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Part IV

Department of Education

34 CFR Part 600, et al.

Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 668, 675, 682, 685, and 690

RIN 1845–AA19

Institutional Eligibility; Student Assistance General Provisions; Federal Work-Study Programs; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Institutional Eligibility, the Student Assistance General Provisions, the Federal Work-Study, the William D. Ford Federal Direct Loan, the Federal Family Education Loan, and the Federal Pell Grant regulations. These proposed regulations implement changes negotiated with the financial aid, higher education, and other related community members in the negotiated rulemaking process mandated by Congress under section 492 of the Higher Education Act of 1965, as amended, (HEA). These changes would streamline the application, reapplication and certification processes for institutions that wish to participate in the title IV, HEA programs; reduce burden, under specific circumstances, for the reporting of additional locations; clarify the reporting responsibilities for institutions that experience a change in ownership that results in a change of control; expand the possibilities for institutions to create written agreements with certain other entities to have part or all of their eligible programs provided by those entities; revise the process for determining a transfer student's financial aid history; recognize electronic certification and record retention options for FWS program administration; add flexibility to the training requirements for institutional certification; change loan proceeds disbursement rules for programs using non-standard terms; clarify notification requirements when title IV loan proceeds are credited to a student's institutional account; and add flexibility to lender disbursement requirements and eligibility determinations for students receiving loan proceeds.

DATES: We must receive your comments on or before September 25, 2000.

ADDRESSES: Address all comments about these proposed regulations to: Mark Washington, U.S. Department of Education, P.O. Box 23272, Washington, DC 20026–3272. If you prefer to send your comments through the Internet please use the following address: GPNPRM@ed.gov

You must use the term, ''Team 2—General Provisions'' in the subject line of your electronic mail message.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Mark Washington, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3045, ROB–3, Washington, DC 20202–5447. Telephone: (202)–260–9321.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses, and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations in Room 3045, Regional Office Building 3, 7th & D Streets, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202)–205–8113 or (202)–260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Negotiated Rulemaking

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. To the extent that agreements are reached during that process, all published proposed regulations must conform to those agreements unless the Secretary reopens the negotiated rulemaking process or provides a written explanation to the participants in that process outlining the reasons why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we held listening sessions in Washington, DC, Atlanta, Chicago and San Francisco. Four half-day sessions were held on September 13 and 14, 1999, in Washington, DC. In addition, we held three regional sessions in Atlanta on September 17, in Chicago on September 24, and in San Francisco on September 27, 1999. The Office of Student Financial Assistance's Customer Service Task Force also conducted listening sessions to obtain public involvement in the development of our regulations.

We then published a notice in the **Federal Register** (64 FR 73458, December 30, 1999) to announce our intention to establish two negotiated rulemaking committees to draft proposed regulations affecting title IV of the HEA. The notice requested nominations for participants from anyone who believed that his or her organization or group should participate in this negotiated rulemaking process. The notice announced that we would select participants for the process from the nominees of those organizations or groups. The notice also announced a tentative list of issues each committee was likely to address.

Once the two committees were established they met to develop proposed regulations over the course of several months, beginning in February.

Committee I—This notice of proposed rulemaking (NPRM) includes two proposed provisions that were discussed as part of negotiated rulemaking by Committee I (Loan Issues). They would make changes to the Federal Family Education Loan (FFEL) Program regulations by providing flexibility to schools and lenders in the disbursement of loan funds. Since the proposed changes would affect both schools and lenders, they have been included in this NPRM. Including these proposed changes in this NPRM will allow all affected parties a better opportunity to review and provide comment on these issues. For a listing of the members of Committee I please see the NPRM published in the **Federal Register** (65 FR 46316) on July 27, 2000 that relates to guaranty agency and other FFEL issues.

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was not achieved on the proposed changes that would provide flexibility to schools and lenders in the disbursement of loan funds during the negotiated rulemaking process for Committee I.

A full discussion of these proposed provisions are included in the section of this document titled ''SIGNIFICANT PROPOSED REGULATIONS'' under the discussion of changes to §§ 682.207 and 682.604.

Committee II—Except as noted, the proposed regulations contained in this notice of proposed rulemaking (NPRM) reflect the final consensus of Committee II, which was made up of the following members:

American Association of Collegiate Registrars and Admissions Officers
American Association of Cosmetology Schools
American Association of State Colleges and Universities (in coalition with American Association of Community Colleges)
American Council on Education
Association of Jesuit Colleges and Universities
Career College Association
Coalition of Higher Education Assistance Organizations
Coalition of Publicly Traded Educational Institutions
Consumer Bankers Association
Legal Services
NAFSA: Association of International Educators
National Accrediting Commission of Cosmetology Arts and Sciences, Inc.
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of Student Financial Aid Administrators
National Association for State Student Grant and Aid Programs
National Association of State Universities and Land-Grant Colleges
National Council of Higher Education Loan Programs
National Direct Student Loan Coalition
Sallie Mae, Inc.
Student Loan Servicing Alliance
The College Fund/United Negro College Fund
United States Department of Education
United States Student Association
United States Public Interest Research Group
University Continuing Education Association.

Consensus was reached on all of the proposed regulations in this document that were discussed by Committee II, except for three issues, two of which allow certain exemptions for public institutions. The other addressed incentive compensation related to securing student enrollments.

The first item in Committee II where consensus was not reached is proposed § 600.20(d)(1) which exempts public institutions from the requirement to apply for approval of their additional locations, if those locations are licensed and accredited, and are in the same State as the main campus. The second item where consensus was not reached is in proposed § 600.31(c)(7), which states that we do not consider a change in governance at a public institution to be a change in ownership resulting in a change of control, if the institution remains a public institution after that change in governance. These two issues will be examined more fully in the following section. Since the committee did not reach consensus on these two provisions, any references to them which may be contained within topics where the committee reached agreement do not represent agreement by the non-federal negotiators with the two regulatory provisions where consensus was not reached. Finally, no consensus was reached regarding whether, or to what extent, we should modify the regulations in § 668.14(b)(22) governing incentive compensation payments made by institutions, related to securing student enrollments. Subsequent to the negotiations, we have decided not to propose regulatory changes in this area.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect. The following paragraphs are organized by topic, and in some cases divided further into subtopics, with appropriate headings. Statutory provisions that apply to a particular topic may not be restated after the subtopical categories.

Section 600.10(b)—Additional Locations

Statute: Section 498 of the HEA authorizes the Secretary to determine whether an institution meets the qualifications to be designated as an eligible institution for purposes of the programs authorized by the HEA. This section also outlines the procedures the Secretary uses to certify an institution to participate in the title IV, HEA programs.

Current Regulations: As provided in § 600.10(b)(3)(i) and (ii), when a participating institution wishes to add a location that was not previously eligible where it offers fifty percent or more of an eligible program, it must notify us about the new additional location, and may be required to submit an application for eligibility of the new location. We consider such a location to be eligible to participate only as of the date we certify it to participate.

Proposed Regulations: The proposed regulations revise the provisions that currently exist in § 600.10(b)(3)(i) and (ii).

The revisions clarify that an institution's eligibility does not extend to an additional location it establishes after the institution is designated as eligible if that location provides at least 50 percent of an educational program, unless we approve the location under proposed § 600.20(f)(5) or if the institution is not required to report it to us under proposed § 600.20(d).

Reasons: This section clarifies that an institution must apply for approval to have its eligibility extended to additional locations that are not included in its most recent certification if the institution will offer 50% or more of an education program at those locations. Such additional locations are not considered eligible until the Secretary has approved them as eligible or they meet the exemptions provided in proposed § 600.20(d).

Section 600.20—Application Procedures for Establishing, Reestablishing, Maintaining, or Expanding Institutional Eligibility and Certification

Initial Eligibility Application

Statute: Section 498(b) of the HEA states that the Secretary shall prepare a single application for institutions to request eligibility, and specifies the information that must be collected from applicant institutions.

Current Regulations: Section 600.20 establishes the procedures for an institution to apply for participation in any title IV, HEA program. Initially, the institution must apply to us to be designated as an eligible institution. Additional requirements for certification to participate in the title IV, HEA programs are described in part 668, subpart B. However, the requirements in the regulations related to eligibility and those related to certification, found in § 600.20(a) and § 668.13, respectively do not make clear that (1) determination of eligibility and certification are separate processes, and (2) an institution may apply for both determinations at the same time by using the Department's application for approval to participate.

Proposed Regulations: These proposed regulations set forth the administrative procedures necessary for submitting the eligibility application, as well as obtaining certification for participation in the title IV, HEA programs.

Section 600.20(a), as proposed, also clearly indicates that eligibility and certification are separate distinguishable processes, requiring specific actions for successful completion.

This revision also clarifies that we determine whether an applicant institution meets the participation standards (in part 668, subpart B) and the financial responsibility standards (in part 668, subpart L), of the current regulations, before we certify the institution. As required under current regulations, our internal administrative processes already include these standards, but the proposed regulation clarifies that the review is based upon the regulatory requirements.

Reasons: We are consolidating related provisions for eligibility and certification mandated by the HEA and current regulations. We believe a more uniform construction will make these regulations easier to understand and to implement.

Reapplication Process

Statute: Section 498(g) of the HEA addresses issues regarding the renewal of institutional eligibility. Section 498(i) outlines the requirements that must be met when an institution experiences a change in ownership that results in a change of control.

Eligible But Not Participating Institutions

Current Regulations: Section 600.20(b) provides that all eligible institutions, whether they participate in the title IV HEA programs or not, must reapply if they want to continue their eligibility, and certification to participate if applicable, under conditions specified in the regulation (e.g., adding a new location or change of ownership).

Proposed Regulations: We propose in § 600.20(b)(1) that a currently designated eligible institution that is not participating in the title IV, HEA programs, is only required to apply to us for a determination that it continues to be eligible, if we request the institution to reapply.

Reasons: In discussions regarding the reapplication process, we proposed to continue the current requirement in § 600.20(b) that all institutions would be required to reapply if we so requested. However, we suggested that eligible but non-participating institutions would not need to automatically reapply for any of the current reasons provided in § 600.20. These institutions may qualify to participate in certain non-title IV, HEA programs, and their students may qualify for loan deferments. Since they are not administering federal student aid, they are only required to reapply for their eligibility determination upon our request, otherwise their eligibility status continues indefinitely.

Participating Institutions

Current Regulations: As noted above, § 600.20 provides that all participating institutions must apply if they want to continue their eligibility and certification to participate. Included among the reasons why a participating institution must reapply is where we request it to do so (§ 600.20(b)(1)). Additionally, § 600.20(c) includes a number of other conditions under which an institution must reapply.

Proposed Regulations: Proposed § 600.20(b)(2) would require a currently eligible institution that participates in title IV, HEA programs to apply for a determination that it continues to meet the requirements of 34 CFR parts 600 and 668 as provided in paragraphs (b)(2)(i) through (iii) of § 600.20.

Section 600.20(b)(2)(i) of the proposed regulations would apply when a participating institution wishes to continue its participation beyond the expiration of the current eligibility and certification. Section 600.20(b)(2)(ii) would require a participating institution to reapply to reestablish its eligibility and certification as a private nonprofit or private for-profit institution, after a change in ownership that results in a change of control, as described in § 600.31. Section 600.20(b)(2)(iii) would require a reapplication if the participating institution experienced any changes in its status as a proprietary, nonprofit, or public institution (e.g., changed its status from for-profit to nonprofit).

Reasons: In order to clarify and to make easier for institutions to comply with the rules, we propose to consolidate the regulatory requirements for the reapplication process into one section, § 600.20(b).

We initially proposed to continue the current requirements that prescribe when a participating institution must reapply for a determination that it continues to meet the standards necessary to participate in the title IV, HEA programs. One of these requirements was when the Secretary, at his discretion, required reapplication. Although this proposed regulation was substantially equivalent to the existing regulation found at § 600.20(b)(1), several members of the committee objected to what they believed was an overly broad extension of the Secretary's authority to regulate, beyond the scope of authority expressly granted or intended by the HEA.

While affirming that we would not use this authority to require reapplication in a capricious or arbitrary manner, we explained that the Secretary must reserve the right to require a review of any institution that gives cause for concern. We indicated that the reapplication process affords us an opportunity for such a review. Various committee members believed we already have that authority under other existing regulations.

