34 CFR Parts 668, 674, 675, 676, 682, 685, and 690

RIN 1840–AC37

Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Program, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Programs, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Opportunity Grant (FSEOG) programs), the Federal Family Education Loan (FFEL) Programs, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Pell Grant Program, the State Student Incentive Grant (SSIG) Program, and the National Early Intervention Scholarship and Partnership (NEISP) Program. These regulations further the implementation of Department of Education (Department) initiatives to reduce burden and improve program accountability. They clarify and consolidate current policies and requirements, improve the delivery of title IV, HEA program funds to students and institutions, and further protect students and the Federal fiscal interest.

DATES: Effective date: These regulations take effect on July 1, 1997. However, affected parties do not have to comply with the information collection requirements in §§ 668.16, 668.165, and 668.167 until the Department publishes in the Federal Register the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT:

1. For Project EASI (Easy Access for Students and Institutions): Fred Sellers, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3045, Washington, D.C. 20202. Telephone: (202) 708–4607.

2. For the Student Assistance General Provisions: Rachael Sternberg, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–7888;

3. For the Federal Perkins Loan Program: Sylvia R. Ross, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–8242;

4. For the Federal Pell Grant, FWS, and FSEOG programs: Kathy S. Gause, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–4690;

5. For the FFEL Programs: Patsy Beavan, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–8242;

6. For the Direct Loan Program: Rachel Edelstein, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202. Telephone: (202) 708–9406.

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

SUPPLEMENTARY INFORMATION: On September 23, 1996, the Secretary published a notice of proposed rulemaking (NPRM) in the Federal Register (61 FR 49874). In the NPRM, the Secretary proposed to amend the Student Assistance General Provisions regulations (part 668) which apply to all of the title IV, HEA programs and the regulations for the Federal Pell Grant (part 690), Federal Perkins Loan (part 674), FWS (part 675), FSEOG (part 676), FFEL (part 682), and Direct Loan (part 685) programs. The Secretary proposed to amend these regulations to further the implementation of several major initiatives within the Department. These initiatives include: (1) Project EASI; (2) the President's Regulatory Reform Initiative; and (3) improved program accountability to protect students and the Federal fiscal interest. A discussion of these initiatives can be found in the preamble to the NPRM on pages 49874 through 40875.

The NPRM included a discussion of the major issues surrounding the proposed changes which will not be repeated here. The following list summarizes those issues and identifies the pages of the preamble to the NPRM on which a discussion of those issues can be found:

The adoption of a uniform definition of payment period for all the title IV, HEA programs as proposed in § 668.4 (pages 49875–49876).

The provision that an institution use electronic services that the Secretary provides on a substantially free basis as a new standard of administrative capability as proposed in § 668.16(o) (pages 49876–49877).

The restructuring and clarification of the provisions under subpart K, Cash Management, of the Student Assistance General Provisions regulations (pages 49877–49882).

The inclusion of a just-in-time payment method as proposed in § 668.162(c) (pages 49877–49878).

The revision of the definition of a disbursement as proposed in § 668.164(a) (page 49878).

The requirement that title IV, HEA program funds be disbursed on a payment period basis as proposed in § 668.164(c) (pages 49878–49879).

The clarification of the requirements for early disbursements as proposed in § 668.194(f) (page 49879).

The consolidation of the individual title IV, HEA program requirements regarding late disbursements as proposed in § 668.164(h) (page 49879).

The revised student notification requirements as proposed under § 668.165 (pages 49879–49880).

The exemption from the current excess cash requirements for an institution that receives funds under the just-in-time payment method as provided in § 668.166(a)(2) (pages 49880–49881).

The requirement that an institution disburse FFEL Program funds within a timeframe comparable to that permitted for disbursing funds under the other title IV, HEA programs as proposed in § 668.167(a) (page 49881).

The requirement that an institution return FFEL Program funds to a lender if the institution does not disburse those funds within specified timeframes as proposed in § 668.167(b) (page 49881).

The procedures under which the Secretary would monitor more carefully an institution's administration of the FFEL Programs as proposed under § 668.167(d) and (e) (pages 49881–49882).

The elimination of the requirement under § 682.207(b) of the current FFEL Program regulations that an institution maintain a separate bank account for FFEL Program funds as proposed in § 668.163(a) (page 49878).

The conforming changes for the campus-based, Federal Family Education Loan, Direct Loan, and Federal Pell Grant programs resulting from the adoption of a uniform definition of a payment period as proposed in §§ 674.2, 675.2, 676.2, 682.200, 685.102, and 690.2 (page 49882).

The amendments to the disbursement rules for the FFEL and Direct Loan programs as a result of the adoption of a uniform definition of a payment period as proposed in §§ 682.207, 682.604, and 685.301 (page 49882).

Substantive Changes to the NPRM

The following discussion reflects substantive changes made to the NPRM in the final regulations. The provisions are discussed in the order in which they appear in the proposed rules.

Student Assistance General Provisions

Subpart B—Standard for Participation in the Title IV, HEA Programs

Section 668.16 Standards of Administrative Capability Electronic Services

To reflect public comment, the Secretary is revising the proposed regulations by changing the reference to ''electronic services'' to ''electronic processes.'' This revision is being made to clarify that the Secretary's intent is that institutions participate in the electronic processes, *e.g.*, electronic data exchange and the Student Financial Assistance Bulletin Board Service (BBS), by which the Secretary administers the title IV, HEA programs and that institutions are not restricted to using software and services provided by the Secretary.

Subpart K—Cash Management

Section 668.161 Scope and Purpose

The proposed regulations are revised to clarify that FFEL Program funds are held in trust by an institution for the intended student beneficiaries, the lenders, the guaranty agencies, and the Secretary.

Section 668.162 Requesting Funds

To take advantage of technological improvements in funding procedures, the Secretary anticipates the implementation by October 1, 1997, for fiscal year 1998, the Grants and Payments System (GAPS) of the Department of Education Central Automated Processing System (EDCAPS). This system, when operational, meets new Federal financial system standards, provides institutions both grant and payment information, and simplifies expenditure reporting. A key element of the new system is the identification of the source of requested funds by the specific designation assigned to those funds by the Secretary. The Secretary notifies the institution of this designation at the time the funds are authorized. Under GAPS, the institution is able to select the particular authorization under which it seeks funds from among the various authorizations that may be available. Institutions that lack the technological capability of accessing GAPS are still able to request funds from the Department by telephone or other existing methods. Regardless of the method used by an institution to request funds, any request made after implementation of GAPS during fiscal year 1998 and thereafter must include the specific designation for those funds.

Section 668.164 Disbursing Funds

Definition of Disbursement

The Secretary is revising the proposed regulations to clarify that if an institution credits a student's institutional account with title IV, HEA program funds earlier than 10 days before the first day of classes of a payment period, for example, for the purpose of preparing a tuition and fee bill for that student, the Secretary considers that the institution makes that disbursement on the 10th day before class.

Early Disbursements

The Secretary is revising the proposed regulations to clarify that, if an institution offers an educational program using semesters, trimesters, or quarters, an institution may disburse title IV, HEA program funds up to 10 days before the beginning of any payment period even if the previous payment period is not ended.

Late Disbursements

The Secretary is revising the proposed regulations to remove the requirement that, in order to make a late disbursement of a Federal Perkins Loan or an FSEOG Program award, an institution must have received from the student an acceptance of that loan or award. A late disbursement under these two programs may be made as long as the student is awarded aid prior to the date the student becomes ineligible.

The regulations are revised to allow PLUS loans to be disbursed under the late disbursement provisions.

Section 668.165 Notices and Authorizations Disbursement Notice

The Secretary is revising the proposed notice requirements to allow a parent, as well as a student, to cancel all or a portion of a loan or loan disbursement.

The Secretary is revising the proposed timeframe requiring an institution to notify a student or parent that the institution credited the student's account with Direct Loan, FFEL, or Federal Perkins Loan Program funds, the date and amount of the disbursement, and the student's or parent's right to refuse all or a portion of a loan or loan disbursement. The revision allows the institution to provide the required notice at any point in time during a 60-day window that is no earlier than 30 days before, and no later than 30 days after, the date the institution disburses those funds.

The timeframe during which a student or parent may request a loan cancellation is revised to clarify that the student or parent may request cancellation either for 14 days from the date the notice was sent by the institution or, if the notice is sent more than 14 days before the first day of the payment period, the first day of the payment period.

Section 668.167 FFEL Program Funds

The Secretary is revising the proposed regulations to provide that an institution must return to a lender loan proceeds received by EFT or master check if the institution does not disburse the funds within (a) 10 business days following the date the institution receives the loan funds if the institution receives the funds on or after July 1, 1997 and (b) 3 business days following the date the institution receives the loan funds if the institution receives the funds on or after July 1, 1999.

The regulations are also revised to provide that, for funds that are not disbursed within the specified timeframe, the institution must return the funds to the lender no later than 10 business days after the last day those funds are required to be disbursed. The Secretary is also revising the regulations to provide that if the borrower establishes eligibility before the institution returns the loan funds to the lender, the institution may disburse those funds to the borrower.

Executive Order 12866

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

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering the title IV, HEA programs effectively and efficiently.

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

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of these final regulations are discussed elsewhere in this preamble under the heading *Final Regulatory Flexibility Analysis,* and in the information previously stated under *Supplementary Information* and *Analysis of Comments and Changes.*

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the NPRM, more than 250 parties submitted comments. An analysis of the comments and of the changes in the regulations since the publication of the NPRM follows.

Major issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed. An analysis of the comments received regarding the initial regulatory flexibility analysis can be found elsewhere in this preamble under the heading *Final Regulatory Flexibility Analysis.*

Part 668—Student Assistance General Provisions

Subpart A—General

Section 668.4 Payment Period

Payment Period Definition (§ 668.4)

Comments: Many commenters supported the Secretary's efforts to provide consistency among the title IV, HEA programs through the proposed uniform payment period definition. One institution specifically endorsed the requirement that, in the case of the FFEL and Direct Loan Programs, as in other title IV, HEA programs, quarter institutions make at least one disbursement each quarter. Two commenters advocated bringing the loan programs further in line with the Federal Pell Grant Program by requiring that loan disbursements be prorated according to Federal Pell Grant Program rules. Another commenter argued for expanding the use of payment periods for loans in order to eliminate the distinction between borrower-based and scheduled academic years and the confusion over whether summer terms should be headers or trailers.

A student advocate organization supported the proposed amendment permitting clock-hour institutions or institutions that use credit hours without terms to make the second disbursement only after that student actually completes one-half the required clock or credit hours, rather than when half the number of days in the loan period have elapsed. This commenter believed this change would protect students, many of whom withdraw from trade institutions before completing one-half the required hours, from incurring double the loan obligation.

Discussion: The Secretary agrees that title IV, HEA program requirements should be made more consistent. With regard to the suggestions that the loan programs be brought further in line with the Federal Pell Grant Program, the Secretary will consider this option for the future but notes that currently there are statutory prohibitions against any further conforming changes. Further, the Secretary does not intend to eliminate the use of borrower-based academic years and scheduled academic years in the FFEL and Direct Loan Programs. These options provide institutions flexibility in awarding loans and monitoring annual loan maximums for an academic year.

Changes: None.

Comments: A significant number of commenters objected to the proposed payment period provisions. One commenter who believed the uniform payment period definition would create great inefficiency and confusion urged the Secretary to delay implementing the payment period provisions in order to consult with institutions, associations, and lenders to try to accommodate program differences. Some commenters stated that the Secretary did not identify any areas of abuse by institutions or lenders in connection with the second disbursement of loan proceeds or did not provide sufficient reasons for the proposed changes in policy. Several commenters assumed that the Secretary is proposing additional disbursement requirements on quarter and trimester institutions for the benefit of the federal fiscal interest. Many commenters who objected to the proposed payment period provisions stated that institutional default rates have significantly decreased over the past six years and suggested that there is no need for the additional burden of increased disbursements and monitoring of student progress proposed in this regulation. In response to the Secretary's efforts to streamline and simplify the disbursement rules for all title IV, HEA programs, one commenter questioned the validity of establishing the same disbursement rules for programs with different eligibility requirements and also questioned who would benefit from the proposed change.

