the authorization for electronic funds transfer or master check, the borrower shall—

(A) Certify that he or she did not endorse the loan check or sign the authorization for electronic funds transfer or master check, or authorize the school to do so;

* * * * *

(8) *Guaranty agency responsibilities with respect to a claim filed by a lender based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan funds via electronic funds transfer or master check.*

* * * * *

(iii) If the agency determines that a borrower who asserts that he or she did

not sign the electronic funds transfer or master check authorization satisfies the requirements for discharge under paragraph (e)(3)(iv) of this section, it shall, within 30 days after making that determination, pay the claim in accordance with § 682.402(h) and—

(10) *Guaranty agency responsibilities in the case of a loan held by the agency for which a discharge request is submitted by a borrower based only on the borrower's assertion that he or she did not sign the loan check or the authorization for the release of loan proceeds via electronic funds transfer or master check.*

(iii) In the case of a borrower who requests a discharge because he or she did not sign the electronic funds transfer or master check authorization, if the agency determines that the borrower meets the conditions for discharge, it shall immediately terminate any collection efforts against the borrower with respect to the discharged loan amount and any charges imposed or costs incurred by the agency related to the discharged loan amount that the borrower is, or was, otherwise obligated to pay, and within 30 days after making that determination—

9. Section 682.404 is amended by revising paragraphs (a)(1), (b)(1), and (b)(2), by removing paragraph (b)(4), by redesignating paragraph (b)(5) as paragraph (b)(4), by removing the period at the end of paragraph (b)(3)(iii) and adding a semi-colon in its place, and adding a new paragraph (b)(3)(iv).

§ 682.404 Federal reinsurance agreement.

(a) *General.* (1)(i) The Secretary may enter into a reinsurance agreement with a guaranty agency that has a basic program agreement. Except as provided in paragraph (b) of this section, under a reinsurance agreement the Secretary reimburses the guaranty agency for 98 percent of its losses on default claim payments to lenders.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, the Secretary

reimburses a guaranty agency for 100 percent of its losses on default claim payments—

(A) For loans made prior to October 1, 1993;

(B) For loans made under an approved lender-of-last-resort program;

(C) For loans transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program;

(D) For a guaranty agency that entered into a basic program agreement under section 428(b) of the Act after September 30, 1976, or was not actively carrying on a loan guarantee program covered by a basic program agreement on October 1, 1976 for five consecutive fiscal years beginning with the first year of its operation.

(b) * * *

(1) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 5 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 90 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that withdraws its participation in the FFEL Program; or

(ii) 88 percent of its losses for loans made on or after October 1, 1993.

(2) If the total of reinsurance claims paid by the Secretary to a guaranty agency during any fiscal year reaches 9 percent of the amount of loans in repayment at the end of the preceding fiscal year, the Secretary's reinsurance payment on a default claim subsequently paid by the guaranty agency during that fiscal year equals—

(i) 80 percent of its losses for loans made before October 1, 1993 or transferred under a plan approved by the Secretary from an insolvent guaranty agency or a guaranty agency that

withdraws its participation in the FFEL Program; or

(ii) 78 percent of its losses for loans made on or after October 1, 1993.

(3) * * *

(iv) On loans made under a guaranty agency's approved lender-of-last-resort program.

10. Section 682.406 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 682.406 Conditions of reinsurance coverage.

(a) * * *

(2) * * *

(ii) The proceeds of the disbursement made by electronic funds transfer or master check in accordance with § 682.207(b)(1)(ii) (B) and (C) have been released from the restricted account maintained by the school within 120 days after disbursement;

11. Section 682.407 is removed and reserved.

12. Section 682.604 is amended by revising paragraph (c)(3) introductory text to read as follows.

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers

* * * * *

(c) * * *

(3) If the loan proceeds are disbursed by electronic funds transfer to an account of the school in accordance with § 682.207(b)(1)(ii)(B), or by master check in accordance with § 682.207(b)(1)(ii)(C), the school must, unless authorization was provided in the loan application, not more than 30 days prior to the first day of classes of the period of enrollment for which the loan is intended, obtain the student's, or in the case of a Federal PLUS loan, the parent borrower's written authorization for the release of the initial and any subsequent disbursement of each FFEL loan to be made, and after the student has registered either—

* * * * *

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

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