The committee ultimately agreed that a narrower regulatory approach that differentiated application requirements between eligible, non-participating institutions and eligible participating institutions, would accommodate concerns regarding fair and consistent application of our authority to review. The proposed regulation makes clear that the Secretary may request reapplication from eligible non-participating institutions at any time, because they are not subject to the ordinary reapplication cycle.

In proposed § 600.20(b)(2)(ii), we would not require a public institution to reapply for approval if its governance changed and that change included an acknowledgment by the new governing entity, on behalf of the institution, of the institution's continuing responsibilities under its program participation agreement. Other changes in governance that do not acknowledge the public institution's ongoing responsibilities under its program participation agreement would be changes of ownership that require reapplication. Additional information on the effect of the change of governance for public institutions can be found under the discussion of § 600.31(c)(7).

Finally, several of the non-federal negotiators expressed concern about the corporate and legal interpretations of ''ownership'', and whether such terms or phrases as ''a change of ownership'' even apply to certain types of educational institutions.

Several non-federal negotiators contested the notion that a ''change in ownership'' applies to a nonprofit entity. They felt strongly that those in the nonprofit sector do not identify with the concept of ''ownership.'' Moreover, one committee member suggested that many nonprofit institutions might fail to comply with the change in ownership regulations, because those institutions may not believe that the regulations apply to them, by virtue of their nonprofit status. We note that the HEA does not exempt non-profit institutions from the change of ownership provisions. However, we understand that clarity in this matter is needed.

To resolve any confusion on this issue the committee evaluated various terms to convey the unique nature and organization of nonprofit entities. One proposal sought to uniformly replace the existing phrase, ''change of ownership'' with ''change in structure, governance, or ownership.'' Although we appreciate that nonprofit entities may not consider the existing regulatory language as properly describing their legal structure and operations, we cautioned that adopting a new phrase for one sector might actually be confused with other commonly accepted terms used in other sectors. Using the phrase ''change of governance'', for example, could possibly indicate something totally different for public institutions.

Ultimately, the committee agreed to use the phrase ''changes its status'' in § 600.20(b)(2)(iii), signaling an organizational change so substantial that it would be a change of ownership resulting in a change in control under the HEA.

Application to Expand Eligibility

Statute: Sections 498(b) and (j) of the HEA outline the application requirements when an institution wishes to expand its eligibility, particularly to branch campuses.

Current Regulations: Section 600.30(a) requires an institution to notify the Secretary of any significant changes it has experienced since its most recent eligibility application. Section 600.20 lists various instances where an institution must make an application to expand its designated eligibility and certification to include additional locations and programs.

Proposed Regulations: Proposed § 600.20(b)(2) lists the events that require an institution to submit a new application. Proposed § 600.20(c) describes the events that require an application to expand eligibility. Except for two new provisions under proposed § 600.20(c), the proposed regulations are very similar to current regulations.

First, at § 600.20(c)(2), we would require an institution to report any increase in the level of program offerings it adds. Second, § 600.20(c)(5) clarifies that an institution must apply for approval if it wishes to convert an existing location to a branch campus.

Reasons: We believe the proposed regulations offer greater clarity on this topic by consolidating all of the related regulations into one section. The current regulations that address expansion of an institution's designated eligibility status are within §§ 600.20 and 600.30, and are not as detailed.

The expansion of an institution's eligibility through the increase of the level of program offerings in § 600.20 (c)(2) was added as one of the requirements for reapplication because this type of change often requires an institution to modify its financial aid and other administrative processes. For example, a change in level of program offerings could affect the institution's determination of program length because of the requirements for ''credit hour conversions''. Similarly, such a change could impact the institution's ability to use the multi-year features of the new master promissory notes in the FFEL and Direct Loan programs.

Finally, the non-federal negotiators suggested that the conversion of an otherwise eligible location to a branch campus be added as § 600.20(c)(5) to address this type of expansion of institutional eligibility.

Exemptions From Applying for Additional Locations

Exemption for public institutions:

Current Regulations: Under § 600.20(c)(3) an institution must apply to add a location not currently a part of its eligibility designation. Those rules do not distinguish among the types of institutions that must apply.

Proposed Regulations: We have proposed in § 600.20(d)(1) that public institutions do not have to apply to the Secretary for approval of an additional location under § 600.20(c)(1), if the additional location is properly licensed and accredited, and is located within the same State as the main campus of the currently designated eligible institution.

Reasons: As noted earlier, the committee did not reach consensus on this issue. During the negotiated rulemaking sessions, we noted that we are not aware of any problems that placed federal funds at risk when a public institution has added additional locations. The public entities that govern these institutions generally apply responsible oversight and systems of control over these institutions, especially with regard to the establishment of additional locations. The additional level of planning, approval, and review generally required by public entities helps to limit rapid growth that could adversely impact educational quality or cause fiscal instability in the administration of title IV funds. Moreover, we believe that the extent of fiscal resources generally made available to public institutions by the public entities that govern them are likely to be substantial enough to safeguard the taxpayers from any potential losses in title IV, HEA program funds.

This exemption only applies to additional locations that are in the same State as the main campus of the public institution, because those locations share the same oversight entities. These additional locations must, of course, be licensed and accredited.

We believe these proposed regulations will enhance efficiency and provide administrative relief for a sizable segment of the population of eligible institutions, by not requiring them to report locations they add until the next scheduled recertification.

Some members of the committee saw this proposed exemption as a benefit unfairly and unduly afforded to a select segment of eligible institutions. One committee member considered the sector-based distinction to be discriminatory, and questioned the legality of the proposed regulations on this basis.

A few committee members suggested that any institution, regardless of its structure or control, that meets the licensing and accreditation standards, and whose additional location was in the same State as the main campus, should receive the same exemption as that being proposed for public institutions.

Several non-federal negotiators added that many private nonprofit and private for-profit institutions have maintained stellar performance records in their administration of the title IV, HEA programs. They also believed that many of these institutions were subject to reasonable oversight from States, accrediting agencies, and industry associations. They argued that any school that demonstrated consistent compliance with our regulations, and had sufficient systems to meet administrative and financial capability standards should be entitled to the same exemption being offered to the public institutions.

We maintained that it was neither novel nor extraordinary for a federal agency to rely upon the oversight and financial backing provided to public institutions. We believe that this governmental oversight over public institutions limits risks to federal funds.

While it is true that some non-public institutions administer their programs in a way that does not pose any fiscal risk to the federal taxpayers, that is not the case for all such institutions. On the other hand, all public institutions have considerable financial support available to help them meet their title IV, HEA program obligations.

Non-public institutions operate in environments that pose significantly higher financial risks than do public institutions. Our experience includes situations where some non-public institutions grew so rapidly that the integrity of their educational and student aid programs was compromised. The level of growth and expansion strained those institutions' financial resources and administrative capability and, ultimately, they failed, causing great harm to students and losses to taxpayers of title IV student assistance funds.

During the discussion on this exemption for public institutions, the amount of burden associated with reporting additional locations was considered. While the actual reporting of proposed additional locations does not involve much burden (the school simply uses our web-based application screens), the school representatives on the committee pointed out that the need to wait for our approval of the new location before title IV aid could be disbursed could create an unnecessary delay. Even though we generally provide our response within about 35 days, the representatives of public institutions noted that, since we have virtually always approved such sites, there is no need for a public institution to report its addition of new locations. Conversely, it was noted by some other members of the committee that, since the burden to report is not significant, all institutions should be required to report so that the Secretary has knowledge of all locations where students are receiving title IV funds.

Again, this specific provision—an exemption for public institutions from the requirement to report additional locations—was one where consensus was not reached by the negotiated rulemaking committee. Consistent with the committee's protocols addressing the issuance of proposed rules when consensus is not reached, we are including in these proposed rules the full exemption for public institutions. However, in addition to soliciting general comments on the issue of the proposed exemption for public institutions, we especially wish to receive comment on whether the proposal should be modified to require public institutions to notify the Secretary of a new additional location, but exempt them from the requirement to wait for our approval before making disbursements of title IV aid to students enrolled at the new location.

Exemptions for temporary additional locations:

Proposed Regulations: The proposed § 600.20(d)(2) would exempt non-public institutions from applying for approval of licensed and accredited temporary locations if the following specific conditions are met: (1) The institution intends to use the location for not more than 12 months; (2) the institution has not added more than six locations offering at least fifty percent of an educational program since it was last certified; (3) the institution does not have any outstanding title IV, HEA program liabilities; (4) the institution did not acquire the assets of another institution that formerly provided educational programs at that location (and that participated in title IV, HEA programs at that location) within the preceding year; (5) the institution would, if it adds that location, not be subject to a loss of eligibility under proposed § 668.188 (Proposed § 668.188 would apply a loss of eligibility, due to high loan cohort default rates, that was previously imposed against one institution to another institution following a change in status.); and (6) we do not currently prohibit the institution from adding locations without advance notice.

Paragraph (d)(3) of § 600.20 explains what happens when an institution that did not apply for approval of a new location because it did not intend to conduct business longer than twelve months realizes that it will continue for more than one year at that location. The institution must apply as soon as it determines it will be at a location for more than 12 months, but not later than 35 days before the end of the initial twelve-month period. In any case, the institution may not disburse title IV, HEA program funds for attendance at that location beyond the twelve-month period without our approval of that location.

We especially request comment on whether an institution that has provided notification to us that it intends to remain at an additional location for more than one year should immediately stop making title IV disbursements until it receives our approval of that location, as would be the case with any other notification of a permanent additional location.

Reasons: An institution may provide training on a temporary basis at off-campus sites, in order to be responsive to the needs of its community. The negotiators agreed that allowing institutions to open a limited number of temporary training locations without reapplication assists the community in meeting its goal of partnering with institutions to accommodate the workforce training requirements of business and industry. We believe that the specific conditions in the proposed rule provide assurance that temporary additional locations will not adversely affect the institution.

When discussing this issue of providing a limited exemption to the reporting of temporary additional locations for non-public institutions, the committee considered several options. We ultimately agreed upon language that provides that a non-public institution does not have to apply to the Secretary for approval of a licensed and accredited temporary additional location under certain conditions. Among those conditions is that the institution has not added more than six locations at which it offered more than 50 percent of an educational program since it was last certified to participate in the title IV, HEA programs.

We are interested in receiving specific comment on whether the six locations proposed is the proper number. Also, since the period between certifications could be up to six years, we also wish to receive comment on whether there should be a limit on the number of such locations added during any one year.

While we are proposing this limited exception to the requirement that institutions report and get our approval of new additional locations before they disburse title IV aid, we do have some concerns about the impact this exception might have on our oversight responsibility. One issue is whether we, as the agency responsible for administering title IV funds, should know about all locations at which these funds are being disbursed. Another concern is whether all non-public institutions should be able to add temporary locations without prior approval, including institutions that may not meet the standards of administrative capability or financial responsibility. An additional concern is that the proposed temporary location exception could be used by schools that would otherwise be unable to obtain our approval to establish new permanent locations or that had been denied such approval in the past.

While the proposed exception requires that the new location be accredited and licensed, some institutions are licensed or accredited by agencies that do not require affirmative prior approval to add new locations. In such cases, therefore, a school would be able to disburse title IV funds to students enrolled at a location that had not received approval from any of the three entities that normally provide oversight—the Department of Education, the State licensing agency, and the accreditation agency. In such cases there would be no external record that the temporary location existed.

In light of the concerns, we are interested in receiving comment on whether requiring notice to the Department, but not prior approval, would create an undue burden, and whether there are certain categories of institutions that should not be able to take advantage of the proposed exception due to problems with their past performance. In addition, we are considering obtaining information on temporary locations through the annual compliance audit and invite comment on such an approach.

Secretary's Responses to Applications

Current Regulations: Under § 600.21(a), (b) and (c), we notify the institution in writing as to its eligibility status.

Proposed Regulations: Proposed § 600.20(f) discusses our various responses to an institution's application (or reapplication) for eligibility or certification. It describes the range of notifications that we will send in response to an institution's application, based upon the type or reason of the application.

Reasons: While the existing § 600.21(a), (b), and (c) address the notifications we provide, the level of specificity is more precise in the proposed regulations. We believe that a clearer connection between the specific reason for the institution's application and the related notification from the Secretary responding to that application will be very useful and practical for applicant institutions.