Discussion: The Secretary continues to believe that establishing a uniform payment period definition is appropriate at this time. The Secretary does not expect the proposed changes to cause title IV, HEA program participants significant problems and, therefore, does not intend to delay revising program regulations accordingly. Although the Secretary has not identified any particular areas of abuse of the existing disbursement rules, the Secretary believes that revising these existing rules to make them more consistent facilitates the administration of the title IV, HEA programs including simplification of the delivery system and provides additional protections to limit excessive borrowing. In addition, the Secretary believes that the proposed changes are in the Federal fiscal interest.

Changes: None.

Comments: With regard to the proposed requirements for term institutions, commenters argued against the proposal to require more than two disbursements for programs using quarters or trimesters, stating that this proposal would increase the administrative burden and expenses for the institution, lenders, and guaranty agencies. Several of these commenters noted that this policy would increase the administrative burden of verifying eligibility as well. Many of these commenters suggested that institutions using academic terms and credit hours should be allowed to choose whether to make a disbursement each semester, trimester, or quarter, as applicable, or twice a year as is currently allowed. Several commenters argued that, for quarter or trimester institutions, scheduling two larger disbursements, rather than three or four smaller disbursements, is particularly appropriate for graduate and professional institutions, where no Federal Pell Grant and virtually no campus-based funding are disbursed to students. One commenter stated that requiring more frequent disbursements for quarter and trimester institutions will complicate loan processing for midyear transfers and will make the paper financial aid transcript an absolute necessity for these transfers.

Discussion: In response to the arguments against requiring quarter or trimester institutions to disburse on a term basis rather than twice per year, the Secretary has proposed this change for two reasons. First, these disbursement rules aid students in managing their funds and may reduce overborrowing.

Second, as stated in the preamble to the NPRM, this approach simplifies the administration of the title IV, HEA programs. This change assists in the development of a single, integrated title IV delivery system.

The Secretary recognizes that an institution is required to make three disbursements of a loan for an academic year if an educational program is offered using quarters that conform to the traditional usage of that term, *i.e.*, each term consists of approximately 10–12 weeks of instruction, full-time is defined as at least 12 quarter credits, and the program's academic calendar includes three quarters in the fall, winter, and spring, and often a summer quarter. As noted, the Secretary believes that students enrolled in educational programs offered using quarters will be assisted in managing their funds and prevented from overborrowing.

Although several commenters suggested that the proposed regulations require institutions using trimesters to make more disbursements than is currently required, most trimester institutions will be required to make only two disbursements under these proposed provisions. Most traditional institutions using trimesters typically schedule only two trimesters in an academic year; therefore, these institutions are usually required to make only two disbursements for the loan period. In some instances, the Secretary is aware that an educational program may use the term ''trimester'' to describe its academic terms but those academic terms do not conform to the traditional usage, *i.e.*, each term consists of approximately 15 weeks of instruction, full-time is defined as at least 12 semester or trimester hours, and the program's academic calendar generally consists of three terms, one each in fall, spring, and summer.

If a term referred to as a trimester or quarter does not conform to the traditional usage, the references to trimesters or quarters in the title IV, HEA program regulations do not apply.

With regard to the comment concerning midyear transfers, the Secretary does not believe that the proposed changes create any extra institutional burden in processing aid for mid-year transfers.

Changes: None.

Comments: Many commenters stated that the Secretary was imposing additional requirements on clock-hour and nonterm credit-hour institutions by requiring that their students complete the necessary number of hours prior to receiving a subsequent disbursement of title IV, HEA program assistance. Commenters who objected to this proposal stated that this requirement would result in a constant readjustment of scheduled disbursements, would require institutions to monitor individual student's progress, and would result in disbursements occurring earlier than the midpoint of the loan period or later than the midpoint, depending on each individual student's progress. Commenters also argued against the proposed payment period policy because they indicated that students do not incur costs according to hours completed. These commenters argued that payment periods for these programs should be measured in length of time rather than by completion of credits.

One institution using credit hours without terms explained that scheduled breaks in the year fall close to the timing of traditional semesters. The institution noted that under the proposed regulations, because the institution does not use terms, the time when the student completes half of the credits for the year may be significantly longer than half the year in length. Another commenter who objected to the proposed requirement for credit-hour programs without terms stated that the Secretary is imposing more stringent standards on nonterm institutions than on term institutions.

Several commenters objected to the proposed policy that eliminates the current Federal Pell Grant payment period definition for clock-hour programs that are offered in terms. Clock-hour institutions with terms argued that a term is a payment period, regardless of whether the courses are measured in clock or credit hours. Commenters argued that this proposal would create cash flow problems for clock-hour institutions with academic terms and would result in students receiving their aid at unpredictable times with payments overlapping terms and academic years. The institutions explained that they assess fees on a term basis; they also argued that if they are not allowed to schedule disbursements according to terms, their students may have fewer disbursements, which might be a detriment to students with poor money management skills. Further, they noted that because institutions would not be allowed to make disbursements until after the student completes the required number of clock hours, students will not have loan funds when tuition and fees are due. Finally, these institutions argued that allowing clock-hour institutions to disburse according to academic terms would simplify the rules and streamline the disbursements of title IV, HEA program funds.

Discussion: In response to the commenters objecting to the proposed requirement that clock-hour institutions with terms track hours completed, the Secretary reminds commenters that clock-hour institutions with or without terms are currently required to track hours completed in order to make subsequent Federal Pell Grant disbursements. Under the current Federal Pell Grant Program requirements, if a student does not complete all of the clock hours in a term for which he or she has been paid, the student may not receive the payment for the subsequent term until the student has completed the clock hours for the prior term. Further, the second disbursement is reduced in accordance with the number of hours that are attributed to the first payment period. For example, a student is enrolled in a 600 clock-hour program with two terms of 300 clock hours each. In the first term, the student completes only 250 clock hours. The first payment period is extended into the second term. When the student completes the first 50 hours in the second term, the student may receive a second disbursement based on 250 clock hours (*i.e.*, the balance of the hours in the second term. The student would then receive a third disbursement based on 50 clock hours after completing the 250 hours of the second term for which he or she was paid. Under the revised payment period definition, the student receives a second disbursement after completing 50 hours in the second term and that disbursement is based on 300 clock hours. There is no third disbursement.

Through subregulatory guidance, the Secretary has directed clock-hour institutions without terms to track clock hours completed for subsequent loan disbursements. In proposing this rule, the Secretary intended to require clock-hour institutions with and without terms to track clock hours completed for purposes of disbursing subsequent loan proceeds in order to align the loan programs more closely with the Federal Pell Grant Program. However, the Secretary emphasizes to the commenters that there are differences between the disbursement rules for loans and for the Federal Pell Grant Program regarding clock-hour programs. Because of the statutory requirement that institutions not disburse the second disbursement of a FFEL or Direct Loan until at least one-half of the loan period has elapsed (see § 428G(b) of the HEA), the Secretary proposed that programs measuring progress in clock hours may not make the second disbursement until the later of the calendar midpoint of the loan period or the date that the student completes half the clock hours in the loan period. These provisions should address the commenters' concerns that students might receive proceeds prior to the midpoint of the loan period.

In response to the clock-hour institutions that stated that the proposed payment period definitions would limit their ability to disburse as often as they currently disburse, the Secretary reminds them that they can always make smaller, more frequent, equal disbursements of the proceeds within the payment period, as long as the student is completing the required number of clock hours necessary for the next disbursement.

The Secretary also believes that it is appropriate that credit-hour institutions without terms track credit hours completed. This policy has been a long-standing requirement in the Federal Pell Grant Program, and the Secretary believes that this requirement is appropriate for loan disbursements as well. The Secretary wishes to emphasize that the loan disbursement rules differ from the Federal Pell Grant disbursement rules for credit-hour institutions without terms; these rules are found under 34 CFR 682.604(c)(7) and 34 CFR 685.301(b)(5). As discussed above, because of the statutory requirement that institutions not disburse the second disbursement until at least one-half of the loan period has elapsed, the Secretary proposed that programs measuring progress in credit hours without terms may not make the second disbursement until the later of the calendar midpoint of the loan period or the date that the student completes half the academic coursework in the loan period.

Changes: None.

Comments: Several commenters stated that the Secretary's efforts to use terms to protect students and title IV, HEA program recipients has been ineffective and that the Secretary should define a standard minimum term. These commenters further stated that some institutions have defined academic terms for as little as four weeks in length in order to circumvent federal regulations such as those for pro rata refunds.

Discussion: With regard to defining a standard minimum term, the Secretary does not believe it is appropriate to define what an institution's academic calendar must be. Further, the commenters are reminded that the loan programs require institutions to use either credit hours with standard terms or to monitor credit and clock hours earned. For the Federal Pell Grant Program, institutions can disburse according to short nonstandard terms. However, payments are prorated based on the hours in these short terms, so there is no need to require disbursements according to a defined minimum term.

Changes: None.

Comments: In the NPRM, the Secretary specifically requested comments on whether to incorporate the proposed approach or the existing Federal Pell Grant Program rules for certain remaining portions of programs less than one academic year but greater than one-half an academic year. Under the proposed approach, for credit-hour programs without terms or clock-hour programs greater than an academic year, when the remainder of the program is less than an academic year but greater than one-half an academic year, this remainder comprises two equal payment periods. Several commenters supported the proposed policy, noting that this approach allocates title IV, HEA program funds more evenly over the remaining portion of the programs than do the current Federal Pell Grant provisions.

One commenter stated that the proposal to change the determination of payment periods for the remainder of certain programs longer than one year in length would require major changes in software programs that have been designed to pay under the existing payment period definitions. The commenter stated that the change would decrease the amount of Federal Pell Grant funds awarded in the third payment period of a program greater than one year, but less than two, and would place additional, unnecessary financial burden on both students and institutions. This commenter also stated that the 1994 attribution rules were eliminated in reference to loan payments, but that this change appears to be suggesting that attribution rules are again effective. Another commenter argued against the proposed rule because, the commenter stated, this rule would result in some students receiving less Federal Pell Grant funding when cross-over periods are used. This commenter suggested that the strict cut off for award-year eligibility be revised to allow students impacted by this policy to either receive more than a full Federal Pell Grant in a given award year or that the concept of cross-over payment be redefined to allow a student to receive payment from a subsequent award year for a payment period completed in the prior award year. Another commenter similarly argued that institutions be allowed to disburse more than one Federal Pell Grant to degree-seeking students completing more than one academic year during an award year.

One commenter stated that the commenter's organization did not have sufficient time for analysis of whether the Federal Pell Grant approach or the proposed approach should be adopted for the final rule. Therefore, the commenter suggested either a pilot program to collect data or allowing institutions to choose either the existing Federal Pell Grant approach or the proposed approach, as long as they use one approach consistently.

Discussion: Although one commenter suggested that these rules would result in decreased Federal Pell Grant awards in some circumstances, the Secretary assures the commenter that the total amount of Federal Pell Grant awarded under the proposed rules would be the same as the amount awarded under the existing rules. For programs that are longer than one year in length but less than two, where the remaining period of enrollment is greater than half an academic year, the student would receive a smaller third disbursement than under the current rules, but the fourth disbursement would be earlier and larger, and the total amount would be the same.

With regard to the question concerning whether a student whose payment period includes a cross-over period would receive less Federal Pell Grant funding under the proposed rule, the Secretary acknowledges that in some limited cases recipients may receive less Federal Pell Grant funding under these provisions than under the current provisions. However, the Secretary reminds the commenter that even under the current provisions, some students receive reduced Federal Pell Grant amounts when their payment period is not included as a cross-over period as a result of the timing of the academic schedule. When these regulations become effective, institutions can adjust their academic calendars to ensure that their students are not affected by the cross-over payment period restrictions.

In response to the suggestion that institutions be allowed to disburse more than one Federal Pell Grant in a given award year, the Secretary recognizes that there was a statutory provision that would have allowed the Secretary to increase the number of Federal Pell Grant awards a recipient can receive within one award year; however, there has never been any appropriation available to fund additional Federal Pell Grants. Therefore, the Secretary does not intend to increase the number of Federal Pell Grant awards a recipient can receive within one award year.