Disbursement Rules

Current Regulations: Under § 600.40 an institution becomes ineligible to continue to participate in any title IV, HEA program as of the day the institution's period of participation under § 668.13 expires, or if the institution's provisional certification is revoked under § 668.26. However, the current regulations provide certain exemptions and timeframes that allow an ineligible institution to continue to make disbursements of title IV aid funds.

Proposed Regulations: These proposed regulations restate and clarify the existing regulations in § 600.40 and § 668.13 that address the impact of a loss of eligibility and certification on an institution's ability to disburse student financial assistance.

Generally, if an institution's eligibility lapses the institution may not continue to disburse title IV, HEA program funds until it receives our notification that it is eligible to participate in the programs again. However, an institution may make lawful disbursements if it has submitted a materially complete renewal application to us at least ninety days prior to the expiration of its current program participation agreement, and is awaiting our determination of eligibility on its reapplication.

Likewise, a private nonprofit or private for-profit institution may not continue to make lawful disbursements if it experiences a change in ownership or change in status that causes a change in control. But, such an institution may continue to make disbursements lawfully, if it has submitted a materially complete renewal application, received a temporary program participation agreement, and is awaiting our final determination.

Also, when an institution is required to make application to add a program or location, or increase the level of program offering, it may not make any disbursements for that program or location until it receives our notification that the program or location is eligible to participate.

An institution would be permitted to continue making title IV, HEA program disbursements when the institution is simply applying to convert an eligible location to a branch, as permitted under the proposed § 600.20(c)(5).

Finally, if an institution is required to submit an application or reapplication or certification and participation and does not, or has a program that is not determined to be an eligible program, or has added a location that is not approved, the institution is liable for all title IV, HEA program funds disbursed to students enrolled at that institution, in that program, or at that location or branch.

Reasons: We do not want students or institutions to experience any adverse impact from an abrupt disruption of programs, services, or financial assistance, caused by an institution's temporary loss of eligibility to participate in our programs. We also want to limit such impact from the expiration of an institution's program participation agreement if a new application is being reviewed. Acceptance of a timely submitted, materially complete application assures a consistent flow of funds and program services for the students who depend upon them.

Section 600.21—Updating Application Information

Current Regulations: Section 600.30 requires an institution to notify us no later than 10 days after changes occur in the information it provided to us in its last eligibility application.

Proposed Regulations: The proposed regulations would remove § 600.30, but keep most of its core elements, and expand them in a newly revised § 600.21. The expanded section would require additional information about changes relating to an institution's other locations, as well as, the main campus itself. Included in the proposed language is a requirement that a decrease in the level of program offered requires the institution to notify the Secretary.

Reasons: While much of proposed § 600.21 remains unchanged from the current regulations in § 600.30, the proposed regulations slightly alter a number of things. For instance, the proposed regulation would amend the list of positions or persons that are now deemed to substantially affect the actions of the institution, eliminating members of an institution's board of directors or trustees. However, those regulations would now clearly identify the chief executive officer, chief financial officer, and the individual designated as the lead program administrator for title IV, HEA programs at the institution. We believe that this approach more effectively identifies those individuals that have the ability to substantially affect an institution's administration of the title IV, HEA programs.

Discussion occurred regarding when an institution owned by a publicly-traded corporation could be expected to know about and report changes that occur, particularly related to change of ownership issues. Currently, a publicly-traded institution is required to notify us when it notifies its accrediting agency, but no later than 10 days after the corporation learns of the change. Some committee members questioned how these institutions could be held responsible to notify us within ten days after a change occurs, since the institution's administration might not always have current information to identify changes in the position of the major shareholders. Others contended that it was likely that the institutions would be aware of material changes to the corporations that owned them.

Ultimately, we decided to require in § 600.21(b) that the institution must notify us of the material changes described in § 600.21 (a)(5) when it notifies its accrediting agency, but no later than 10 days after the change is known to the institution.

Section 600.21(d) clarifies the consequences of an institution's failure to notify the Secretary as required.

Section 600.31—Change in Ownership Resulting in a Change in Control for Private Nonprofit and Private for-Profit Institutions

Statute: Section 498(i) of the HEA provides that an institution that undergoes a change in ownership resulting in a change in control ceases to qualify as an eligible institution after the change in control until it establishes that it meets eligibility and certification requirements.

Publicly-Traded Corporations

Current Regulations: Section 600.31(c)(2) treats a change in ownership and control of a publicly-traded corporation as occurring when a transaction takes place that causes the filing of a Form 8–K with the Securities and Exchange Commission (SEC).

Proposed Regulations: The proposed rule at § 600.31(c)(2) would clarify the circumstances in which a reduction in an ownership interest in a publicly-traded corporation results in a change of control within the meaning of section 498(i) of the HEA.

Currently, those changes are predicated upon an event that requires a publicly-traded corporation to file a Form 8–K with the SEC. The proposed regulations would augment that condition with another, which would consider such a change to have occurred if one who was a controlling shareholder of the corporation ceases to be a controlling shareholder.

For these purposes, we would consider a controlling shareholder to be a person who holds or controls twenty-five percent or more of the total outstanding voting stock of the corporation. This proposed regulation would use that percentage as a ''bright line'' in determining whether a person is in fact a controlling shareholder. This definition would not apply to ''institutional investors'' or to shareholders whose sole stock ownership is held in mutual funds, profit-sharing plans, or Employee Stock Option Plans (ESOPs).

Reasons: Although changes in ownership and control that occur when a person acquires a controlling interest in the corporate owner of an institution seem to be readily identified, other transactions may cause a change impacting which person holds a controlling interest, without that person having acquired new stock that would have triggered a Form 8–K filing with the SEC.

For example, stock sales by other shareholders or stock repurchases by the parent corporation may alter the currently largest shareholder's majority position so that that person is no longer the largest shareholder. Other corporate actions, such as the spin-off of a subsidiary corporation, may cause a significant change in the identity of the persons who can control the corporation, even if the transaction results in no single person holding enough of an interest to be easily identified as a controlling shareholder.

We continue to believe that the eligibility of institutions must be reassessed when these changes occur, just as current regulations require for those institutions owned by closely held and other corporations. However, for institutions owned by publicly-traded corporations, identifying the circumstances in which a reduction in an ownership interest actually causes a change in ownership and control to occur poses significant practical difficulties. The change proposed here would adopt a ''bright line'' test to identify those ownership interests that are large enough to be considered controlling interests in a publicly-traded corporate owner of an institution. This proposed change will only apply to situations where a change in controlling interests does not arise through the traditional stock acquisition that would trigger a Form 8–K filing with the SEC. The changes in control arising from the acquisition of an ownership interest that trigger the Form 8–K filing will continue to be identified by the facts specific to that corporation. Current rules regarding acquisition of an ownership interest, except as specifically noted here, are not affected by these changes.

The proposed ''bright line'' test only applies to controlling shareholders that own or control at least 25 percent of the corporation. We considered that some generally accepted accounting principles (GAAP) treat a 20 percent ownership interest as sufficient to create a presumption of control of a publicly-traded corporation. *See,* Accounting Practices Board Opinion 18, ¶17.

Using that standard, a reduction in ownership interest to less than 20 percent would also create a presumption of loss of control. However, this accounting benchmark would be used to create a rebuttable presumption that a change of control had occurred; more analysis would sometimes be needed to tell whether control had actually been lost at the point when ownership interest fell below that threshold.

As a result of the negotiated rulemaking meetings, we listened to representatives from the institutions who argued that the 20 percent threshold might be too low for a ''bright line'' test, and agreed to simplify the measure by raising the threshold to 25 and changing it to be a ''bright line'' test.

Therefore, since our current regulations already associate controlling interests with ownership of at least 25 percent of a publicly-traded corporation, the proposed rule will treat a 25 percent interest as giving rise to a conclusive presumption of control, for purposes of analyzing reductions in control, if that holding is also the largest ownership interest in the corporation.

Under the proposed rule, any transaction that causes the holder of at least a 25 percent ownership interest that is also the largest interest in the corporation to reduce that interest to less than 25 percent, or less than the interest of any other shareholder, constitutes a change in ownership and control within the meaning of section 498(i) of the HEA.

In addition, we recognize that when an institution undergoes a complete or partial change in ownership and control, it must apply to reestablish its eligibility and certification to participate in the title IV, HEA programs, and if approved, may remain provisionally certified for not more than three years. In that application, the institution must identify those shareholders with substantial interests in the institution. The provisional certification gives us an opportunity to conduct some assessment of the potential influence of those shareholders on institutional affairs.

Therefore, if a reduction in ownership interest of the controlling shareholder causes a change in ownership to occur within the term of this provisional certification, the institution must reapply for certification, but the term of the following provisional certification will not extend beyond the term of the initial provisional certification, if the person who thereby becomes the controlling shareholder was identified on the prior application.

Recognizing that publicly traded corporations currently file financial reports with the SEC, a publicly-traded institution that undergoes a change in ownership due to a reduction in ownership interest may submit its most recent quarterly financial statement filed with the SEC, together with copies of all other SEC filings made since the close of the fiscal year for which the institution last submitted a compliance audit, when the prospects of obtaining a ''same day'' balance sheet are impractical.

Public Institutions

Current Regulations: Section 600.31(c)(7) provides that an institution that is owned by a public entity changes ownership and control when that entity is transferred to another governmental entity or other person.

Proposed Regulations: The proposed regulation provides that a change in governance at a public institution is not a change in ownership, if the institution's new governing body is in the same State included in the public institution's program participation agreement and the new governing body has acknowledged the institution's continuing responsibilities under its program participation agreement.

Reasons: Our original position on this issue was met with significant opposition from some of the non-federal negotiators, as we related earlier in our discussions on proposed § 600.20(d)(1), and the committee did not reach consensus on this point. We are including in these proposed rules, substantially the same proposal we submitted to the negotiating committee. The only difference is the inclusion of a provision that makes it clear that we would not consider a change in governance at a public institution to be a change of ownership only if the new governing authority is in the same State included in the public institution's program participation agreement and the new governing body has acknowledged the institution's continuing responsibilities under its program participation agreement.

As we stated there, we believe the fiscal resources available to public institutions and their history of compliance allows us to provide this limited regulatory relief.

A change of governance at a public institution is not a change in ownership if the institution's new governing body is in the same State included in the program participation agreement and the new governance has acknowledged that the institution continues to be bound by its program participation agreement. Under such circumstances, we believe the possibilities for fiscal or administrative instability to occur are remote, and there is virtually no threat to taxpayers' funds.

A change in ownership resulting in a change of control would occur, however, if a public institution's governance changes, and that new governing body is not located in the same State identified in the institution's program participation agreement or the new governing body has not acknowledged the institution's continuing obligations under the terms of the institution's program participation agreement. In such cases, the institution would be required to comply with the change of ownership provisions of § 600.20(b)(2)(iii).

Several non-federal negotiators felt that our position was biased in favor of public institutions. One committee member suggested that as more State and municipal governments create partnerships with corporate or non-profit entities, the traditional attributes of public governance are often lost, and therefore, the stabilizing factors that we rely upon for our position will be undermined.

Another non-federal negotiator suggested that the trend of privatization and divestiture of public units and institutions should give us reason for caution, in terms of the reliance we have placed on the history of compliance of such entities. He suggested that some schools might actually decrease the level or extent of compliance, based upon its governance by a different entity that might have lower thresholds or standards for compliance.

We considered these arguments, but noted that the situations described by the negotiators would not result from the proposed exception. The provision does not apply to a change in governance in a public entity that involves the transfer of the institution to any hybrid entity, such as a special corporation with limited liability, a public-private partnership, or that results in joint ownership with any out-of-state entities. Also, the exemption is not available if the new governing body does not, in the process of gaining control of the public institution, acknowledge the institution's continuing responsibilities under its program participation agreement with us.

We understand that a change in governance at a public institution could arise in many different ways. Such a change could come from a directive by an executive agency, a change in law by a State legislature, through a voter referendum, or through a contractual agreement between two governmental entities. The proposed regulation does not require the governing bodies or the institution to notify us of a change in governance, so long as the conditions set out in the regulation are satisfied.