Changes: None.

Comments: One commenter asked for clarification concerning the meaning of the phrase, ''other academic term'' in proposed § 668.4(a). This commenter further noted a contradiction between proposed § 668.4(a) and proposed 34 CFR 685.301(b)(5), as this latter section provides that institutions using nonstandard terms cannot disburse Direct Loans according to the nonstandard terms. This commenter suggested defining payment periods for nonstandard terms as the periods of time needed to complete the first and second halves of the programs, as measured in clock or credit hours.

Another commenter asked for clarification as to how to apply payment periods to nonstandard term programs when the academic year exceeds a 12-month period or calendar year. The commenter noted that, in accordance with 34 CFR 682.603(f)(2), a loan period may not exceed 12 months. Therefore, the commenter suggested that payment periods are greatly disproportional to the loan period. The commenter gave an example where the first payment period could be nine months for an academic year that is 18 months in duration, even though the loan period is 12 months. This commenter stated that the proposed changes do not accommodate eligible programs with an academic year exceeding 12 months.

Discussion: The commenter is correct in noting a difference in language between proposed § 668.4(a) and the Direct Loan disbursement rules found in proposed 34 CFR 685.301(b)(5). There is also a difference in the proposed FFEL rules under 34 CFR 682.604(c)(7). The reason for this disparity is that institutions can disburse according to ''other academic terms,'' that is, nonstandard terms, in the Federal Pell Grant Program. In the loan programs, institutions using nonstandard terms cannot disburse according to these terms. For nonstandard term credit-hour institutions, institutions are required to disburse the second loan disbursement on the later of the calendar midpoint between the first and last scheduled days of class or the date that the student has completed half the academic coursework in the loan period. The slight difference between the Federal Pell Grant Program's and the loan programs' disbursement rules exists because of the statutory requirement that institutions not disburse the second disbursement of a Direct or FFEL loan until at least one-half of the loan period has elapsed. See § 428G(b) of the HEA. Also, Federal Pell Grant Program requirements allow institutions to disburse Federal Pell Grants according to nonstandard terms because Federal Pell Grant funds are prorated according to the number of hours in the term relative to the number of hours in the academic year. Institutions may not disburse Direct Loan or FFEL program loans according to nonstandard terms; unlike under the Federal Pell Grant Program, loans are not prorated based on the number of hours in a term.

The commenter above correctly noted that a loan period cannot be greater than 12 months. Institutions disbursing loans would not be able to certify or originate a loan for a period greater than one year in length. Institutions with an academic year longer than 12 months would be required to schedule disbursements according to the rules in 34 CFR 682.604(c)(7) and 34 CFR 685.301(b)(5), as applicable.

Changes: None.

Comments: One commenter noted that the Secretary is moving towards all title IV, HEA program funds being disbursed at the same time and asked whether the Secretary would propose that certain Federal Pell Grant recipients be subject to the 30-day delayed disbursement required for first-time, first-year FFEL and Direct Loan student borrowers.

Discussion: The Secretary does not intend to propose that Federal Pell Grant recipients be subject to the 30-day delay required for first-time, first-year borrowers. Although the Secretary has proposed certain changes in order to promote conformity among disbursement rules for different programs, the Secretary does not believe that all restrictions within certain programs should be implemented across all of the title IV, HEA programs. Just as the Secretary does not propose to require multiple disbursement of Federal Pell Grants for students enrolled in one payment period only, the Secretary believes it is not necessary to require that any Federal Pell Grant recipients be subject to a 30-day delay in disbursements.

The Secretary notes that under the Federal Pell Grant Program, institutions have the authority to make disbursements at such times as best meet the needs of students. See 34 CFR 690.76(a). The Secretary notes, however, that delaying disbursement for institutional purposes to avoid refund requirements would not be in compliance with 690.76(a).

Changes: None.

Comments: One institution suggested that the language in this section identifying payment periods as the ''period of time in which the student completes [the first or second half of the program] as measured in credit or clock hours,'' does not require that the student must successfully complete the credit or clock hours in a payment period. This institution argued that, for a student who did not successfully complete the hours in a payment period, the institution should determine financial aid eligibility, based on the institution's satisfactory academic progress policy. Another commenter asked which concept of payment period completion would be used: scheduled hours or hours actually completed.

Discussion: The Secretary intends that institutions subject to these provisions, *i.e.*, institutions offering programs using credit hours without terms or clock hours, monitor credit or clock hours that are *successfully* completed including excused absences as provided in § 668.164(b)(3). For credit-hour programs without terms and clock-hour programs, students may not receive subsequent disbursements until they have actually completed the required number of credit or clock hours.

Changes: None.

Comments: One commenter noted that proposed § 668.4(b)(3) provides an exception to the payment period definition for programs where students do not earn any credits until the last day of the year. The commenter noted that the section refers back to paragraphs (b)(1) and (b)(2), which affect not only credit-hour institutions without terms but also clock-hour institutions. The commenter asked, therefore, whether the Secretary intends to apply this rule to programs using credit hours without terms only or to both credit-hour programs without terms and all clock-hour programs.

Discussion: As under the current Federal Pell Grant Program regulations, the Secretary intends that this provision apply only to educational programs without terms that measure progress in credit hours.

Changes: The Secretary has added a clarification that § 668.4(b)(3) applies only to eligible programs that measure academic progress using credit hours.

Comments: Several commenters suggested that the proposed policy would affect the current refund provisions. One commenter stated that defining payment periods by completion of credit hours is in contradiction to the pro rata refund regulations that require refunds to be calculated based on the portion of the period of enrollment. Several commenters noted under this proposed policy, certain institutions would be required to make fewer, and therefore, larger disbursements; thus, students who withdraw early will owe greater repayments than if funds had been disbursed according to academic terms.

One institution objected to the universal payment period definition specifically because if the first payment period changes to the completion of the first half of the academic year, and the student leaves before the completion of the payment period, what the student would have received in grants will now come out of pocket.

One commenter stated that if the institution must use as a minimum 450 hours for a period of enrollment as a basis for charges, but can only disburse 289.5 hours worth of Federal Pell Grant funds, there may be a balance due which would be reflected as an unpaid scheduled cash payment for refund purposes.

Discussion: With regard to the general comment that the proposed payment period policy would affect refunds provisions, the Secretary notes that the requirements for disbursements of title IV aid are not related to title IV refund requirements. In response to the commenter who stated that refunds must be calculated based on the portion of the period of enrollment, the Secretary wishes to clarify that the refund calculation determines the unearned portion of the actual charges for the period of enrollment for which the student was charged. Although one commenter suggested a relationship to the amount of grants received and the refund calculation, the Secretary notes that the refund calculation does not determine the source from which an institution earns funds. Several commenters noted that the proposed payment period provisions would result in institutions making fewer, and therefore, larger disbursements; however, institutions are reminded that they are allowed to schedule smaller, more frequent, disbursements within a payment period, rather than making one disbursement per payment period. Finally, in response to the commenter who noted a possible discrepancy between the minimum number of clock hours that may be used as a basis for charges vs. the amount of Federal Pell Grant funds that may be disbursed, the Secretary notes that such a discrepancy may exist under the current disbursement rules and, therefore, is not a result of the proposed changes to the payment period requirements.

Changes: None.

Comments: Several commenters objected to the Secretary's proposal that, for a student enrolled in an eligible clock-hour program, the institution may include excused absences for up to 10 percent of the clock hours in the payment period in determining whether the student has completed the payment period, stating that this proposal dictates an attendance policy to clock-hour institutions. One commenter stated that mandating 10 percent of the clock hours in a payment period as the maximum excused absences an institution may include in determining whether the student has completed the payment period impinges on academic freedom and that the satisfactory academic progress regulations, as well as State and accrediting agency oversight, already address this area. This commenter noted that many colleges maintain no attendance requirements.

On the other hand, one student advocate organization generally supported the proposed regulation's policy regarding excused absences for clock-hour institutions. However, this commenter suggested lowering the percentage of excused absences that could be counted towards attendance from 10 percent to 5 percent, arguing that if these programs are meaningful, students should not be permitted to miss so many hours and still receive Federal aid.

Discussion: As stated in the preamble to the proposed rule, except where an accrediting agency or State licensing agency sets a more rigorous standard, the Secretary believes that excused absences of more than 10 percent of clock hours in a payment period would impair the educational attainment of the student and would not make the best use of Federal funds (60 FR 49879). This requirement is for purposes of title IV, HEA programs only and does not infringe on academic prerogatives of the institution. Institutions can adopt another policy for other purposes.

Changes: None.

Comments: Many commenters argued that, if the loan period is only one term, only one disbursement should be required. Several commenters stated that for a student using the loan for living expenses, getting the second disbursement halfway through the term does not adequately cover the student's financial needs. One institution suggested that if the Secretary cannot change the regulations for all institutions, the Secretary might establish eligibility criteria for certain institutions that would be allowed to make one disbursement in a single-term situation. One commenter pointed out that allowing for a single disbursement of a loan when the payment period is only one term would further align loan disbursement rules with Federal Pell Grant disbursement rules.

One experimental site institution that is exempt from the multiple disbursement requirements for single semester loans noted that it has received positive feedback from students regarding single disbursements for one term. This institution recognized that the multiple disbursement requirement is statutory and stated its support for efforts to remove this statutory requirement. Another experimental site institution that is exempt from multiple disbursement requirements for single-term loans asked for confirmation that the multiple disbursement requirement for single payment periods in these regulations will not affect the exemption for experimental site institutions.

Discussion: The Secretary reminds commenters that unless institutions have received waiver under the Experimental Sites Program (authorized under § 487A(d) of the HEA), the statute requires multiple disbursements of loan proceeds for single-term loans. See § 428G(a) of the HEA. These regulations do not affect the experimental site institutions that are exempt from this requirement. The Secretary will take into consideration the commenter recommendations in the context of HEA reauthorization.

Changes: None.

Comments: In proposed 34 CFR 682.604(c)(7)(ii), commenters suggested replacing the proposed phrase, ''academic coursework'' with the term ''credit hours'' because, the commenters stated, this phrase is more specific.

Discussion: The Secretary has used the phrase ''academic coursework'' rather than credit hours in 34 CFR 682.604(c)(7)(ii) and in 34 CFR 685.301(b)(5)(ii) for two reasons. First, this phrase provides institutions with flexibility to measure progress by other means than credit hours. If they choose to do so, they can make this determination based on credit hours completed; however, they can also use other measures such as lessons completed in those circumstances where the midpoint of a student's academic program does not coincide with the midpoint in credit hours earned. In addition, some institutions do not allow students to earn credits until the end of a program or academic year. Under this proposed provision, even if the institution does not award credit hours until the end of the program or academic year, the student could receive the second loan disbursement according to another measure of progress. Also this policy is consistent with the similar circumstances addressed in § 668.4(b)(3).

Changes: None.

Comments: Several institutions advocated allowing unequal loan disbursements, noting that while the proposed regulations provide that loans must be disbursed in equal installments, educational costs are often unequal across terms.

One institution currently addresses the problem of unequal costs by scheduling three disbursements for one type of loan (*e.g.*, subsidized) and two disbursements for another (*e.g.*, unsubsidized) for the same student and notes that this practice would not be permitted according to the proposed regulations.

Another institution noted that the Direct Loan software allows institutions to make unequal disbursements and argued that unequal disbursements also be permitted in the FFEL Program.

One institution expressed concern that the equal disbursement requirements would reduce the amount the student would receive in situations where at least one-half the loan period has elapsed prior to the first disbursement so that the first disbursement is combined with a subsequent disbursement.

Discussion: The Secretary notes that the statute requires equal disbursements of loan proceeds. See § 428G(c)(3) of the HEA. The Secretary will take into consideration allowing unequal disbursements in the context of HEA reauthorization. With regard to the comment from the institution that schedules subsidized and unsubsidized loan disbursements differently in order to meet the student's unequal costs, this practice goes against the statutory intent that all loans for a student be disbursed in equal installments. Similarly, the Secretary reminds Direct Loan institutions that, even though the software for the Direct Loan program does not reject unequal disbursements, the statute prohibits Direct Loan institutions from scheduling unequal disbursements.