The regulation requires the new governing body to have acknowledged the institution's continuing responsibilities under its program participation agreement, but does not specify any particular format for the acknowledgment. The acknowledgment that the institution continues to be responsible for meeting its obligations in its program participation agreement must be written, and must be a part of the documents that transfer control to the new governing body.

Where the formal transfer of governing authority did not acknowledge this requirement, the institution under its new governance could submit a written notice to us advising that it was acknowledging its continuing responsibilities under its program participation agreement. This separate notice to us would also satisfy the requirement. We invite comment on whether a particular form of acknowledgment should be required under any of these situations.

Section 668.2—General Definitions (Academic Year); and Section 668.8—Eligible Program

Statute: Section 481 of the HEA requires an academic year to have at least 30 weeks of instructional time. For certain program eligibility purposes, the HEA requires a minimum of ten or fifteen weeks of instructional time.

Current Regulations: Sections 668.2(b) and 668.8 reflect the statutory requirement that, in order for an educational program to meet the definition of both an academic year and an eligible program, it has to include a minimum number of weeks of instructional time. The existing regulations provide criteria that address what activity, and what amount of that activity, is needed to determine a week of instructional time.

An educational program that uses a semester, trimester, or quarter system, (or one that measures academic progress in clock hours) must have at least one day of instructional time in a week for that week to count as a week of instructional time. This requirement is often referred to as the ''one-day rule''. Full-time students at schools with programs offered in semesters, trimesters and quarters are generally presumed to be in class for 12 hours each week. For purposes of consistency, an educational program that measures academic progress in credit hours but does not use a semester, trimester, or quarter system, must have at least 12 hours of instructional time in a week for that week to count as a week of instructional time. This requirement is generally referred to as the ''twelve-hour rule''.

Proposed Regulations: The proposed regulations would amend § 668.2(b)(2)(ii) in the definition of an academic year, and § 668.8(b) (3) and (4) to clarify that homework does not count as instructional time, and that, in terms of ''preparation for examinations'', only study for final examinations that occurs after the last scheduled day of classes for a payment period would count as instructional time.

Reasons: Several negotiators pointed out that the current regulatory approach does not adequately address newer, non-traditional approaches to the delivery of postsecondary education to students, such as distance education. They urged us to eliminate or substantially modify our current regulations in this area, especially the so-called ''twelve-hour rule.'' While we understood and appreciated the comments of the non-federal negotiators, we remained concerned about possible abuse if institutions that did not use semester, trimester or quarter systems were, without any other controlling factor, able to construct academic programs that included only a minimal amount of instructional time each week. Thus, after considerable discussion during the negotiations we decided that we did not have enough information on alternative measures to responsively propose substantive changes in these regulations at this time. No changes were proposed to the current regulatory requirement. We invited the negotiators and other interested parties to participate in future discussions to address the issues surrounding the one-day and twelve-hour rules, and other related issues. The efforts of this workgroup may result in recommended changes to the HEA or our regulations, subject to a future negotiated rulemaking process.

Consequently, the only modifications to the definition of an academic year and an eligible program that are proposed here are clarifications of: (1) Homework in the determination of weeks of instructional time; and, (2) study for final examinations that occurs after the last scheduled day of classes for a payment period.

It was never intended that homework should count as instructional time in determining whether a program meets the definition of an academic year, since the 12-hour rule was designed to quantify the in-class component of an academic program. For that reason, the only time spent in ''preparation for exams'' that could count as instructional time was the preparation time that some institutions schedule as study days in lieu of scheduled classes between the end of formal class work and the beginning of final exams.

Section 668.5—Written Arrangements To Provide Educational Programs

Statute: Section 484(a) of the HEA provides that a recipient of title IV program funds must be enrolled in an eligible academic program leading to a degree or certificate at an eligible institution.

Current Regulations: Read literally, the statutory language could suggest that a student may only receive title IV funding for academic work offered by the eligible institution that has accepted the student into a degree or certificate program. However, in order to provide flexibility to both students and institutions and to allow for the benefits that can accrue when a student takes classes at different institutions, the regulations include provisions whereby students may receive title IV aid while taking a part of their academic program outside of the institution that admitted them.

Section 600.9 of the Institutional Eligibility regulations and § 690.9 of the Federal Pell Grant Program regulations govern written agreements between an eligible institution and another institution or organization when all or part of a student's educational program is provided by the other school or organization. These agreements are commonly referred to as consortium and contractual agreements.

Proposed Regulations: We propose to delete §§ 600.9 and 690.9 and consolidate most of the provisions currently contained in those sections into a new § 668.5 of the Student Assistance General Provisions regulations.

In addition, we propose a new provision in § 668.5(b) to provide that an eligible institution may have a written arrangement with a study abroad organization that represents one or more foreign institutions instead of separate agreements directly with each foreign institution its students are attending.

Finally, we would create a new provision in § 668.5(d) that, in cases of a written arrangement between eligible institutions, would allow any of the institutions participating in the written arrangement to make title IV, HEA program calculations and disbursements without that institution being considered to be a third-party servicer for the institution at which the student is enrolled as a regular student.

Reasons: One reason for proposing the consolidation of the provisions covering these arrangements is to simplify the title IV, HEA program regulations. This consolidation, in addition to making the regulations easier to use, will also make it clear that the provisions apply to all of the title IV student assistance programs and not just to the Federal Pell Grant Program which is regulated in part 690.

The main reason for proposing that institutions may enter into written agreements with study abroad organizations instead of directly with a foreign institution is to provide more flexibility to institutions in structuring their study abroad programs.

Currently, if an eligible institution wants to enter into a written arrangement with one or more foreign institutions under which those foreign institutions provide part of the educational program for students enrolled in the eligible institution, the eligible institution must have a written agreement directly with each foreign institution its students will be attending. However, in many cases study abroad organizations represent foreign institutions by facilitating enrollment arrangements, including managing required student payments to the foreign institution.

Under proposed § 668.5(b), if an eligible institution has a written agreement with a study abroad organization that represents one or more foreign institutions that provide part of the educational program of students enrolled in the eligible institution, the eligible institution would no longer be required to have an agreement directly with the foreign institutions. The written agreement between the eligible institution and the study abroad organization would be sufficient for purposes of the administration of the title IV, HEA programs, provided that the written agreement between the eligible institution and the study abroad organization, adequately describes the duties and responsibilities of each entity and meets the requirements of the regulations.

Consistent with current regulations, proposed § 668.5(d)(2) would allow an eligible institution that enters into an arrangement with one or more other eligible institutions to choose which of them calculates and disburses title IV, HEA aid. However, under existing regulations the student must be taking courses at the institution that calculates and disburses the aid. The proposed regulations would allow any of the eligible institutions in the arrangement to calculate and disburse the aid, even if the student is not taking courses at the institution that is calculating and disbursing the aid. This is to allow and support the diverse ways in which institutions are partnering to enable students to have greater access to postsecondary education. We support these arrangements and wish to facilitate these partnerships by allowing them to choose who best to administer their aid programs.

Section 668.13—Certification Procedures [Training Requirements]

Current Regulations: Section 668.13(a)(4) requires that, under certain circumstances (e.g., a new institution or change of ownership, participation in a new title IV, HEA program), specified institutional staff must attend and complete title IV, HEA program training. Under those circumstances, all institutions must send their financial aid administrator to the training. Additionally, institutions that are nonprofit must send either their chief administrator, or someone he or she designates to this training. In addition to the financial aid administrator, for-profit institutions are required to send the chief administrator of the school for training. The regulations allow for an on-site certification review as an alternative to meeting the training requirement, if one or more of the required individuals has previously completed such training.

Proposed Regulations: In addition to a restructuring of paragraph (a) of § 668.13, the proposed regulations modify and simplify the certification training requirements for chief executive officers and financial aid administrators.

First, the proposed regulations limit the conditions under which this training is required to only when an institution wishes to participate in the title IV, HEA programs for the first time and when there is a change of ownership. We propose to remove the current requirement that training is also required when a currently participating institution wishes to participate in a new title IV, HEA program.

Second, these proposed regulations provide that, for all institutions the chief executive may elect to send for title IV certification training another executive level officer of the institution in his or her stead. Both the chief financial aid administrator and the chief executive of the institution, or designee, must attend the certification training within twelve months after the institution executes its program participation agreement. In addition, the institution may request a waiver of the training requirement for either the financial aid administrator or the chief administrator.

The proposed rules provide that we may grant or deny the waiver for the required individual, require another official to take the training, or require alternative training.

Reasons: We believe that it is unnecessary to require senior administrators from institutions that already participate in some of our programs to attend specialized training, simply because the institution wishes to add a title IV, HEA program in which they do not currently participate.

We recognized and agreed with the non-federal negotiators that the current regulations could, in some cases, impose an impractical burden on the chief administrators of for-profit institutions by requiring their attendance at the title IV certification training. Thus, we now propose to give those chief administrators the same ability to designate another senior institutional official to attend the training, as is now allowed for nonprofit institutions.

Also, if the chief administrator or his designee, or the person designated as the title IV administrator has recently completed the required title IV HEA program certification training, there currently is no training alternative for the participating institution to otherwise meet the training requirement. As proposed, § 668.13(a) allows the institution to request a waiver of the training requirement and provides that we may either grant the waiver or require alternative training that would be more beneficial.

Section 668.19—Financial Aid History

Statute: Section 484 of the HEA contains a number of student eligibility provisions that a student must satisfy, or not violate, to receive aid under any of the title IV, HEA programs. Included are provisions that deny additional title IV, HEA program assistance to a student who is in default on a title IV loan or owes an overpayment of title IV aid. In addition, most of the title IV, HEA student aid programs have annual or aggregate maximum amounts, or both, that a student may not exceed.

Current Regulations: Section 668.19 requires institutions to obtain student eligibility information for transfer students by either requesting a financial aid transcript (FAT) from each institution the student previously attended or, under certain conditions, obtaining information from the National Student Loan Data System (NSLDS). Use of NSLDS, while allowed is not required. Thus, institutions that receive FAT requests from other institutions or from students must complete and return them.

Additionally, current requirements distinguish between two types of transfer students: a student who attended another institution in a prior award year (prior-year transfer) and a student who transfers from one institution to another institution during the same award year (current-year transfer). For a prior-year transfer, an institution may use the Institutional Student Information Record (ISIR) information it receives for that student or obtain that information by requesting a paper FAT from the other institutions attended by the prior-year transfer student. Generally, for a current-year transfer student an institution must request a paper FAT from the institution the student previously attended during the award year.

In all cases where an institution or student requests a paper FAT, the regulations require the other institution to complete and promptly return the FAT.

Proposed Regulations: The proposed regulations eliminate the paper FAT requirement for all students and mandate the use of NSLDS data for purposes of obtaining financial aid history information. However, the proposed regulations make a distinction between the two types of transfer students. Thus, for a prior-year transfer, an institution could continue to rely on the ISIR financial aid history information it receives for that student. But, for a current-year transfer student, instead of requesting a paper FAT from the other institution, an institution would request updated student eligibility information from NSLDS.

In addition, the proposed regulations would replace the various certification, origination, and disbursement provisions in the current rules with only one requirement: an institution may not make a disbursement of title IV, HEA program funds to a current-year transfer student for seven days after it requests updated information from NSLDS. The proposed rules would, however, allow an institution to make a disbursement to a student who is otherwise eligible if, within the seven-day period, NSLDS provides the updated information to the institution, or the institution obtains the information itself directly from NSLDS.

Finally, the proposed regulations eliminate the requirement that an institution that receives a request for the completion of a paper FAT, must respond to that request.

Reasons: We believe that it is no longer necessary for an institution to request student eligibility information from another institution when that information is available from NSLDS, particularly in view of the burden imposed on an institution in complying with the paper FAT requirements.

During the negotiations we submitted a draft proposal to the committee under which an institution would obtain student eligibility information for a current-year transfer directly from NSLDS. However, because institutions and guaranty agencies report student aid disbursement data to NSLDS only periodically, we wanted to limit the number of instances where NSLDS could not provide accurate data at the time an institution would seek that data for a current-year transfer. Therefore, we proposed than an institution had to query NSLDS no earlier than 30 days before it could disburse aid to a current-year transfer in order to ensure, to the greatest extent possible, that NSLDS would have the aid disbursement data from prior institutions at that time.