Finally, with regard to the question of whether the equal disbursement requirements would reduce the amount the student would receive in situations where at least one-half the loan period has elapsed prior to the first disbursement, the Secretary assures the commenter that this provision does not reduce the amount the student would receive. For example, in a quarter situation where a disbursement is not made until after the start of the second quarter, the institution could combine the first and second disbursement in one transaction. Subsequently, the institution could disburse the final installment in the third quarter. In this situation, statute and regulations permit the combined first and second disbursements to exceed the amount of the final disbursement.

Changes: None.

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

Section 668.16 Standards of Administrative Capability

Electronic Processes (§ 668.16(o))

Comments: Most commenters supported the concept of moving to electronic processes in the delivery of title IV, HEA program assistance. Many commenters recognized and supported the need for institutions to use electronic processes in order to move to a Project EASI delivery system and encouraged the Secretary to use the best available electronic services. One association commenter stated that the Secretary must be aggressive with regard to institutions' capabilities to participate in information sharing via electronic means. Another commenter stated that mandating the use of electronic processes would enhance the level of student services at institutions. Another commenter supported this provision because the commenter believed it was essential to achieving Project EASI's goal of providing comprehensive, current student information.

Discussion: The Secretary very much appreciates, and thanks the financial aid community for, its support in moving to greater use of electronic processes and its contributions to developing and implementing Project EASI. The Secretary believes that, by working with the community in these areas, we will be able to improve services for students and institutions.

Changes: None.

Comments: Several commenters believed that the Secretary proposed to restrict institutions to using electronic services provided only by the Secretary. Some commenters were concerned that, while the preamble to the notice of proposed rulemaking indicated that an institution would be able to use software developed by the Secretary or software developed by the institution or its vendor, the proposed regulations only referenced electronic services provided by the Secretary. Other commenters were concerned that the proposed regulations would not allow an institution to be considered administratively capable if it participated in electronic services through an agency such as the Pennsylvania Higher Education Assistance Authority. Another commenter was concerned that an institution would be unable to comply with the proposed regulations through a third-party servicer. The commenters suggested that the Secretary should clarify this provision.

Discussion: As some of the commenters noted, it is not the Secretary's intent to restrict institutions to using only software and services provided by the Secretary. Nor is it the Secretary's intent to restrict the ability of institutions to comply with the requirement by employing third-party servicers. The Secretary agrees with the commenters that the provision needs clarification since it is his intent that institutions have the ability to participate in electronic processes such as electronic data exchange and the BBS, but that institutions should have available options to achieve compliance other than by using software or products that the Secretary provides.

Changes: The Secretary has revised the reference to ''electronic services'' in § 668.16(o) to refer instead to ''electronic processes.''

Comments: One commenter stated that the Federal Register notice announcing the electronic processes in which an institution must participate should address not only the electronic processes or functionalities an institution must be capable of performing but should include other information such as optimal system configurations and network configurations.

Discussion: The Secretary very much appreciates the commenter's concerns but does not believe that the addition of this information would be appropriate for publication in the Federal Register. The Secretary believes that it is more appropriate to include this type of information in the other publications that he provides that include such items as systems specifications and record layouts.

Changes: None.

Comments: Many commenters were concerned that the Secretary should provide institutions reasonable notice and timeframes to implement these processes. The commenters were concerned that some institutions may not immediately have the necessary resources to participate in electronic processes. The commenters believed that additional training of staff would be needed. One commenter suggested that notice was needed by December 1 prior to an award year. Another commenter also indicated that the Secretary should provide as much advanced notice as possible of the electronic processes which the Secretary expects to require over the next several years so that institutions may include these expectations in securing the necessary resources.

Discussion: The Secretary agrees with the commenters concern that institutions be provided advanced notice of electronic processes in which they are expected to participate. The Secretary expects to provide such notice as soon as the information is available. Under the current systems development cycles by award year, the Secretary expects to be able to provide notice before December 1 prior to the award year. To the extent it is possible to provide a notice covering subsequent award years, the Secretary will provide such notice.

With respect to training, the Secretary agrees that additional training is needed for institutional personnel and expects to announce shortly additional training opportunities that will be available in all 10 regional training facilities.

Changes: None.

Comments: Some commenters believed that the Secretary should use open networks such as the Internet to provide electronic interfaces rather than rely on the Title IV Wide Area Network. One commenter was concerned that security was not adequate on the Internet. Another commenter believed that it would be beneficial for all institutions to use the Title IV Wide Area Network but that it should be recommended, instead of being required, during the 1997–98 award year. Another commenter believed institutions should be expected to participate in the Title IV Wide Area Network, to receive Institutional Student Information Records (ISIRs), and to participate in the National Student Loan Data System. The commenter questioned whether the Student Financial Assistance Bulletin Board System (BBS) was duplicated in other forums.

Discussion: The Secretary is currently exploring issues related to the use of open systems like the Internet including such issues as security, authentication, and reliability. The Secretary's primary concern, however, is that institutions begin to use electronic processes for delivering title IV, HEA program assistance regardless of the network configurations that may be available to implement a particular electronic process. For example, the BBS is currently available through two electronic networks: the Title IV Wide Area Network and the Internet (the Internet address is: http://sfa.ed.gov). If the Secretary requires institutions to be able to access the BBS, using either electronic network would satisfy the requirement.

Comments: A few commenters proposed that the Secretary provide additional administrative cost allowances to allow institutions to meet the requirement to use electronic processes. One commenter was concerned that the proposed regulations were an unfunded mandate to the States. The commenter believed that the administrative cost allowance was not sufficient to cover the costs to institutions of using electronic services.

Discussion: The current administrative cost allowances are set by specific statutory authorizations and appropriations and the Secretary, therefore, is unable to provide a specific administrative cost allowance for funding institutions using electronic processes. The Secretary will take into consideration these comments while developing proposals in the context of HEA reauthorization.

The Secretary does not agree with the comment that these requirements are an unfunded mandate. Institutions are provided with administrative cost allowances to administer the title IV, HEA programs, and these funds may be used by the institution for funding institutional use of electronic processes that the Secretary does not expect to have significant cost implications.

Comments: Two commenters were concerned about the meaning of the phrase ‘‘at no substantial charge to the institution.’’ One commenter believed that the Secretary should absorb all the costs of the central processor's services.

Discussion: The Secretary considers an electronic process to be offered to an institution at no substantial charge if the process is provided for free or there are generally no additional charges for normal business activity. For example, an institution may make regular phone calls to a customer service office but, if an institution makes excessive phone calls, the Secretary believes it is appropriate to charge for use beyond that normally needed even though the Secretary is requiring institutions to use that process.

Changes: None.

Comments: One commenter questioned the benefit of using electronic processes and requested that institutions be able to receive exemptions from this requirement. Another commenter was concerned that the Secretary needed to develop an alternative, cost-effective option for small institutions.

Discussion: As the Secretary noted in the preamble discussion of this requirement in the proposed regulations, the Secretary believes that the use of electronic services by institutions is essential to achieving better services for students and institutions, the Project EASI goal of an integrated student aid delivery system for students and institutions, and necessary improvements in program accountability. As a result, the Secretary does not expect to provide for any alternative processes such as using paper documents. With respect to small institutions, the Secretary notes that a number of options are available to, and are currently being used by, small institutions. These institutions either are using the services and free products provided by the Department; or are using the products and services of private vendors, third-party servicers; or are using the Internet directly.

Changes: None.

Comments: One commenter opposed the proposed regulations because the commenter thought that institutions, that the commenter believed offered quality educational programs, would have difficulty meeting the requirement. Another commenter opposed the proposed regulations because the commenter believed that they would result in the elimination of all small institutions because they rely on Federal information.

Discussion: The Secretary recognizes that some institutions may have difficulty in meeting the requirement. The Secretary does not believe that it need result in the elimination of any small institutions because small institutions are already participating in electronic processes directly or are participating through third-party servicers.

Changes: None.

Comments: Two other commenters questioned whether an institution's electronic capabilities indicated that an institution was administratively capable.

Discussion: The Secretary believes that an institution's participation in electronic processes are essential to its demonstrating administrative capability. The Secretary believes that institutional use of electronics will result in business processes that improve service to, and reduce burden on, students and will result in improved institutional administration and accountability.

Changes: None.

Subpart K—Cash Management

Section 668.161 Scope and Purpose

Comments: One commenter, on behalf of student legal aid services organizations, supported the Secretary's stated goals with regard to the purpose of the cash management regulations, and specifically appreciated the incorporation of the goal to minimize costs that accrue to students under the title IV, HEA loan programs as proposed in § 668.161(a)(1)(iii).

One commenter on behalf of the lending community recommended that the Secretary clarify in regulations that the cash management rules under subpart K apply to a third-party servicer employed by the institution to distinguish between other third-party servicers employed by lenders and guaranty agencies.

A few commenters on behalf of the lending community expressed concerns about proposed § 668.161(a)(3)(iii) with regard to the use of the term ''disburse'' to mean the same as deliver loan proceeds under 34 CFR 682 of the FFEL Program regulations. These commenters were worried that the distinction between the terms ''disburse'' and ''deliver'' would be eliminated in the FFEL Program regulations. The commenters pointed out that under the FFEL Programs a lender or escrow agent is the disbursing agent who *disburses* the funds to the institution who, in turn, *delivers* the funds to the borrower and that the distinction is important in determining interest that accrues to the government and to borrowers. One commenter noted that current provisions regarding restricted interest arose out of Negotiated Rulemaking discussions. The commenter argued that the current definition of disbursement in the FFEL program regulations allows the lender to utilize a readily identifiable date for this purpose and that the definition should be retained under the FFEL Program regulations.

Several commenters writing on behalf of the lending community opined that because FFEL Program funds are provided by lenders, rather than the Secretary, and unlike other title IV, HEA programs those funds are private capital, FFEL Program funds are held in trust by the institutions for the student beneficiaries, the lenders and the Secretary, and the distinction should be noted in this section.

Discussion: The Secretary disagrees with the commenter who suggested that § 668.161(a)(2) be revised to distinguish between third-party servicers employed by institutions and other third-party servicers employed by lenders and guaranty agencies. The Student Assistance General Provisions regulations govern institutions and their third-party servicers. The rules that govern lenders, guaranty agencies and their third-party servicers are found in 34 CFR 682 of the FFEL Program regulations. Therefore, it is unnecessary to distinguish in these regulations that the third-party servicers affected are those employed by institutions.

With respect to the concerns raised regarding the use of the term ''disburse'' under subpart K to mean the same as ''deliver loan proceeds'' under the FFEL Program regulations, the Secretary wishes to clarify that this is not a change from current rules.

For the FFEL Programs, the Secretary is cognizant of the distinction made in the HEA between a ''disbursement'' by a lender and ''delivering the proceeds of the loan'' by an institution to a borrower. The definition of disburse under the FFEL Program regulations remains unchanged for purposes of determining interest due. As discussed previously in the cash management NPRM of September 29, 1994 (59 FR 49766–49773), the term disburse solely as used in subpart K, corresponds to the concept of delivery of proceeds under the FFEL Program regulations in order to prevent confusion by utilizing a single term for all title IV, HEA programs to which certain rules and timeframes under subpart K apply. In the most recent NPRM, the Secretary merely relocated the explanation from the definitions section, which was eliminated, to § 668.161, Scope and purpose. The Secretary will take into consideration this issue in the context of HEA reauthorization.

The Secretary agrees with those commenters who suggested that a distinction should be made between those funds provided by the Secretary and those funds provided by lenders and guaranty agencies for purposes of clarifying that an institution holds FFEL Program funds in trust and may not use those funds for any unintended or unauthorized purpose.

Changes: Section 668.161(b) is revised to clarify that FFEL Program funds are held in trust by an institution for the intended student beneficiaries, the lenders, the guaranty agencies, and the Secretary.

Comments: One commenter requested clarification concerning the applicability of the provisions of these regulations to State institutions in a State with an agreement between the State and the U.S. Department of the Treasury (Treasury) under the Cash Management Improvement Act of 1990 (CMIA). The commenter recommended that provision for the CMIA agreements be incorporated into these regulations.