Although the non-federal negotiators appreciated our effort to eliminate the paper FAT requirements, most believed that the draft fell short of its intended benefits. Several negotiators suggested that requiring an institution to query NSLDS within the 30-day period was too restrictive, particularly in view of the current rules where an institution may request an FAT at any time. Moreover, some negotiators felt the draft plan would create rather than reduce burden, because for many institutions the query and subsequent review of the NSLDS data would occur at a time between terms when a financial aid staff is at its busiest. Another negotiator believed that eliminating the burden now imposed on institutions in responding to FAT requests outweighed the burden of query and review of NSLDS data. The negotiators suggested that the we find a way to provide student eligibility data directly to an institution that needs it, rather than requiring institutions to request and review information for all current-year transfer students within a very specific timeframe.

We adopted the non-federal negotiators' suggestions. Under proposed § 668.19, an institution would, at any time, request NSLDS to provide it with eligibility data for a current-year transfer. We expect, but do not require, that this request would be made as soon as the institution determines that a student is interested in transferring during the current year. In making its request, the institution would provide information identifying the student, such as name, social security number, and date of birth. After receiving the institution's request, NSLDS would compare the disbursement data it has at that time to the most recent ISIR generated for the student that contained disbursement data. If NSLDS has more recent disbursement data, or later acquires disbursement data for that student, it would provide that updated information directly to the requesting institution. Thus, NSLDS would provide updated disbursement data that was not previously provided to the institution whenever it acquires that data from other institutions or guaranty agencies. We believe that this will greatly reduce burden on institutions, because once they submit the identifiers for their current-year transfers, they will only receive NSLDS information for those students that had current year disbursements not already reported to the institution.

The proposed rules provide that, after making its request, an institution has to wait seven days before it could make a disbursement of title IV, HEA programs funds to a student. This timeframe was established to ensure that NSLDS could process the requests, query its database, and report back to an institution before aid is disbursed. However, if the student is otherwise eligible, an institution is allowed to make a disbursement within the seven-day period if it receives the updated information from NSLDS, or queries NSLDS on-line to obtain that information.

The negotiators supported this proposal and agreed that we should hold further discussions with institutions, outside of the negotiated rulemaking process, over the next several months regarding the following administrative matters:

- The way or ways an institution would request NSLDS to provide it with updated data;
- The types of data changes within NSLDS that would generate a record to the school;
- The way or ways NSLDS would provide the data to institutions and the contents and format of that data; and
- The period for which NSLDS would continue to provide updated data for a student.

Section 668.165—Notices and Authorizations

Current Regulations: Section 668.165(a)(3)(ii) requires an institution to provide a notice to a student or parent borrower when title IV, HEA program loan proceeds are used to credit the student's account at the institution. The regulation allows this notice to be sent electronically, but with the requirement that the institution must require the student or parent to confirm receipt of the notice and the institution must maintain a copy of that confirmation.

Proposed Regulations: Under the proposed regulation, the institution must confirm receipt by the student or parent of the electronic notification and must maintain documentation of that confirmation. This is a change from the requirement that the institution require the student or parent to confirm receipt.

Reasons: During negotiated rulemaking some of the non-federal negotiators suggested that the current regulations in this area did not support their constituents' efforts to take advantage of advances in electronics.

They specifically objected that, with regard to the notice required when loan funds are credited to a student's account, if the school notified the borrower electronically, the school was required to obtain and maintain a copy of the confirmation of receipt from the student or parent. They pointed out that this level of confirmation and documentation was not required when the same notice was sent via the U.S. Postal Service. They asked why they could not simply send the required notification electronically, and monitor any ''returned mail'', just as they do with mail sent through the U.S. Postal Service.

We noted the long-standing precedent that mail deposited with the U.S. Postal Service is presumed to have been delivered unless it is returned to the sender. We shared our concern about the lack of a standard for the handling of undeliverable electronic messages in the different email systems that schools use. Just because a school sends a message electronically does not assure that it was received. For example, some email systems report as ''undeliverable'' any message that does not make it all the way to the intended recipient's email account. However, other systems may only send an ''undeliverable'' message if the transmission does not make it to the recipient's email provider, regardless of whether the provider is able to deliver the mail to the recipient's account. In other instances, an ''undeliverable'' message might not be sent to the institution even if the message never reaches the email provider. Thus, relying only upon the lack of an ''undeliverable'' message, would not be sufficient to ensure that these important consumer protection messages were actually received by the borrower. Therefore, we declined to make the changes suggested by the non-federal negotiators.

At the last round of the negotiations we were asked to at least change the retention requirement so that all an institution needed to do was to demonstrate that it had used a system that monitored receipt. The presenter of that proposal suggested that, while she would prefer a more drastic relaxation of the requirement, at least this suggestion would not require schools to create and maintain a system that tracks and retains these electronic transmissions for several years.

We believe that ensuring that these important messages were actually delivered to the recipients' email account requires confirming that the individual messages are sent and received, rather than simply monitoring the presence of a reliable notification system. Thus, we do not feel that changing the current requirement to simply require documentation of a school process can be made at this time.

However, in reviewing this issue we decided that some clarifications could be made to reflect policy guidance that has been provided in this area. Specifically, the current rule states that the institution must require the recipient of the message to confirm that the message has been received. We have consistently interpreted that provision to only require confirmation that the notice was received by the student or parent, that is, that the electronic mail was delivered to the correct address.

Therefore, we are proposing that the regulation simply require the school to confirm receipt by the student or parent of the electronic notification and maintain documentation of that confirmation.

Federal Work-Study Program

Section 675.19—Fiscal Procedures and Records

Current Regulations: Section 675.19(b)(2)(i) requires an institution to establish and maintain program and fiscal records that include, among other things, a certification that each FWS student has worked and earned the amount being paid. This certification must be signed by the FWS student's supervisor, who is either an official of the institution or off-campus agency. For students paid on an hourly basis, this certification must be part of, or supported by, a time record showing the hours each student worked in clock time sequence or the total hours worked per day.

Proposed Regulations: These proposed regulations would amend § 675.19(b)(2)(i) by removing the requirement that the certification must have the handwritten signature of the FWS student's supervisor. This change provides flexibility to institutions by allowing the use of an electronic certification or a certification through other appropriate means. The proposed regulation still allows institutions the option of continuing to have the FWS student's supervisor sign his or her name on a paper certification.

We expect an institution that chooses to use a system that incorporates an electronic certification to adopt reasonable safeguards against possible fraud and abuse. The institution should provide a secure electronic certification through an electronic payroll system that includes:

- Password protection;
- Password changes at set intervals;
- Access revocation for unsuccessful log-ins;
- User identification and entry point tracking;
- Random audit surveys with supervisors; and
- Security tests of the code access.

Reasons: The current requirement for a handwritten signature from the FWS student's supervisor predates the development of electronic alternatives to indicate that the supervisor certified the time record. A number of institutions have expressed the desire to implement an electronic system that can process time records for all its employees, including FWS students.

However, the current requirement of collecting a handwritten signature from an FWS student's supervisor on a paper certification often prevents, or at least diminishes, the effectiveness of an automated electronic payroll system.

The proposed regulatory change does not remove the certification requirement. The certification requirement helps ensure that the supervisor is reviewing the time record prior to paying an FWS student. This is an important safeguard to help maintain the integrity of the FWS Program by paying only students who worked and by paying only the correct amount of funds earned by the students.

Federal Family Education Loan Programs and Federal Direct Loan Program

Section 682.201 and 685.200—Eligible Borrowers

Statute: Section 428B(a)(1)(A) of the HEA states, among other things, that parents of dependent students are eligible to borrow PLUS loans in the FFEL and Direct Loan programs, if they do not have an adverse credit history.

Current Regulations: Sections 682.201(b)(1) and 685.200(b)(1) list the criteria that a parent borrower must meet to be eligible to borrow a PLUS Program loan. One criterion for a Federal PLUS loan made on or after July 1, 1993, is that the parent borrower must not have an adverse credit history.

The regulation further indicates that, unless the lender determines that extenuating circumstances exist, the lender must consider that an applicant has an adverse credit history based on several enumerated reasons that may appear in the applicant's credit report.

If the lender does determine that extenuating circumstances exist, the regulation requires the lender to retain documentation demonstrating its basis for making that determination.

Proposed Regulations: The proposed regulation would amend § 682.201(b)(1)(vii)(F) to require that the lender retain a record (instead of documentation) demonstrating its basis for determining that extenuating circumstances exist in such a situation. Similarly, where the regulation indicates what that documentation may include, the proposed regulation would indicate what such a record may include.

Reasons: This change in the two places noted to the word ''record'' in place of the word ''documentation,'' is a clarification of the existing regulation.

A lender has never had to maintain original documents that showed what its basis was for determining that extenuating circumstances existed, although it could do so.

The proposed regulation provides some examples of what the record of such a determination may include (an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500). This record that demonstrates the lender's determination that extenuating circumstances existed could be the original applicable document. However, it could also be an electronic (or other type of) copy of such a document.

Section 682.207—Due Diligence in Disbursing a loan

Statute: Section 428G of the HEA establishes the requirements for the disbursement of student loans under the FFEL Program.

Current Regulations: Under § 682.207(b)(1) and (c)(3), a lender is required to disburse loan proceeds to a school in accordance with the disbursement schedule provided by the school.

Proposed Regulations: Proposed changes to § 682.207(b)(1) and (C)(3) would explicitly allow a lender to disburse loan proceeds either in accordance with the disbursement schedule or in accordance with another request made by a school that modifies that schedule.

Reasons: Under proposed § 682.207(b)(1) and (c)(3), a lender could continue to provide loan proceeds to a school based solely on the disbursement schedule provided by the school on a loan certification. Or, the school and the lender could agree that loan proceeds would be provided at the school's request under an alternate process like the current ''hold and release'' process used by some FFEL lenders and guaranty agencies. Under the hold and release process, a school instructs the lender not to provide the loan funds for a borrower according to the disbursement schedule provided in the loan certification. Rather, the lender holds the funds until the school requests the lender to release those funds for that borrower.

Although the current regulations do not prohibit schools and lenders from using the hold and release process, we wish to make explicit in the regulations that schools have the flexibility to request a modification to the original disbursement schedule, and lenders have the authority to provide FFEL loan proceeds, in a manner that best meets their administrative needs. Thus, the proposal would allow FFEL lenders to release loan funds upon the specific request of the school to modify the original schedule, rather than according to the disbursement schedule originally presented in the loan certification.

Current Regulations: Section 682.207(f) allows a lender to disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis if, among other things, the school certifies the borrower's loan eligibility before the date the borrower became ineligible and the loan funds will be used to pay educational costs that the school determines the student incurred for the period in which the student was enrolled and eligible. The regulation requires the lender to give notice to the school that the loan proceeds are being disbursed based on the above noted situation.

Proposed Regulations: The proposed regulation would amend § 682.207(f) by dropping the requirement for the lender to give notice to the school of the reason that the loan proceeds are being disbursed in this situation.

Reasons: In order for the lender to disburse the loan proceeds in this situation, the school must determine that there are educational costs (that are intended to be covered by the loan) that the student incurred for the period in which the student was enrolled and eligible. Therefore, since it makes the determination about the student's incurred educational costs, the school will know the reason that the loan proceeds are being disbursed by the lender in this situation. Thus, requiring the lender to give notice of that fact is not necessary.

Section 682.604(b)—Releasing Loan Proceeds

Current Regulations: Before a school may release FFEL Program loan proceeds to a student, it must determine that the student has continuously maintained eligibility, as provided in § 682.201. The current regulations specifically require the school to make this determination after it receives the loan proceeds from the lender.

Proposed Regulations: Proposed § 682.604(b)(2)(i) would not require a school to determine a student's eligibility after it receives loan proceeds from a lender.

Reasons: As part of the negotiations of Committee I, the FFEL industry recommended that the regulations be revised in several ways to better accommodate the processes under which lenders and the Secretary provide title IV program funds to schools. In response, we submitted a proposal to Committee I describing a new payment method that incorporated many of the FFEL industry's recommendations.