Discussion: The Secretary agrees with the validity of the commenter's concern regarding the applicability of the provisions of these regulations to State institutions in a State with an agreement with the Treasury under the CMIA. Such an agreement is uniquely negotiated between the Treasury and the State and concerns requesting and transferring funds between a State and the Treasury. Further, a State's agreement with the Treasury is specific as to the federally funded programs that are covered. For these reasons the Secretary does not believe it is necessary or appropriate to incorporate specific references to CMIA agreements into these regulations.

Changes: None.

Section 668.162 Requesting Funds

Just-In-Time Payment Method (§ 668.162(c))

Comments: While most commenters understood and supported the Secretary's plans to transition the operations of the title IV, HEA programs into an integrated delivery system and to improve program accountability, many commenters expressed reservations about the implementation of the just-in-time payment method.

Their reservations primarily were due to their perceptions that there was a lack of specificity concerning operational features, concerns regarding potential expenses and reporting burden, issues such as the unpredictability of changes in student eligibility, and a belief that the Secretary was addressing issues of fraud and abuse that should be addressed through enforcement actions. Commenters were concerned about whether there would be adequate Department staff and resources to ensure that all requested funds would be sent to institutions within adequate timeframes. Some commenters recommended that the Secretary develop a pilot to provide adequate testing of the new payment method.

Commenters were also concerned that institutions would lose flexibility under this payment method as opposed to the advance payment method under which an institution may receive Federal funds without providing information on the students for whom the funds are intended. The commenters stated that financial aid offices are at their busiest just before the start of classes, and the commenters believed that they would be coping with an increase in reporting activity that would be time-consuming and staff-intensive. Other commenters were concerned that a student's funds might be held up due to processing problems; thus, the student would be forced to take out a short-term loan, to borrow from family or friends, or to withdraw from the institution.

Discussion: As the Secretary noted in the preamble to the NPRM, the just-in-time payment method is a core element to creating the Project EASI vision of a student-centered integrated student aid delivery system. Providing student-level information for one or more programs in a single process and using that same information to provide funds to institutions is the basis for reengineering the delivery system and reducing duplicative, uncoordinated, and unreconcilable systems. The Secretary believes that using a just-in-time payment method in a reengineered delivery system will result in improved business processes and better management of the title IV, HEA programs and will improved accountability at problem institutions. The Secretary recognizes and very much appreciates the concerns that the commenters have expressed. The Secretary believes that many of these concerns will be addressed in the design of the system that will support the just-in-time payment method. The Secretary understands that further work is needed on the development of the system before the system can be implemented, and the Secretary plans to further involve institutions and other participants in the Title IV, HEA Programs in the development of the system. In addition, when the system is further developed, the Secretary expects to use this payment method only at institutions that volunteer to participate in it. Moreover, the Secretary will permit those institutions to choose the particular Title IV, HEA programs to run under the just-in-time method. Thus, for example, an institution may volunteer to participate in the just-in-time method for the Pell Grant program only and continue to receive funds under the advance system of payment for the Direct Loan and campus-based programs.

Changes: None.

Section 668.163 Maintaining and Accounting for Funds

Comments: A number of commenters supported the Secretary's proposal to eliminate the requirement under § 682.207(b) that an institution maintain a separate bank account for FFEL Program funds. One commenter expressed concern that not requiring a separate account may provide an opportunity for institutions to abuse title IV, HEA program funds.

Discussion: The Secretary appreciates the commenters support of this proposal. The Secretary continues to believe that there is no longer any compelling reason to require a separate account for FFEL Program funds provided by EFT or master check. The Secretary further believes that, by requiring an institution to comply with the bank account notification requirements and the accounting and financial records prescribed in this section, he will greatly reduce the opportunity for institutions to abuse Federal funds.

Changes: None.

Section 668.164 Disbursing Funds

Definition, Disbursement

Comments: Several commenters requested that the Secretary clarify the discussion in the preamble that ''a disbursement occurs when an institution makes the benefits of title IV, HEA program funds constructively available to students.'' These commenters maintained that it is difficult, if not impossible, to determine the difference between funds made constructively available and bill preparation that includes crediting the student's account. The commenters argued that since institutions consider a student's title IV, HEA program awards as a payment toward tuition and fee charges, students realize the benefits of their title IV, HEA program awards when institutions allow them to enroll for and attend classes even though institutions have not yet received Federal funds for those awards.

A few other commenters suggested that the preamble discussion that ''the Secretary does not consider that a disbursement is made if, solely for the purpose of preparing a bill for a student, an institution must credit the student's account at the institution'' be codified in final regulations to avoid any misunderstanding between the preamble and the regulations.

Many commenters representing institutions and higher education associations objected to the provision that a title IV, HEA program disbursement occurs on the date that an institution credits a student's account or pays the student or parent directly with institutional funds used in advance of receiving title IV, HEA program funds. Some of these commenters regarded this provision as an intrusion in the way that institutions bill students and post payments to student accounts and questioned whether the Secretary has the authority to regulate the use of institutional funds in this manner. Other commenters believed that an institution should have a choice in determining whether to use institutional funds in advance of title IV, HEA program funds since the institution is solely liable for any funds advanced. In addition, the commenters stated that at many institutions tuition is generally billed and payable long before acceptable disbursement dates for title IV, HEA program purposes. At these institutions, students are not considered to be ''officially enrolled'' until tuition is paid in cash or by institutional credit, with such payments or credits occurring many months prior to the start of classes. Another commenter believed that the use of institutional funds to credit a student's account should not be held to the same requirements as a credit of actual title IV, HEA program funds. This commenter, along with other commenters, noted that in many cases the crediting of institutional funds is the result of a ''short-term loan'' from the institution to the student (*e.g.*, to enable the student to pay for off-campus housing) pending the institution's receipt of title IV, HEA program funds and the subsequent disbursement of those funds to the student. Still another commenter maintained that the ability to credit a student's account with institutional funds prior to the receipt of title IV, HEA program funds offers important administrative flexibility to institutions to manage workload and was adamant in stating that until title IV, HEA program funds are utilized no disbursement of any Federal funds has taken place. One commenter recommended that the Secretary include in the final regulations the exception to the definition of disbursement found in the preamble discussion of the proposed regulations concerning institutions that, in order to create a bill, must credit the student's account on the general ledger. The commenter was referring to the discussion in the preamble of the proposed regulations where the Secretary noted that he does not consider that a disbursement is made if, solely for the purpose of preparing a bill for a student, an institution must credit the student's account at the institution by making a general ledger entry.

Discussion: The Secretary appreciates the commenters' concerns regarding the proposed definition of ''disbursement'' and the apparent ambiguities surrounding that term both in the proposed regulation itself and in the preamble. The Secretary hopes to clarify that term in the following discussion and in a revision to the final regulations.

It is the Secretary's view that a disbursement of Title IV, HEA program funds occurs when an institution credits a student's account or pays a student directly, and indicates that the source of that payment is a Title IV, HEA program. Thus, if an institution credits a student's account at the institution with $1,200 and indicates on the account that the $1,200 credit is a

Federal Pell Grant award, the institution has made a Federal Pell Grant disbursement regardless of whether the institution used its own funds or federal funds for that credit.

On the other hand, if the institution simply makes a memo entry for billing purposes or credits a student's account and does not identify the credit as a credit for a title IV, HEA program, the Secretary considers that the institution did not make a Title IV, HEA program disbursement. For example, if the ledger entry calls the credit an ''estimated Federal Pell Grant,'' the Secretary does not consider the institution to have made a Federal Pell Grant disbursement. Consequently, it is the institution that controls whether a payment to a student is a Title IV, HEA program payment.

The Secretary understands that there are institutions that are required by State or local law to credit a student's tuition and fee account with Title IV, HEA program funds in order to send the student a tuition and fee bill. In addition the Secretary believes that there are other institutions that, because of accounting and billing systems constraints, also credit students' accounts in order to generate billing statements. These institutions may send these bills far in advance of the first date that an institution can disburse Title IV, HEA program funds under these rules. The Secretary further understands that these institutions credit a student's tuition and fee account with Title IV, HEA program funds but do not actually take Federal funds to satisfy these credits until they are permitted to do so under the cash management rules.

The Secretary has amended the definition of the term ''disbursement'' to accommodate these institutions. Under the amended definition, the Secretary will not recognize that a disbursement of Title IV, HEA program funds takes place until the first day that such a disbursement can take place, 10 days before the first day classes, or 30 days after the first day of classes for FFEL or Direct Loan proceeds for a first year first time borrower.

The Secretary acknowledges that some institutions may need to make administrative or systems changes to comply with these new requirements. Therefore, the Secretary may not take an adverse action against an institution that fails to satisfy the requirements during the 1997–98 award year if the Secretary determines that the institution had insufficient time to make the necessary changes.

Changes: The Secretary is revising the definition ''disbursement'' in § 668.164(a) to provide that if an institution credits a student's institutional account with title IV HEA program funds earlier permitted under the provisions of § 668.164 solely for the purpose of preparing a tuition and fee bill for that student, the Secretary will recognize that disbursement as being made on the first day that it would be permitted to be made under that section.

Direct Loan Disbursements (§ 668.164(d)(3))

Comments: Several commenters questioned the significance of the provision that requires that institutions disbursing Direct Loans to student accounts must first credit Direct Loan funds to the student's account to pay for outstanding current and authorized charges. These commenters asked why the Secretary does not require Federal Perkins Loan Program and FFEL Program loans disbursed to student accounts to be applied first to the student's account to cover outstanding current and authorized charges and suggested that the Secretary may be moving away from parity between the Direct Loan and FFEL programs.

Discussion: This provision is based on the statutory requirement that Direct Loans be applied to the student's account for tuition and fees, and in the case of institutionally owned housing, to room and board. See § 455(j)(1) of the HEA. This requirement does not result in any significant inequity between the FFEL and Direct Loan programs. Rather, this provision simply promotes the use of EFT to student accounts as a means of disbursing to borrowers. This statutory requirement only applies to schools that actually disburse funds directly to student accounts. Furthermore, this statutory requirement does not require that Direct Loan funds must be credited to the student's account prior to other funds, *i.e.*, grants and other loans. This provision simply requires that if there is any outstanding balance for current outstanding or authorized charges on the student's account when Direct Loan funds are disbursed to that account, Direct Loan funds must be applied to those outstanding charges before any Direct Loan funds are disbursed directly to the borrower.

Changes: None.

Early Disbursements (§ 668.164(f))

Comments: One commenter was concerned about the requirement that an institution may disburse title IV, HEA program funds on the later of 10 days before the first day of class or the end of the prior payment period in which the student received title IV, HEA program funds. The commenter believed that this requirement would delay disbursements until after classes would have started in instances where the time between payment periods is less than 10 days. The commenter believed, for example, that if only seven days separated two quarters, the disbursement for the second payment period would be delayed until the third day of classes in the second quarter.

Two other commenters were concerned that the requirements were a change from current requirements for educational programs using academic terms and credit hours. For these educational programs, the commenters understood the current requirements to allow an institution to make a disbursement up to 10 days prior to the subsequent term. For example, one of these commenters noted that, when one term ends on Friday and the next term begins on a Monday, the current regulations (34 CFR 668.165(c)) provide that an institution may make a disbursement up to 10 days prior to the Monday on which the subsequent term begins.

Discussion: In general, under proposed § 668.164(f), an institution would be able to disburse funds for a subsequent payment period the later of (1) 10 days before the first day of classes of the payment period, or (2) the date the student completes the previous payment period for which he or she receives title IV, HEA program funds. Under the proposed regulations, in the first commenter's example, the institution would be able to make a disbursement for the second quarter up to seven days prior to the beginning of the second quarter instead of three days into the second quarter as the commenter believed.

The Secretary agrees with the comments of the other two commenters that the proposed regulations would be a change in the requirements. The Secretary intended to coordinate the requirements for early disbursements with the implementation of the disbursement of all title IV, HEA assistance by payment periods. The Secretary did not intend to change the current policy for educational programs offered using semesters, trimesters, or quarters that allows an institution to disburse title IV, HEA assistance up to 10 days prior to the beginning of a payment period regardless of the ending date of the prior payment period.

Changes: The Secretary has revised the requirements in § 668.164(f) to provide that, in the case of an educational program offered using semesters, trimesters, or quarters, an institution may disburse title IV, HEA program assistance up to 10 days prior to the beginning of any payment period.

This revision is also in accordance with the disbursement requirements for the FFEL and Direct Loan programs for educational programs that do not use semesters, trimesters or quarters.

Late Disbursements (§ 668.164(g))

Comments: Several commenters expressed support for the proposal to consolidate the late disbursement requirements into the cash management subpart of the regulations. They believed that this proposal would promote clarity and that the uniformity will enhance program efficiency.

One commenter believed that a conflict has been created in the Secretary's effort to consolidate the Federal Pell Grant Program rules with the other title IV, HEA program's late disbursement rules in § 668.164(g). The commenter stated that the proposed provision in paragraph (g)(2) gives an institution discretion to make late disbursement payments to a student for up to 90 days after the student's last date of attendance to pay for educational costs that the student incurred while enrolled. The commenter stated that § 690.78 of the current Federal Pell Grant regulations *requires* the institution to disburse funds to a student if the student requests those funds within 15 days after the last date of his or her enrollment ends in the award year. If the student has not picked up the payment at the end of the 15-day period, then he or she forfeits the right to it. However, an institution could use its discretion to disburse Federal Pell Grant funds after the 15th day.

Discussion: The Secretary appreciates the commenters' support for the proposal to consolidate the late disbursement provisions into the cash management subpart of the regulations.

The Secretary does not agree with the commenter that there is a conflict between the provisions of § 690.78 and the proposed rule in § 668.164(g) because they each deal with a different matter. Section 690.78 deals with the situation where an institution pays an eligible student by check but the student does not pick up the check. That section indicates that the student forfeits his or her right to the check after a certain time. Section 668.164(g)(2) deals with the situation where a student becomes ineligible before the institution makes a payment to that student and the circumstances under which the institution can make that payment anyway.

Changes: None.

Comments: One commenter representing a guaranty agency objected to the proposal that in order to make a late payment of an FFEL Program loan, before the date the student became ineligible, an institution must have received a SAR from the student or an ISIR from the Secretary, and must have been certified the student's loan application. The commenter indicated that this proposal would penalize students due to the institution's failure or inability to drawdown ISIRs before a student became ineligible. The commenter believed that if the student is otherwise eligible and the institution draws down (or obtains) the student's ISIR or SAR prior to the disbursement of funds, the institution should be able to deliver the loan to the student. The same commenter also indicated that the certification of a loan application after the date on which the borrower becomes ineligible does not impact program integrity since the institution would still be required to certify a cost of attendance which only covers costs incurred by the student during the period when the student was eligible.

One commenter questioned why there are different proposed rules for loans and grants. The commenter objected to the proposal that disbursement of loans may only be made if the student has graduated or completed the loan period, while grant payments may be made regardless of the student's status. The commenter believes that the loan provisions should match the late disbursement provisions for Federal Pell Grants.

Discussion: Under the FFEL Programs, the HEA requires that an institution certify that a student is an eligible student at the time it certifies the student's loan application. Therefore, the commenter's suggestion is not legally supportable. In addition, the Secretary believes that in order for an institution to make a late disbursement to an ineligible student, that student must meet a core requirement: he or she must have applied for those funds and the institution must received an ISIR or an SAR with an official EFC before he or she became ineligible.

The Secretary also disagrees with the commenter who believes the late disbursement provisions should be identical for loans and Federal Pell Grants. Under the HEA, an institution is prohibited from making a late second disbursement of a Direct Loan or FFEL loan unless the student had graduated or successfully completed the period of enrollment for which the loan was intended. No legal restriction applies to grants.

Changes: None.

Comments: Several commenters objected to the proposed requirement that would make a written acceptance of a Federal Perkins Loan or an FSEOG Program award from a student a condition for making a late disbursement. The commenters noted that the Federal Perkins Loan and FSEOG Program regulations do not require signed acceptance letters. The commenters view this proposal, therefore, as unnecessarily burdensome.

Several commenters writing on behalf of guaranty agencies, student loan servicers, and education associations believed that in paragraph (g)(3) the proposed language, ''If a *student* qualifies for a late disbursement . . .'', should be changed to read, ''If a *borrower* qualifies for a late disbursement . . .''. The commenters stated that the current proposed language using the word ''student'' restricts the approval of late disbursements to student borrowers, and fails to account for PLUS loans made to parent borrowers who are eligible to receive a late disbursement.

Discussion: The Secretary agrees with the commenter's objections regarding late disbursements of a Federal Perkins Loan or an FSEOG Program award and has made appropriate changes.

The Secretary also agrees with the commenters that the proposed regulations restrict the approval of late disbursements to student borrowers and fails to account for PLUS loans made to parent borrowers, and will revise the section accordingly.

Changes: The Secretary revises paragraph (g) to remove the proposed provision that would require an institution to have received from the student an acceptance of the Federal Perkins Loan or an FSEOG Program award before making a late disbursement. Instead the institution will merely have to show that it awarded a student a loan or grant before the student became ineligible.

The Secretary also revises paragraph (g) to allow for PLUS loans to be disbursed under these same late disbursement provisions.

Comments: One commenter writing on behalf of a consumer law center objected to the Secretary's discussion of documented educational costs that student's incur before they become ineligible. The commenter believed that the preamble statement leaves the impression that the Department is creating a lesser standard of proof for institutional charges. The commenter believed that this would permit institutions to charge students with improper and inflated costs. For example, the commenter was concerned that the preamble discussion would allow an institution to charge students who have withdrawn after just two weeks for *all* the term's books and supplies regardless of whether the student received them or returned them. According to the commenter, inflated add-on expenses have been a serious problem area with some institutions, particularly those that require high-cost supplies and that have their own book distribution and even publishing companies. The commenter further questioned whether the Department intends to sanction such overcharges. The commenter suggested that the preamble of the final regulations specify that the individual student's alleged costs must be documented, and that any policy the institution develops must be based solely on books or supplies *actually received* by the student and not returned to the institution. The commenter concluded by suggesting that the preamble of the final regulations specify that such policies developed by the institution must comply with pertinent State law, if any, on the issue of permissible charges to students.

Discussion: The Secretary believes that the commenter misconstrued the intent and effect of the Secretary's preamble discussion on this matter. The Secretary sought only to expand the means by which an institution might account for educational costs without the added burden of requiring each student to keep a detailed expenditure account. The preamble discussion did not address what the commenter was concerned about, improper and inflated institutional charges.

It was not the Secretary's intent for that this discussion appear to sanction unscrupulous practices. With regard to the commenters suggestion that the preamble should state that institutional policies on permissible charges to students must comply with State law since the Secretary assumes that institutions must comply with applicable State laws at all times.

Changes: None.

Comments: Many commenters writing on behalf of loan servicers, guaranty agencies, education associations, and business officers overwhelmingly supported the 90-day timeframe for making a late disbursement after the date a student becomes ineligible. However, these commenters were concerned about conflicting policies, such as the 60-day late disbursement timeframe in the current FFEL Program regulations. The same commenters indicated that since funds are *disbursed* by the lender and *delivered* by the institution, in some instances, especially with check disbursements, a lender may meet the 90-day *disbursement* requirement but the institution could not deliver the proceeds to the student borrower within the 90-day timeframe. These commenters concluded by suggesting that the provision be revised to reflect that late disbursements may be delivered by the institution provided the lender disburses funds, or the institution draws down funds, within 90 days after the date the student becomes ineligible.

Discussion: The Secretary agrees with the commenters that the 90-day late disbursement timeframe should coincide with the current FFEL Program regulations, and that corresponding changes are needed to remove conflicting policies referenced in those regulations. Section 668.164(g) provides that if a student is eligible for a late disbursement, the institution is permitted to make the late disbursement within 90 days after the date the student becomes ineligible. Contrary to the suggestion of the commenters, the Secretary requires that the delivery of the FFEL Program loan proceeds to the student (or parent) by the institution must be made within this 90 day period. Therefore, a lender would have to make a disbursement to the school that would provide sufficient time for the school to comply with this requirement.

Changes: The Secretary revises the late disbursement provisions found in 34 CFR 682.207 of the FFEL Program regulations to conform to the changes in § 668.164(g).

Section 668.165 Notices and Authorizations

Award Notice (§ 668.165(a)(1))

Comments: One commenter, writing on behalf of student legal aid services organizations, strongly supported the proposed requirement concerning notification by the institution of the amount of funds a student could expect to receive under each title IV, HEA program and how and when those funds would be disbursed. The commenter also supported the proposal that, if those funds include Direct Loan or FFEL Program funds, the notification indicate the amounts of subsidized loans and the amount of unsubsidized loans. The commenter further noted that there is apparently a proposal under review to eliminate a question on the FFEL loan application that provides the applicant with the opportunity to indicate whether he or she wishes to apply for a subsidized or an unsubsidized loan. The commenter cautioned that the notice requirement in § 668.165(a) should not be used as a reason to eliminate that question on the application.

A couple of commenters suggested that the notification requirement regarding the amount of subsidized and unsubsidized loans duplicates information provided by lenders.

Discussion: The Secretary would like to emphasize that the notice requirement regarding the amount of subsidized and unsubsidized loans is not intended to eliminate a borrower's right to choose whether to apply for a subsidized or unsubsidized loan. As to the commenters suggestion that this notice requirement may duplicate information otherwise provided by lenders, the Secretary believes that it is useful for an institution to provide a student with his or her total aid package even though some of the information provided to the student might be also provided by others at other times.

Changes: None.

Comments: One commenter was concerned that the institution may not have definitive information regarding the amount and types of loans that will be disbursed until the lender issues a disclosure notice. In addition, the commenter cautioned that while institutions indicate when a disbursement should be made, sometimes lenders do not adhere to these dates, and students expect that whatever dates are given to them are sacrosanct.

Another commenter, writing on behalf of the lending community, suggested that this section be revised further to state that if the amount of loan funds or subsidy type (*i.e.*, subsidized or unsubsidized) changes after the institution's initial notification, the institution or its agent must notify the borrower within 30 days after the change.

Discussion: With respect to the comment that the institution may not have definitive information regarding the amount and types of loans that will be disbursed, the Secretary reminds institutions that they are responsible for certifying, and thus requesting from the lender, a specific type and amount of loan, or in the case of a Direct Loan of originating a specific type and amount. However, the Secretary understands that in some limited number of instances, the lender may reduce the certified amount of the loan as a result of a borrower's request or enforcement edits. The Secretary also understands that the actual disbursement received from the lender might differ slightly from what the institution expected because of loan fees and rounding differences. Thus, the Secretary allows the information provided in this notice to include the gross amount of the loan disbursement or a close approximation of the net disbursement amount. The Secretary considers that an institution meets the notice requirement if it provided the best information it had.

With regard to the comment that some lenders do not adhere to the disbursement dates requested by the institution, the Secretary reminds both institutions and lenders that the FFEL Program regulations require the lender to comply with the disbursement dates provided by the institution, assuming that the requested dates meet all statutory and regulatory requirements.

With respect to the suggestion that the notice requirement be expanded to require an institution or its agent to notify a borrower within 30 days regarding loan changes, the Secretary believes that it is not necessary to proscribe specific timeframes for either the initial notice or any required revisions.

Changes: None.

Comments: A few commenters agreed with the proposal to notify students about PLUS funds. One commenter expressed concern about the violation of the privacy of a parent borrower under the PLUS programs when the notice is sent to the student.

Discussion: The Secretary believes that the student should be informed of all title IV, HEA aid awarded to, or on their behalf. The Secretary believes that right outweighs any privacy right a parent may have with regard to a PLUS loan.

Changes: None.