We and the non-federal negotiators reached tentative agreements on many of the provisions of the proposed payment method. However, consensus was not reached on our entire proposal, nor on alternatives to that proposal that were put forth by some non-federal negotiators. Under the protocols adopted by the committee, when consensus is not reached we may publish proposed regulations that may or may not reflect any tentative agreements, or that address all or some of the issues discussed during the negotiated rulemaking sessions. Consistent with these protocols, we propose to make a revision to § 682.604(b)(2) of the FFEL Program regulations.

Under the General Provisions regulations, and in each of the program regulations, a school may disburse Title IV, HEA program funds only to, or on behalf of, an eligible student. The specific provision in the FFEL Program regulation at § 682.604(b)(2) is the only one in the regulations that requires a school to make an eligibility determination after it receives program funds. Under all of the other regulations, a school has the flexibility to implement policies and procedures that ensure that a student meets all of the eligibility requirements before it disburses funds. This proposed change would extend this flexibility to FFEL Program funds as well.

In addition, the proposed change would eliminate a conflict between the current provisions in § 682.604(b)(2) and the General Provisions regulations in § 668.164(a). Under § 668.164(a), a school makes a disbursement of Title IV, HEA program funds whenever it credits a student's account, regardless of whether the school has received program funds from the Secretary or a lender. As discussed above, a school must ensure that it only disburses Title IV, HEA program funds to eligible students. However, under current § 682.604(b)(2) a school that makes a disbursement of FFEL Program funds to, or on behalf of, an eligible student by crediting the student's account before it receives the funds from a lender, must make another eligibility determination after it receives those funds from the lender. We are proposing to modify the current regulation to make clear that since the General Provisions regulations in § 668.164(a) apply to disbursements of all program funds, the school in the example above does not need to make another eligibility determination.

Section 682.604(c)(6)—Processing the Borrower's Loan Proceeds and Counseling Borrowers; and Section 685.301—Origination of a Loan by a Direct Loan Program School

Statute: Section 428G(a)(2) of the HEA provides that FFELP loans generally must be disbursed in at least two installments. The second installment cannot be made any earlier than half-way through the loan period except for semester, quarter, or similar term situations. Then the second installment is allowed to be made at the beginning of the second semester, quarter, or similar term. Federal Direct Loan Program loans are made under the same conditions pursuant to section 455 of the HEA.

Current Regulations: In the FFEL Program, except for the situation in which the date of one or more scheduled disbursements has passed before a lender makes a disbursement, § 682.604(c)(6) requires, among other things, that the school deliver loan proceeds at least once in each payment period when a loan period is more than one payment period. Section 682.604(c)(7) states that in cases where a school uses credit hours and terms other than semesters, trimesters, or quarters, it may not deliver a second loan disbursement until the later of the calendar midpoint of the loan period or the date when the student has completed half of the academic coursework in the loan period. Section 685.301(b) has similar provisions for the Direct Loan Program.

Proposed Regulations: In the FFEL Program, the proposed change to § 682.604(c)(6) adds § 682.604(c)(7) as one exception to the rule that a school deliver loan proceeds at least once in each payment period. In the Direct Loan Program, § 685.301(b)(2) already includes a reference to a provision corresponding to § 682.604(c)(7).

In addition, in the FFEL Program and in the Direct Loan Program, the proposed regulations would amend §§ 682.604(c)(7) and 685.301(b)(5) so that they do not preclude a school from delivering loan proceeds in each term in those situations in which the school measures progress in credit hours and uses terms other than semesters, trimesters, or quarters as long as those non-standard terms are substantially equal in length throughout the loan period.

Credit hour schools that do not use terms, or use terms that are not substantially equal in length, would continue to be required to wait until the later of the calendar midpoint of the loan period or the date that the student has completed half of the academic coursework in the loan period before delivering the second disbursement of the loan.

Terms within a loan period would be considered to be substantially equal in length if no term in the period was more than two weeks shorter than any other term in the period.

Reasons: Since all terms in which a school uses credit hours are considered to be payment periods according to § 668.4 of the Student Assistance General Provisions regulations, there is an inconsistency in the FFEL Program regulations between §§ 682.604(c)(6) and (c)(7) in some situations. This inconsistency does not exist in the Direct Loan Program regulations as noted above.

In the FFEL Program for example, if a school uses credit hours and has five terms in its academic year, § 682.604(c)(6) indicates that the school should deliver loan proceeds at least once each term. But, § 682.604(c)(7) indicates that the school may not deliver a second disbursement until the later of the calendar midpoint of the loan period or the date by which the student has completed half of the academic coursework in the loan period. We have removed that inconsistency.

With regard to the change in the treatment of terms other than semesters, trimesters, or quarters, that are of substantially equal length, we have proposed the same treatment for those terms as is currently provided for semesters, trimesters, or quarters. We have done this because it appears reasonable to treat all terms in the same manner, without regard to the number of terms that a school has, as long as all of the terms in the loan period are substantially equal in length.

However, for terms that are not substantially equal in length, we have retained the current requirement that there be two disbursements, with the second disbursement being made at the later of the calendar midpoint of the loan period or the date that the student has completed half of the academic coursework of the loan period. We have done this to prevent a second or subsequent disbursement from being made too early in a student's loan period when the earlier disbursement would be for an amount that substantially exceeds the amount that would be proportional to the period for which it is made.

For example, if a school had two terms in a 30-week academic year, one of which was 10 weeks and the other was 20 weeks long, we would not want the second disbursement (equal to half of the loan amount) to be made in the eleventh week, the beginning of the second term.

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

As more fully described elsewhere in this preamble, these proposed regulations, developed through a negotiated rulemaking process with the higher education community, would implement a variety of streamlining and clarifying provisions to provide institutions additional flexibility in the administration of the title IV, HEA programs. In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

2. Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

We invite comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 675.19 *Fiscal procedures and records.*)
- Could the description of the proposed regulations in the SUPPLEMENTARY INFORMATION section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the ADDRESSES section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Entities affected by these regulations are institutions of higher education that participate in the title IV, HEA programs. The institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of $5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. The regulations would benefit both small and large institutions by providing additional flexibility in the administration of: the Institutional Eligibility requirements; the certification procedures for institutions; the financial aid history verification requirements; the cash management requirements; the written arrangements requirements; the FFEL Programs; Direct Loan Program and Federal Work-Study Programs, without requiring significant changes to current institutional system operations.

These proposed regulations would ease administrative burden and augment student benefits by: consolidating and streamlining procedures for establishing, reestablishing, maintaining or expanding institutional eligibility and certification; expanding options for institutions that enter contractual agreements with other entities for the delivery of eligible programs and title IV, HEA program funds disbursement; improving the process to verify the financial aid history of title IV, HEA program fund recipients; streamlining the disbursement rules for non-traditional programs that participate in either the FFEL or Direct Loan programs; expanding electronic options for notifications in cash management; providing flexibility to schools and lenders in the disbursement of loan funds; and streamlining the collection of hours worked by FWS Program hourly employees through allowing institutions to implement an automated timekeeper system using electronic signatures to verify hours worked.

We invite comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

Proposed §§ 600.20, 600.21, 600.31, 668.13, 668.19 and 675.19 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. These sections contain the recordkeeping and reporting provisions for various title IV, HEA programs, detailed in the following paragraph.

Collection of information: Student Assistance General Provisions—§ 600.20—Application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification. The proposed regulations would streamline the application and reapplication procedures that institutions must follow to obtain eligibility and certification to participate in the title IV, HEA programs. New flexibility is proposed regarding the format of the application, the process of adding additional and temporary locations, and an institution's ability to make disbursements after its eligibility or certification has expired.

Section 600.21—Updating application information. The proposed regulations in this section clarify the instances requiring notification of updated information, and the procedures for making such notification. The reporting timeframes for institutions owned by publicly traded corporations are significantly altered in these proposed regulations.

Section 600.31—Change in ownership resulting in a change in control for private nonprofit and private for-profit institutions. These regulations specifically address procedures and requirements institutions must follow when they have experienced a change in ownership, resulting in a change of the people or entities that govern those institutions. Generally, schools must reapply when such a change occurs. These proposed regulations modify the criteria an institution must consider to determine if, or to what extent, such a change occurred.

Section 668.13—Certification procedures [training requirements]. The proposed regulations offer alternatives to the training requirements for institutional certification, and the option to request a waiver from the training.

Section 668.19—Financial Aid History. The proposed regulations amend the process for confirming a transfer student's financial aid history, eliminating the need to use paper forms to meet the requirements.

Federal Work-Study Program—§ 675.19—Fiscal procedures and records. The proposed regulations allow a FWS student's supervisor to certify electronically or through other means, that each student has worked and earned the amount being paid. This proposed change eliminates the restriction that the FWS certification must have a handwritten signature and reduces the administrative burden for certifying FWS time records.

Federal Family Education Loan Program and William D. Ford Direct Loan Program—§ 682.201—Eligible borrowers. The proposed regulations revise this section to allow greater flexibility to FFEL Program lenders in record retention regarding the documentation required to establish an adverse credit history for a parent borrower.

Section 682.207—Due diligence in disbursing a loan. We propose to change this section to allow a lender in the FFEL Program to disburse funds to a school based upon the school's modification to the disbursement schedule originally provided in the loan certification. Another proposed change to this section eliminates the requirement that a lender in the FFEL Program provide notice to the school when it disburses funds to the school after the student is no longer enrolled on at least a half-time basis.

Section 682.604—Processing the borrower's loan proceeds and counseling borrowers and § 685.301—Origination of a loan by a Direct Loan Program school. These proposed changes clarify and eliminate a regulatory contradiction in the loan disbursement rules for nontraditional programs under the FFEL and Direct Loan programs.

Our current estimate is that the existing total annual recordkeeping and reporting burden hours for all of the affected sections listed above will not change. We do not anticipate any significant changes in these hours as a result of the proposed regulations that would result in an increase in the current estimates. We believe the additional flexibilities these regulations propose may reduce the annual recordkeeping and burden hours for many institutions.

We will monitor the impact of the proposed flexibilities to determine the nature and extent of any impact upon institutions.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These title IV, HEA program funds are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.032 Consolidation Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.037 Federal Perkins Loan Cancellation Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Leveraging Educational Assistance Partnership Program; 84.268 Federal William D. Ford Federal Direct Loan Program)

List of Subjects

34 CFR Part 600

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

34 CFR Part 668

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

34 CFR Part 675

Colleges and universities, Employment, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, College and universities, Loan programs—education, Student aid, Vocational education, Reporting and recordkeeping requirements.

34 CFR Part 685

Administrative practice and procedure, College and universities, Loan programs—education, Student aid, Vocational education, Reporting and recordkeeping requirements.

34 CFR Part 690

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

Dated: August 4, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons stated in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by amending parts 600, 668, 675, 682, 685 and 690 as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

§§ 609.9 and 600.30 [Removed]

2. Sections 600.9 and 600.30 are removed.

3. Section 600.10 is amended by removing and reserving paragraph (a)(2) and by revising paragraphs (b)(3)(i) and (b)(3)(ii) to read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(b) * * *

(3) * * *

(i) The Secretary approves that location under § 600.20(f)(5); or

(ii) The location is licensed and accredited and the institution does not have to notify the Secretary about that location under § 600.20(d).

* * * * *

4. Section 600.20 is revised to read as follows:

§ 600.20 Application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

(a) *Initial eligibility application.* An institution that wishes to establish its eligibility to participate in any HEA program must submit an application to the Secretary for a determination that it qualifies as an eligible institution under this part. If the institution also wishes to be certified to participate in the title IV, HEA programs, it must indicate that intent on the application, and submit all the documents indicated on the application to enable the Secretary to determine that it satisfies the relevant certification requirements contained in 34 CFR part 668, subparts B and L.

(b)(1) *Reapplication.* A currently designated eligible institution that is not participating in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part if the Secretary requests the institution to reapply.

(2) A currently designated eligible institution that participates in the title IV, HEA programs must apply to the Secretary for a determination that the institution continues to meet the requirements in this part and 34 CFR part 668 if the institution wishes to—

(i) Continue to participate in the title IV, HEA programs beyond the scheduled expiration of the institution's current eligibility/certification designation;

(ii) Reestablish eligibility/certification as a private nonprofit or private for-profit institution following a change in ownership that results in a change in control as described in § 600.31; or

(iii) Reestablish eligibility/certification after the institution changes its status as a proprietary, nonprofit, or public institution.