Disbursement Notice (§ 668.165(a)(2))

Comments: Many commenters writing on behalf of business officers and financial aid administrators disagreed with the proposed changes in the notification requirements regarding the disbursement of Direct Loan, Federal Perkins Loan Program, or FFEL Program funds that are provided *via* EFT or master check. Several commenters disagreed that any such notification should be required of institutions. These commenters argued that student and parent borrowers are notified of loan amounts, estimated disbursement dates, and their rights and responsibilities, including those regarding the cancellation of loans, several times during the application process by the institution, lenders, guaranty agencies, or the Secretary. Many commenters felt that adequate information was already provided to borrowers through award letters, loan counseling, debt reduction efforts on behalf of the institution, and other required notifications such as on the promissory note and in terms and conditions publications.

A few commenters suggested that if additional information regarding students' and parents' loan disbursements, rights, and responsibilities needs to be disclosed to borrowers, the information should be provided by lenders, included on the promissory notes, or in other consumer disclosure notices already required. One commenter suggested the notification be added to the award notice under paragraph (a)(1) of this section. The commenters indicated that another notice would be administratively burdensome, costly, and unnecessarily confusing to students and parents. One commenter thought that the proposal was contrary to President Clinton's directive to Federal agencies to reduce regulatory and paperwork burden.

Discussion: The Secretary appreciates the detailed comments submitted by all parties regarding the requirement that an institution notify a student or parent borrower of the date and amount of Direct Loan, FFEL, and Federal Perkins loan funds that are disbursed by crediting the student's account at the institution. The Secretary considers the initiation of an EFT of title IV, HEA program loan funds to a student's or parent's bank account and the subsequent withdrawal of funds from that account to pay for tuition and fees or other authorized charges, to be the same as directly crediting the student's account at the institution and therefore subject to these notification requirements.

The Secretary wishes to emphasize that this notice requirement is not new but is a continuation of existing requirements. The provision reflects the Secretary's continuing view that a borrower is entitled to be informed when his or her title IV loan funds are being used by the institution to pay institutional charges thereby generally making the borrower liable for those loan funds.

Changes: None.

Comments: Several commenters specifically opposed allowing a student or parent to cancel a loan that had been disbursed, citing increased administrative burden and inconvenience. Two commenters argued that the cancellation notice is unnecessary, because an EFT already requires an authorization and therefore, a borrower's right to have funds delivered by check is protected, and the current rules already require a notice to the borrower that loan funds have been credited to his or her account. The commenters contended that the proposed rule was designed to undermine the premise by which the loan was requested. A few commenters suggested that students and parents would ‘‘game’’ the system and misuse the federal loan programs as cash flow assistance or short-term bridge loans pending receipt of other funds with which they intend to pay their tuition, fees, room and board.

Discussion: The Secretary believes that regardless of the manner in which a loan is provided to an institution, and regardless of the way the institution chooses to disburse that loan, the borrower should have the opportunity to decline that loan at, or close to, the time the funds are disbursed and the debt incurred. Since a borrower has this opportunity if loans are disbursed in the form of checks, the Secretary believes an alternative option should be available for EFT and master check disbursements. The Secretary believes that the borrower's authorization of an EFT transfer takes place too early in the loan process to satisfy this consideration.

The Secretary disagrees with the commenters who suggested that this requirement would be overly burdensome. The Secretary developed this requirement with the existing notice system in mind. As a result, an institution can piggyback on other required notices, it does not have to send a separate notice. This matter is further discussed under another series of comments.

With respect to the commenters who suggested that the notification will lead to students and parents ‘‘gaming’’ the system and using Federal funds as cash flow assistance, the Secretary disagrees that the required notification will in any way influence whether a student or parent would act in such a manner.

Changes: None.

Comments: Many commenters supported the notification requirement. A handful of commenters indicated that their institutions grant cancellation requests of a student or parent request even after the loan has been disbursed. Several commenters writing on behalf of the lending community expressed support of the cancellation provision likening it to a ‘‘right of recession’’ period provided for under other consumer loans.

Some commenters writing on behalf of financial aid administrators expressed concern regarding how the cancellation provisions would affect the requirement that a title IV, HEA credit balance must be paid within 14 days after the first day of classes or within 14 days after the date on which the credit balance occurs, whichever is later. The commenters thought there would be a conflict between the 14-day credit balance rule and the 14-day loan cancellation provision and that institutions would be required to cancel a loan or loan disbursement by returning institutional funds to cover a loan when all or a portion of the loan was already paid to the student or parent. The commenters concluded that the institution would have to then bill the student or parent for those funds.

A few commenters writing on behalf of financial aid administrators were concerned about how the 14-day cancellation provision would affect institutional refunds as required under § 668.22. One commenter contended that the cancellation provision ignored an institution's right to retain title IV, HEA program funds earned by the institution under refund regulations. This commenter argued that if a borrower decided to withdraw and cancel a loan, the institution may be denied that portion of the loan to which it may be entitled under its refund policy. It would then be required to bill the student for the unpaid amount of the tuition and fees to which the institution was entitled.

Discussion: The Secretary appreciates the support of the commenters for this provision.

The Secretary disagrees with the commenters regarding any conflict between the loan cancellation provisions and the credit balance provisions. When a borrower exercises his or her right to request the cancellation of a loan or loan disbursement, the borrower can only request that the institution cancel and return to the lender those loan funds that the institution used to pay institutional charges or is still holding on behalf of the borrower. Thus, if an institution released title IV, HEA program loan funds to the student or parent as part of a credit balance and then received a request to cancel the loan, it would not be required to return those funds previously released to the student or parent.

The Secretary agrees with the commenters who pointed out that the cancellation provisions may have an impact on an institutional refund under § 668.22. The Secretary reminds the commenters that the refund requirements determine the unearned portion of the actual charges for the period of enrollment for which a student has been charged, not the source from which the institution earns funds. The determination of the amount of aid received by, or on behalf of, the student takes place before a refund is calculated. If students or parents avail themselves of the cancellation provision, a refund calculation may reflect greater unpaid charges than would have existed if the loan had not been cancelled. The Secretary points out that, contrary to the commenter's assertion, there is no "portion of the loan to which it (the institution) may be entitled under its refund policy" when a student withdraws.

The institution, after returning the requested loan funds to the lender, would simply calculate the refund without consideration of the cancelled loan, much as it would do if the loan had never been disbursed or the student refused to accept a late disbursement. Any time a refund calculation establishes unpaid charges to which the institution is entitled that have not been paid by another source, the institution may bill the student for the unpaid amount. The Secretary assumes that the student who requested the loan cancellation understood the implications of that request and its impact on remaining debt to the institution.

Changes: None.

Comments: A commenter writing on behalf of student legal services organizations supported the cancellation provision but suggested that the Secretary include language in the regulations that allows a student or parent to refuse a loan or loan disbursement in whole or in part. A significant number of the commenters agreed with the Secretary that student and parent borrowers should be informed of their rights to cancel a loan or loan disbursement, but disagreed with the proposed timeframe within which the institution would be required to notify the student or parent borrower. The commenters said the timeframe was too short, and in many cases would require a completely separate notice to be sent out by the institution. Most commenters suggested that the timeframe be extended from the 20-day window between 10 days before the disbursement and 10 days after the disbursement, to a timeframe that allows for the notice to be easily included in monthly statements already prepared and issued by the institutions. These commenters cited increased administrative burden and the cost of systemic changes for an additional notice, which would ultimately be passed on to the students, as reasons to extend the timeframe. Other commenters contended that such a narrow timeframe in combination with the few number of students or parents who would take advantage of the cancellation provision would increase administrative burden on the institutions without providing much, if any, additional benefit.

A few commenters were concerned that due to the proposed changes in the definition of disbursement under § 668.164, the 10-day timeframe on either side of the disbursement would be difficult to determine. One commenter suggested that the beginning date of the notification timeframe be pushed back at least to 15 days prior to the first day of a payment period to allow a cancellation to be made before the institution might need to process a refund. At least one commenter suggested that there be no required timeframe; that the institution be provided flexibility in determining when to notify students and parents.

Discussion: The Secretary agrees with the commenter that a borrower should be allowed to cancel all or a portion of his or her loan. With regard to the number of thoughtful comments provided concerning the timeframes proposed for the notification by the institution to the borrower, the Secretary is persuaded that a change is necessary. Therefore, the Secretary is expanding the timeframe from a 20-day window to a 60-day window. Institutions will be required to provide the notice to the borrower by the institution no earlier than 30 days before the disbursement of the loan funds and no later than 30 days after the disbursement. The Secretary believes that this 60-day window will provide sufficient flexibility for institutions to utilize existing systems and processes to provide information to borrowers that a loan debt has been, or is about to be incurred and of the right of the borrower to request that the debt be cancelled.

However, in order to ensure that the borrower has sufficient time to exercise his or her cancellation rights, the Secretary is also modifying the proposed timeframe placed on the borrower with regard to how quickly he or she must notify the institution of the request to cancel all or a part of the loan. The institution must honor such a request from the borrower if it is received by the institution no later than 14 calendar days from the day the institution sent the notice to the borrower, or the first day of classes for the student, whichever is later. This extension up to the first day of classes will allow the borrower who receives the required notice 30 or 40 days before the beginning of classes (early disbursement allowed 10 days before the first day of classes of a payment period) the opportunity to consider other funding options and request the cancellation before incurring the obligation.

The Secretary notes that an institution is free to agree to a borrower's request for loan cancellation after the timeframe established by this rule.

Changes: The notice requirements in § 668.165(a)(2)(ii) are amended to allow a student or parent to cancel all or a portion of a loan or loan disbursement. The timeframe under § 668.165(a)(3)(i) is amended to allow the institution to provide the required notice no earlier than 30 days before, and no later than 30 days after, the date the institution has disbursed, or will disburse loan funds. The timeframe during which a student or parent may request a loan cancellation is amended to provide that the student or parent has a minimum of 14 days from the date the notice was sent by the institution to request a cancellation. If the notice is sent out prior to the first day of classes the student or parent has 14 days or until the first day of classes to request a cancellation, whichever is longer.

Comments: A few commenters wondered how this cancellation provision would affect the rule that borrowers can have a loan cancelled within 120 days of the disbursement if the net amount (minus the guarantee and insurance fees) of the loan is returned, and prepaid after 120 days if the gross amount of the loan is returned (including the guarantee and insurance fees).

A few commenters indicated that if the notice in § 668.165(a)(2) is provided electronically the institution should not be required to request receipt of that notice. One commenter expressed doubt that such an electronic notification could realistically be provided for the majority of students and parents. The commenter contended that because this opportunity could not be utilized by many institutions, that the overall result is increased administrative burden on institutions. The commenter urged the Secretary to retain the current notification requirements.

Discussion: The 14-day cancellation provision does not eliminate or change the provisions that allow a borrower to return the net amount of an FFEL or Direct Loan program loan within 120 days or the gross amount of the loan after 120 days.

The Secretary does not believe that because some institutions do not have the capability to notify students or parents electronically that other institutions should be prohibited from utilizing electronic means of notification. In addition, the Secretary continues to believe that a ''return receipt'' for notices sent electronically is necessary in order to ensure that the electronic notification has been properly transmitted.

Changes: None.

Comments: A commenter writing on behalf of student legal services organizations suggested that the 14-day timeframe allowed for the borrower to request cancellation of the loan be from the date the notice is received by the student or parent rather than on the date the notice was sent by the institution. The commenter also suggested that the Secretary expand the timeframe within which a student or parent has to request a loan or loan disbursement cancellation to at least 60 days from receipt of the notice. The commenter noted that this period would parallel the Federal Fair Credit Billing Act, (15 U.S.C. 1666), which is part of the Consumer Protection Credit Act and provides credit card consumers with 60 days from the receipt of a credit card bill to dispute a charge. Under that Act the creditor must acknowledge a complaint within 30 days, and within 90 days either correct the error or explain why it cannot be corrected. The commenter argued that giving the borrower adequate time from receipt of the notice within which to ascertain whether or not a loan is truly necessary will foster sound borrowing practices and ultimately reduce loan defaults.

Discussion: The Secretary chose to make the timeframe run from the date of the institution's notice rather than from the date the student received the notice to avoid having the institution incur the cost and burden of sending such a notice return receipt requested. The Secretary continues to believe that the cost and burden is to great and the benefit to small to change that procedure. On the other hand, when the Secretary was considering these timeframes, the Secretary allowed for the relatively long timeframe of 14 days to take into account that the time period ran from the date of the notice rather than the date the borrower received the notice. In the event of a dispute, the institution would bear the burden of proving when it sent the questioned notice.