(c) *Application to expand eligibility.* A currently designated eligible institution that wishes to expand the scope of its eligibility/certification and disburse title IV, HEA Program funds to students enrolled in that expanded scope must apply to the Secretary for approval to—

(1) Add a location at which the institution offers 50 percent or more of an educational program, unless the institution is exempt from this requirement under paragraph (d) of this section;

(2) Increase its level of program offerings (e.g., adding graduate degree programs when it previously offered only baccalaureate degree programs);

(3) Add an educational program if the institution is required to apply to the Secretary for approval under § 600.10(c);

(4) Add a branch campus at a location that is not currently included in the institution's eligibility/certification designation; or

(5) Convert an eligible location to a branch campus.

(d) *Exemptions from applying for additional locations*—(1) *Exemption for public institutions.* A public institution does not have to apply to the Secretary for approval of a licensed and accredited additional location under paragraph (c)(1) of this section if the additional location is in the same State as the main campus. The institution must report those locations in its next recertification application.

(2) *Exemption for temporary additional locations for non-public institutions.* A non-public institution does not have to apply to the Secretary for approval of a licensed and accredited temporary additional location under paragraph (c)(1) of this section if—

(i) The institution intends to use that location for not more than 12 months and has not yet used that location for more than 12 months;

(ii) The institution has not added more than six locations at which it offered more than 50 percent of an educational program since it was last certified to participate in the title IV, HEA programs;

(iii) The institution does not have any outstanding title IV, HEA program liability;

(iv) The institution did not acquire the assets of an institution that provided educational programs at that location during the preceding year and participated in the title IV, HEA programs during that year;

(v) The institution would not be subject to a loss of eligibility under 34 CFR 668.188 if it adds that location; and

(vi) The Secretary does not currently preclude the institution from opening additional locations without notice to the Secretary.

(3) *More than one year at a temporary location.* If an institution does not apply to the Secretary for approval of a temporary additional location under the provisions of paragraph (c)(1) of this section because it did not intend to operate at that location for more than 12 months, and the institution will stay at that location for more than 12 months, the institution—

(i) Must apply to the Secretary for approval of that additional location as soon as it determines that it will stay at that location for more than 12 months, but not later than 35 days before the end of that 12-month period; and

(ii) May not disburse title IV, HEA program funds after the 12-month period has expired to students enrolled at that location until the Secretary approves that location.

(e) *Application format.* To satisfy the requirements of paragraphs (a), (b), and (c) of this section, an institution must apply in a format prescribed by the Secretary for that purpose and provide all the information and documentation requested by the Secretary to make a determination of its eligibility and certification.

(f) *Secretary's response to applications.* (1) If the Secretary receives an application under paragraph (a) or (b)(1) of this section, the Secretary notifies an institution—

(i) Whether the applicant institution qualifies in whole or in part as an eligible institution under the appropriate provisions in §§ 600.4 through 600.7; and

(ii) The locations and educational programs that qualify as the eligible institution if only a portion of the applicant qualifies as an eligible institution;

(2) If the Secretary receives an application under paragraph (a) of this section and that institution applies also to participate in the title IV, HEA programs, the Secretary notifies the institution—

(i) Whether the institution is certified to participate in those programs;

(ii) The title IV, HEA programs in which it is eligible to participate;

(iii) The title IV, HEA programs in which it is eligible to apply for funds;

(iv) The effective date of its eligibility to participate in those programs; and

(v) The conditions under which it may participate in those programs;

(3) If the Secretary receives an application under paragraph (b)(2) of this section, the Secretary notifies the institution whether it continues to be certified, or whether it reestablished its eligibility/certification, to participate in the title IV, HEA programs.

(4) If the Secretary receives an application to have a branch campus certified to participate in the title IV, HEA programs as a branch campus, the Secretary notifies the institution whether that branch campus is certified to participate and the date that the branch campus is eligible to begin participation;

(5) If the Secretary receives an application under paragraph (c)(1) of this section for an additional location, the Secretary notifies the institution whether the location is eligible or ineligible to participate in the title IV, HEA programs, and the date of eligibility if the location is determined eligible; and

(6) If the Secretary receives an application under paragraph (c)(2) of this section for an increase in the level of program offerings, or for an additional educational program under § 600.10(c) and paragraph (c)(3) of this section, the Secretary notifies the institution whether the program qualifies as an eligible program, and if the program qualifies, the date of eligibility.

(g) *Disbursement rules related to applications.* (1)(i) Except as provided under paragraph (g)(1)(ii) of this section and 34 CFR 668.26, if an institution submits an application under paragraph (b)(2)(i) of this section because its participation period is scheduled to expire, after that expiration date the institution may not disburse title IV, HEA program funds to students attending that institution until the institution receives the Secretary's notification that the institution is again eligible to participate in those programs.

(ii) An institution described in paragraph (g)(1)(i) of this section may disburse title IV, HEA program funds to its students if the institution submits to the Secretary a materially complete renewal application in accordance with the provisions of 34 CFR 668.13(b)(2), and has not received a final decision from the Secretary on that application.

(2)(i) Except as provided under paragraph (g)(2)(ii) of this section and 34 CFR 668.26, if a private nonprofit or private for-profit institution submits an application under paragraph (b)(2)(ii) or (b)(2)(iii) of this section because it has undergone or will undergo a change in ownership that results in a change of control or a change in status, the institution may not disburse title IV, HEA program funds to students attending that institution after the change of ownership or status until the institution receives the Secretary's notification that the institution is eligible to participate in those programs.

(ii) An institution described in paragraph (g)(2)(i) of this section may disburse title IV, HEA program funds to its students if the Secretary approves the institution's materially complete application under paragraph (i) of this section, and has not received a final decision from the Secretary on that application.

(3) If an institution must apply to the Secretary under paragraphs (c)(1) through (c)(4) of this section, the institution may not disburse title IV, HEA program funds to students attending the subject location, program, or branch before the institution receives the Secretary's notification that the location, program, or branch is eligible

to participate in the title IV, HEA programs.

(4) If an institution applies to the Secretary under paragraph (c)(5) of this section to convert an eligible location to a branch campus, the institution may continue to disburse title IV, HEA program funds to students attending that eligible location.

(5) If an institution does not apply to the Secretary to obtain the Secretary's approval of a new location, program, increased level of program, or branch, and the location, program, or branch does not qualify as an eligible location, program, or branch of that institution under this part and 34 CFR part 668, the institution is liable for all title IV, HEA program funds it disburses to students enrolled at that location or branch or in that program.

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

5. Section 600.21 is revised to read as follows:

§ 600.21 Updating application information.

(a) *Notice requirements.* Except as provided in paragraph (b) of this section for the information described in paragraph (a)(5) of this section, an eligible institution must notify the Secretary in a manner prescribed by the Secretary, no later than 10 days after the change occurs, of any change in the following:

(1) Its name, the name of a branch, or the name of a previously reported location.

(2) Its address, the address of a branch, or the address of a previously reported location.

(3) The way it measures program length (e.g., from clock hours to credit hours, or from semester hours to quarter hours).

(4) A decrease in the level of program offerings (e.g. the institution drops its graduate programs).

(5) A person's ability to affect substantially the actions of the institution if that person did not previously have this ability. The Secretary considers a person to have this ability if the person—

(i) Holds alone or together with another member or members of his or her family, at least a 25 percent ''ownership interest'' in the institution as defined in § 600.31(b);

(ii) Represents or holds, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement at least a 25 percent ''ownership interest'' in the institution, as defined in § 600.31(b); or

(iii) Is a general partner, the chief executive officer, or chief financial officer of the institution.

(6) The individual the institution designates under 34 CFR 668.16(b)(1) as its title IV, HEA Program administrator.

(b) *Institution's notice to the Secretary.* An institution that is owned by a publicly traded corporation must notify the Secretary of any change in the information described in paragraph (a)(5) of this section when it notifies its accrediting agency, but no later than 10 days after the institution learns of the change.

(c) *Secretary's response to notice.* The Secretary notifies an institution if any reported change affects the institution's eligibility, and the effective date of that change.

(d) *Consequence of failure to notify.* An institution's failure to inform the Secretary of a change described in paragraph (a) of this section within the time period stated in that paragraph may result in adverse action against the institution.

(e) *Definition.* For purposes of this section, the Secretary considers a member of a person's family to be his or her—

(1) Parent, sibling, spouse or child;

(2) Spouse's parent or sibling;

(3) Child's spouse; and

(4) Sibling's spouse.

(Authority: 20 U.S.C. 1001, 1002, 1088, and 1099c)

6. Section 600.31 is amended by:

A. Revising the section heading.

B. Revising the first sentence of paragraph (a)(1).

C. Redesignating paragraph (a)(2) as paragraph (a)(3) and adding a new paragraph (a)(2).

D. Removing the definition of ''ownership'' in paragraph (b) and adding, in its place, the definition of ''ownership or ownership interest''.

E. Revising paragraphs (c)(2), (c)(6), and (c)(7).

F. Removing the word ''or'' at the end of paragraph (d)(6).

G. Revising paragraph (d)(7) and adding paragraph (d)(8).

The additions and revisions read as follows:

§ 600.31 Change in ownership resulting in a change in control for private nonprofit and private for-profit institutions.

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, a private nonprofit or private for-profit institution that undergoes a change in ownership that results in a change in control ceases to qualify as an eligible institution upon the change in ownership and control. * * *

(2) If a private nonprofit or private for-profit institution has undergone a change in ownership that results in a change in control, the Secretary may, under the provisions of § 600.20(h) and (i), continue the institution's participation in the title IV, HEA programs on a provisional basis, provided that the institution submits under the provisions of § 600.20(h) a materially complete application—

(i) No later than 10 business days after the change occurs; or

(ii) For an institution owned by a publicly traded corporation, no later than 10 business days after the institution knew, or should have known of the change based upon SEC filings, that the change occurred.

* * * * *

(b) * * *

Ownership or ownership interest. (1) Ownership or ownership interest means a legal or beneficial interest in an institution or its corporate parent, or a right to share in the profits derived from the operation of an institution or its corporate parent.

(2) Ownership or ownership interest does not include an ownership interest held by—

(i) A mutual fund that is regularly and publicly traded;

(ii) An institutional investor, such as a pension fund or insurance company;

(iii) A profit-sharing plan of the institution or its corporate parent, provided that all full-time permanent employees of the institution or corporate parent are included in the plan; or

(iv) An Employee Stock Ownership Plan (ESOP).

* * * * *

(c) * * *

(2) *Publicly traded corporations required to be registered with the Securities and Exchange Commission (SEC).* A change in ownership and control occurs when—

(i) A person acquires such ownership and control of the corporation so that the corporation is required to file a Form 8K with the SEC notifying that agency of the change in control; or

(ii)(A) A person who is a controlling shareholder of the corporation ceases to be a controlling shareholder. A controlling shareholder is a shareholder who holds or controls through agreement both 25 percent or more of the total outstanding voting stock of the corporation and more shares than any other shareholder. A controlling shareholder for this purpose does not include a shareholder whose sole stock ownership is held as an institutional investor, held in mutual funds, held through a profit-sharing plan, or held in an Employee Stock Ownership Plan (ESOP).

(B) When a change of ownership occurs as a result of paragraph (c)(2)(ii)(A) of this section, the institution may submit its most recent quarterly financial statement as filed with the SEC, along with copies of all other SEC filings made after the close of the fiscal year for which a compliance audit has been submitted to the Department of Education, instead of the ''same day'' balance sheet.

(C) If a publicly traded institution is provisionally certified due to a change in ownership under paragraph (c)(2)(ii) of this section, and that institution experiences another change of ownership under paragraph (c)(2)(ii) of this section, an approval of the subsequent change in ownership does not extend the original expiration date for the provisional certification provided that any current controlling shareholder was listed on the change of ownership application for which the original provisional approval was granted.

* * * * *

(6) *Nonprofit institution.* A nonprofit institution changes ownership and control when a change takes place that is described in paragraph (d) of this section.

(7) *Public institution.* The Secretary does not consider that a public institution undergoes a change in ownership that results in a change of control if there is a change in governance and the institution after the change remains a public institution, provided:

(i) The new governing authority is in the same State as approved in the institution's program participation agreement; and

(ii) The new governing authority has acknowledged the public institution's continued responsibilities under its program participation agreement.

(d) * * *

(7) A change in status from a for-profit to a nonprofit institution; or

(8) A change in status from a nonprofit to a for-profit institution.

* * * * *

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

7. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

8. Section 668.2(b) is amended by revising paragraphs (2)(ii) and (iii) and adding paragraph (2)(iv) to the definition of the term ''academic year'' to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Academic year: * * *

(2) * * *

(ii) If an institution provides an educational program using a semester, trimester, or quarter system, or in clock hours, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides for that program—

(A) At least one day of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a term, at least one day of study for final examinations.

(iii) If an institution provides an educational program using credit hours but not a semester, trimester, or quarter system, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides for that program—

(A) At least 12 hours of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a payment period, at least 12 hours of study for final examinations.

(iv) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

* * * * *

9. A new § 668.5 is added to read as follows:

§ 668.5 Written arrangements to provide educational programs.

(a) *Written arrangements between eligible institutions.* If an eligible institution enters into a written arrangement with another eligible institution, or with a consortium of eligible institutions, under which the other eligible institution or consortium provides all or part of the educational program of students enrolled in the former institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of § 668.8.

(b) *Written arrangements for study abroad.* Under a study abroad program, if an eligible institution enters into a written arrangement with a foreign institution, or an organization acting on behalf of a foreign institution, under which the foreign institution provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if it otherwise satisfies the requirements of paragraphs (c)(1) through (c)(3) of this section.

(c) *Written arrangements between an eligible institution and an ineligible institution or organization.* If an eligible institution enters into a written arrangement with an institution or organization that is not an eligible institution under which the ineligible institution or organization provides part of the educational program of students enrolled in the eligible institution, the Secretary considers that educational program to be an eligible program if—

(1) The ineligible institution or organization has not had its eligibility to participate in the title IV, HEA programs terminated by the Secretary, or has not voluntarily withdrawn from participation in those programs under a termination, show-cause, suspension, or similar type proceeding initiated by the institution's State licensing agency, accrediting agency, guarantor, or by the Secretary;

(2) The educational program otherwise satisfies the requirements of § 668.8; and

(3)(i) The ineligible institution or organization provides not more than 25 percent of the educational program; or

(ii)(A) The ineligible institution or organization provides more than 25 percent but not more than 50 percent of the educational program;

(B) The eligible institution and the ineligible institution or organization are not owned or controlled by the same individual, partnership, or corporation; and

(C) The eligible institution's accrediting agency, or if the institution is a public postsecondary vocational educational institution, the State agency listed in the **Federal Register** in accordance with 34 CFR part 603, has specifically determined that the institution's arrangement meets the agency's standards for the contracting out of educational services.

(d) *Administration of title IV, HEA programs.* (1) If an institution enters into a written arrangement as described in paragraph (a), (b), or (c) of this section, except as provided in paragraph (d)(2) of this section, the institution at which the student is enrolled as a regular student must determine the student's eligibility for title IV, HEA program funds, and must calculate and disburse those funds to that student.

(2) In the case of a written arrangement between eligible institutions, the institutions may agree in writing to have any eligible institution in the written arrangement make those calculations and disbursements, and the Secretary does not consider that institution to be a

third party servicer for that arrangement.

(3) The institution that calculates and disburses a student's title IV, HEA program assistance under paragraph (d)(1) or (d)(2) of this section must—

(i) Take into account all the courses in which the student enrolls at each institution that apply to the student's degree or certificate when determining the student's enrollment status and cost of attendance; and

(ii) Maintain all records regarding the student's eligibility for and receipt of title IV, HEA program funds.

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

10. Section 668.8 is amended by revising paragraphs (b)(3) and (b)(4) to read as follows:

§ 668.8 Eligible program.

* * * * *

(b) * * *

(3)(i) If an institution provides an educational program using a semester, trimester, or quarter system, or in clock hours, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides—

(A) At least one day of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a term, at least one day of study for final examinations.

(ii) If an institution provides an educational program using credit hours but not a semester, trimester, or quarter system, the Secretary considers that the institution provides one week of instructional time in that program during any week the institution provides—

(A) At least 12 hours of regularly scheduled instruction or examinations; or

(B) After the last scheduled day of classes for a payment period, at least 12 hours of study for final examinations.

(4) Instructional time does not include any vacation periods, homework, or periods of orientation or counseling.

* * * * *

§ 668.12 [Amended]

11. Section 668.12 is amended by:

A. Redesignating paragraphs (f) and (g) as paragraphs (h) and (i) of § 600.20.

B. In newly redesignated paragraph (h)(1) of § 600.20, removing ''an institution'' and adding, in its place, ''a private nonprofit institution or private for-profit institution'' the first time ''institution'' appears.

C. In newly redesignated paragraph (h)(2) of § 600.20, removing ''an institution'' and adding, in its place, ''a private nonprofit institution or private for-profit institution''.

D. In newly redesignated paragraph (i)(2)(iii) of § 600.20, removing ''(f)(3)'' and adding, in its place, ''(h)(3)''.

E. Removing the remainder of § 668.12.

12. Section 668.13 is amended by revising paragraph (a) to read as follows:

§ 668.13 Certification procedures.

(a) *Requirements for certification.* (1) The Secretary certifies an institution to participate in the title IV, HEA programs if the institution qualifies as an eligible institution under 34 CFR part 600, meets the standards of this subpart and subpart L of 34 CFR part 668, and satisfies the requirements of paragraph (a)(2) of this section.

(2) Except as provided in paragraph (a)(3) of this section, if an institution wishes to participate for the first time in the title IV, HEA programs or has undergone a change in ownership that results in a change in control as described in 34 CFR 600.31, the institution must require the following individuals to complete title IV, HEA program training provided or approved by the Secretary no later than 12 months after the institution executes its program participation agreement under § 668.14:

(i) The individual the institution designates under § 668.16(b)(1) as its title IV, HEA program administrator.

(ii) The institution's chief administrator or a high level institutional official the chief administrator designates. (3)(i) An institution may request the Secretary to waive the training requirement for any individual described in paragraph (a)(2) of this section.

(ii) When the Secretary receives a waiver request under paragraph (a)(3)(i) of this section, the Secretary may grant or deny the waiver, require another institutional official to take the training, or require alternative training.

* * * * *

13. Section 668.19 is revised to read as follows:

§ 668.19 Financial aid history.

(a) Before an institution may disburse title IV, HEA program funds to a student who previously attended another eligible institution, the institution must use information it obtains from the Secretary, through the National Student Loan Data System (NSLDS) or its successor system, to determine—

(1) Whether the student is in default on any title IV, HEA program loan;

(2) Whether the student owes an overpayment on any title IV, HEA program grant or Federal Perkins Loan;

(3) For the award year for which a Federal Pell Grant is requested, the student's scheduled Federal Pell Grant and the amount of Federal Pell Grant funds disbursed to the student;

(4) The outstanding principal balance of loans made to the student under each of the title IV, HEA loan programs; and

(5) For the academic year for which title IV, HEA aid is requested, the amount of, and period of enrollment for, loans made to the student under each of the title IV, HEA loan programs.

(b)(1) If a student transfers from one institution to another institution during the same award year, the institution to which the student transfers must request from the Secretary, through NSLDS, updated information about that student so it can make the determinations required under paragraph (a) of this section; and

(2) The institution may not make a disbursement to that student for seven days following its request unless it receives the information from NSLDS in response to its request or obtains that information directly by accessing NSLDS, and the information it receives allows it to make that disbursement.

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

14. Section 668.165(a)(3)(ii) is revised to read as follows:

§ 668.165 Notices and authorizations.

(a) * * *

(3) * * *

(ii) Either in writing or electronically. If the institution sends the notice electronically, it must confirm receipt by the student or parent of the electronic notification and must maintain documentation of that confirmation.

* * * * *

PART 675—FEDERAL WORK-STUDY PROGRAMS

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

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

16. Section 675.19 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 675.19 Fiscal procedures and records.

* * * * *

(b) * * *

(1) An institution must follow the record retention and examination provisions in this part and in 34 CFR 668.24.

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

(i) Include a certification by the student's supervisor, an official of the institution or off-campus agency, that each student has worked and earned the amount being paid. The certification must include or be supported by, for students paid on an hourly basis, a time record showing the hours each student worked in clock time sequence, or the total hours worked per day;

(ii) Include a payroll voucher containing sufficient information to support all payroll disbursements;

(iii) Include a noncash contribution record to document any payment of the institution's share of the student's earnings in the form of services and equipment (see § 675.27(a)); and

(iv) Are reconciled at least monthly.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

17. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

18. Section 682.201 is amended by revising paragraph (b)(1)(vii)(F) to read as follows:

§ 682.201 Eligible borrowers.

* * * * *

(b) * * *

(1) * * *

(vii) * * *

(F) The lender must retain a record of its basis for determining that extenuating circumstances existed. This record may include, but is not limited to, an updated credit report, a statement from the creditor that the borrower has made satisfactory arrangements to repay the debt, or a satisfactory statement from the borrower explaining any delinquencies with outstanding balances of less than $500.

* * * * *

19. Section 682.207 is amended by:

A. Revising paragraph (b)(1)(i)(B).

B. Revising paragraph (c)(3).

C. Removing ''(1)'' after the paragraph designation ''(f)''; removing paragraph (f)(2); and redesignating paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) as paragraphs (f)(1), (f)(2), and (f)(3), respectively.

The revisions read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b)(1) * * *

(i) * * *

(B) Must disburse a Stafford or PLUS loan in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

* * * * *

(c) * * *

(3) Disbursement must be made on a payment period basis in accordance with the disbursement schedule provided by the school or any request made by the school modifying that schedule.

* * * * *

20. Section 682.604 is amended by:

A. Revising paragraph (b)(2)(i).

B. Revising paragraph (c)(6).

C. Revising paragraph (c)(7).

The revisions read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * * * *

(b) * * *

(2)(i) Except in the case of a late disbursement under paragraph (e) of this section or as provided in paragraph (b)(2)(iii) or (iv) of this section, a school may release the proceeds of any disbursement of a loan only to a student whom the school determines continuously has maintained eligibility in accordance with the provisions of § 682.201 for the loan period certified by the school on the student's loan application.

* * * * *

(c) * * *

(6) Unless the provision of § 682.207(d) or the provisions of paragraph (c)(7) of this section apply—

(i) If a loan period is more than one payment period, the school must deliver loan proceeds at least once in each payment period; and

(ii) If a loan period is one payment period, the school must make at least two deliveries of loan proceeds during that payment period. The school may not make the second delivery until the calendar midpoint between the first and last scheduled days of class of the loan period.

(7)(i) If a school measures academic progress in an educational program in credit hours and either does not use terms or does not use terms that are substantially equal in length for a loan period, the school may not deliver a second disbursement until the later of—

(A) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) The date, as determined by the school, that the student has completed half of the academic coursework in the loan period.

(ii) For purposes of paragraph(c)(7) of this section, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks shorter than any other term in that loan period.

* * * * *

PART 685—FEDERAL WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

22. The authority citation for part 685 is revised to read as follows:

Authority: 20 U.S.C. 1087a through 1087j, unless otherwise noted.

23. Section 685.301 is amended by revising paragraph (b)(5) to read as follows:

§ 685.301 Origination of a loan by a Direct Loan Program school.

* * * * *

(b) * * *

(5)(i) If a school measures academic progress in an educational program in credit hours and either does not use terms or does not use terms that are substantially equal in length for a loan period, the school may not make a second disbursement until the later of—

(A) The calendar midpoint between the first and last scheduled days of class of the loan period; or

(B) The date, as determined by the school, that the student has completed half of the academic coursework in the loan period.

(ii) For purposes of this paragraph, terms in a loan period are substantially equal in length if no term in the loan period is more than two weeks longer than any other term in that loan period.

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

24. The authority citation for part 690 continues to read as follows:

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

§ 690.9 [Removed]

25. Section 690.9 is removed.

§ 690.75 [Amended]

26. Section 690.75 is amended by removing the words ''financial aid transcript'' in paragraph (a); and by removing the reference to ''34 CFR 668.7'' in paragraph (a)(1) and adding, in its place, ''34 CFR part 668, subpart C''.

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