With regard to the reference to consumer credit, the Secretary points out that, unlike the consumer credit example cited, the purpose of this notice and cancellation provision is to acknowledge the fact that student loan debt is incurred, not when the promissory note is signed, but when the institution disburses the loan. These proposals are not designed to allow the student to ''test'' the product and then to make a determination that it is faulty and request that the debt be cancelled.

Changes: None.

Comments: Commenters writing on behalf of financial aid administrators believed that the institution should be able to let the borrower know of the possible impact of cancellation at the time the institution notifies the student or parent of his or her right to cancel a loan or loan disbursement.

Discussion: The Secretary agrees and encourages institutions to keep their students well-informed. However, the Secretary reminds institutions that they must not, in their attempt to provide this information, imply that the loan or loan disbursement cannot be cancelled if the cancellation leaves a balance owed to the school.

Changes: None.

Student and Parent Authorizations (§ 668.165(b)(1))

Comments: One commenter, writing on behalf of student legal aid services organization, asked for clarification of whether a student must have a title IV, HEA credit balance in order to take advantage of the authorization provisions in § 668.165(b)(1)(iii). The commenter also disagreed with the proposal to remove the current restriction prohibiting an institution that fails to meet the financial responsibility requirements from holding a student's or parent's title IV, HEA credit balance funds, and the proposal to remove the language stating that an institution, in holding title IV, HEA program funds, is acting as a fiduciary for the benefit of the student or parent. The commenter suggested that a paragraph be added to the regulations that prohibits institutions placed on reimbursement from obtaining student or parent authorizations, and further suggested that the Secretary retains the authority to prohibit institutions from holding student's or parent's title IV, HEA funds upon a determination of demonstrated weakness in administrative or financial capability.

Discussion: In response to the commenter's question, the Secretary wishes to make clear that a student or parent must have a title IV, HEA credit balance under § 668.164(e) in order to take advantage of the authorization provisions under § 668.165(b)(1)(iii).

The Secretary agrees in part with the commenter who suggested that the Secretary prohibit an institution on the reimbursement payment method from obtaining authorizations to hold a student's or parent's title IV, HEA program funds. The Secretary believes that a fixed rule may not be warranted under all circumstances. If the Secretary determines that there is demonstrated weakness in administrative or financial capability at an institution, the Secretary will take appropriate administrative action against the institution which may include preventing it from obtaining student and parent authorizations under § 668.165.

With regard to the request by the commenter that the regulations in this section include a statement stating that the institution acts as a fiduciary for the benefit of the student or parent, the commenter is referred to § 668.161(b).

Changes: Section 668.165(b)(1)(iii) has been amended to give the Secretary discretion to prohibit institutions that have been placed on the reimbursement payment method by the Secretary from holding student funds in excess of allowable charges.

Comments: A few commenters questioned the necessity of a written authorization from the student, or parent in the case of PLUS funds. These commenters also questioned the necessity of obtaining written authorizations to use title IV, HEA program funds to pay prior-year charges, charges not included in the cost of attendance, and even future charges. One commenter contended that students and parents should be allowed to authorize the use of title IV, HEA credit balance funds for future charges because the funds, especially loan funds, are the student's or parent's which they must repay. The commenter argued that there is no logic to the practice of letting credit balance funds be used for prior-year charges but not for future-year costs. One commenter argued that students already sign a statement saying they will use aid for educational purposes. The same commenter questioned why an institution would want to pay a student credit balance funds when the student owes a debt to the institution from a previous year or for other charges. The commenter contended that this requirement causes more work for the institutions, confusion to students and parents, and results in no positive benefits to anyone.

Discussion: The Secretary continues to believe that any student or parent authorization under this section must be in writing. A student or parent should have control over the title IV, HEA program funds he or she receives for educational costs in excess of tuition and fees, and the Secretary believes that demonstration of that control must be documented. The Secretary notes that title IV, HEA program funds in excess of current-year tuition and fee charges are the students' funds and students are entitled to receive those funds within the specified timeframe.

With regard to comments concerning the use of current year funds to pay for prior-year charges or for future year charges, the HEA clearly indicates that title IV, HEA program funds are awarded to students to pay current year charges. In fact, the HEA requires that the student sign a ''Statement of Educational Purpose'' that includes a promise that any funds received will be used to meet educational expenses for that year. However, in response to institutional comments about the administrative problems of lingering prior-year charges on student accounts, the Secretary has authorized a limited exception and permits title IV, HEA program funds to be used to cover minor prior-year charges, if the institution had obtained the written authorization of the student to use those funds in that manner. There is no similar justification for extending this exception to future years and therefore this limited exception will not be extended into any future year. Therefore, an institution must release to the student any current year title IV funds remaining in the student's account at the end of an award year (or loan period).

Changes: None.

Single Authorization Throughout Period During Which a Student is Enrolled at the Institution (§ 668.165(b)(3))

Comments: Several commenters writing on behalf of financial aid administrators and the lending community supported the Secretary's proposal to eliminate the requirement that an institution must notify a student or parent annually of the provisions contained in an authorization previously provided to the institution. The commenters appreciated the reduction in administrative burden placed on institutions. One commenter supported the Secretary's efforts to identify areas where regulatory relief can be granted and urged the Secretary to continue these efforts. A few commenters suggested that this single authorization for the entire period during which a student is enrolled at the institution be extended to EFT authorizations.

One commenter on behalf of student legal aid services organizations opposed the removal of the requirement for annual authorizations and the annual extension procedures. The commenter indicated that keeping the current system was important since cancellations or modifications are not retroactive. The commenter argued that an annual notice advising students of their right to directly receive title IV, HEA credit balance funds is of minimal burden to institutions and is an important piece of consumer information for students.

Discussion: The Secretary appreciates the commenters' support of the proposal to eliminate an annual notice outlining authorizations previously provided to the institution.

With regard to the commenters opposition to these changes, the Secretary wishes to remind institutions that the initial authorization provided by the student must clearly and conspicuously provide the student with information about his or her right to cancel or modify the authorization at any time, as well as the implications of each of the authorized actions.

The Secretary will consider in the future the commenters' suggestion that a single authorization be provided for EFT transactions.

Changes: None.

Cancellation of a Student or Parent Authorization (§ 668.165(b)(4))

Comments: One commenter thought an institution should pay credit balances three days rather than 14 days after the institution receives a notice that a student or parent is cancelling an authorization to hold title IV, HEA program funds.

Discussion: The Secretary appreciates the commenter's position that title IV, HEA program funds should be paid timely. However, the Secretary continues to believe that the 14-day timeframe strikes a balance between institutions with check-writing authority that may issue a check upon demand, and institutions that cannot provide these funds as quickly because they must rely on a central office or State agency to issue a check.

Changes: None.

Payment of Funds Authorized to be Held on Account at the Institution (§ 668.165(b)(5))

Comments: Several commenters disagreed with the Secretary's proposal to require an institution to pay any remaining balance on loan funds by the end of the loan period for which those funds were intended, and to pay any remaining balance on any other title IV, HEA program funds by the end of the last payment period in the award year for which those funds were intended, notwithstanding any authorization obtained by the institution. One commenter writing on behalf of business officers argued that institutions would be required to pay funds to students contrary to the students' expressed wishes. The commenters contended that once the title IV, HEA program funds are held by the institution at the student's request, they have lost their federal character. One commenter questioned the need for new rules to govern an area that the commenter felt is sufficiently governed by existing rules. One commenter asserted that unless there is evidence of fraud or mismanagement, the Secretary should allow institutions to establish an arrangement with students and parents regarding funds that are not expended by the end of the loan period or payment period. The commenter insisted that it is unnecessary for the Secretary to micromanage this activity.

Discussion: As discussed in an earlier section of this preamble, the Secretary believes that title IV, HEA program fund are provided for a specific period of time, and the institution must provide remaining title IV, HEA loan program funds to the student by the end of the loan period and the remaining balance of other title IV, HEA program funds by the end of the last payment period of the award year for which they were intended.

Changes: None.

Section 668.167 FFEL Program Funds

Comments: Many commenters strongly objected to the Secretary's proposal that an institution return to a lender any loan funds that the institution does not disburse to eligible students within three business days after the institution receives those funds, if those funds are provided by the lender via EFT or master check. Some commenters believe that such an abbreviated period for disbursement of EFT and master check loan proceeds will adversely impact the entire delivery system of the FFEL Programs and impede the ability to administer title IV, HEA program funds in an efficient manner. A few commenters supported the reduction in the timeframe to three business days.

Some commenters cited the proposed regulatory requirement as unreasonable, unrealistic, and not administratively feasible and noted that most institutions disburse in three days if possible. The commenters suggested that some situations may arise that require funds to be held longer and that the Secretary should take those situations into consideration in establishing a timeframe. Examples of such situations include drop/add period changes, loan counseling requirements, enrollment verification, history changes, reviewing prior-term attendance to ensure credits were completed, receiving financial transcripts, the provision of necessary information by students, and late registration. Some commenters suggested that corruption of a file, a data-match problem with the system, or satisfying multiple system interfaces each could be a two- or three-day process. A commenter noted that if an overaward occurs between the time the Stafford loan application is processed and the funds arrive at the institution, it will usually take more than three days to contact the student to see if there are additional expenses to consider to reduce the overaward or to see if there are other avenues to take to reduce/eliminate the overaward. Some commenters expressed concern that returning funds to the lender is typically a more difficult process than receiving the funds. The commenters suggested that the opportunity for errors in the entire delivery process are greatly increased when funds are returned to the lender and must be reissued. They stated that many lenders have a policy that once a disbursement is returned, the loan is cancelled, thus requiring the student to submit a new loan application. Some institutions expressed concern that their processing systems are not as automated as some institutions and they must do a recertification manually for each student. The institution's inability to verify eligibility quickly would necessitate the return of the funds to the lender and a need to request them again. The commenters believed this would prove distressing to the students and lenders. Some institutions noted that although they can accept funds electronically, they manually check the loan amount against the awarded amount and manually post to the financial aid account. Other commenters noted that the act of sending funds back to the lenders requires a physical check, because some lenders and financial institutions currently do not allow the institution to return funds by EFT. They expressed concern that this would require more paperwork and processing for both the financial aid and business offices, taking time away from other EFTs which may have arrived in the meantime.

The commenters generally believed that review of student files and records that are needed for a successful distribution of title IV, HEA program funds may take more than three business days. Some commenters expressed concern that limited staff or staff unavailability might render the institution unable to comply with the three-day window. In some cases, the loss of a single staff person upsets the checks and balances the institution works so diligently to create and would render the institution unable to deliver EFT or master check funds to student accounts in the prescribed timeframe. Some commenters expressed concern that they do not have the capability to add staff, sophisticated programming, or even new systems designed to accommodate the loan delivery process within three business days.

Some commenters suggested that the computer capabilities and institutional procedures vary so greatly from institution to institution that such a restricted timeframe may cause some institutions to consider reverting to the use of paper checks which is far less efficient. A commenter expressed concern that lenders and servicers often using the same guaranty agency provide EFT roster information in different formats. The commenter stated that some agencies send the information on diskettes, and some still send hard copy rosters. Some commenters suggested that the disbursement roster, though issued at the same time, may not arrive on the same date as the EFT or master check. The commenters suggested that the use of Commonline format will help, when it becomes more widespread. However, they note that until that day, it is physically impossible for a college with high student volume at peak periods to perform the required edit checks and process loan disbursements within three business days. The commenters suggested a range of anywhere from 10 to 30 days in the number of days for an institution to disburse loan funds to a borrower. Most commenters suggested that a reasonable range would be 7 to 15 business days. Some commenters suggested that even 30 days was insufficient time to deliver loan proceeds. Some commenters expressed concern that the NPRM language, as currently written, did not clearly identify what is to be done within the proposed timeframes, *i.e.*, return the funds to the lender or disburse those funds to a student or parent for a payment period. Some commenters suggested technical corrections to § 682.603 and § 682.604 to conform to the timeframes for delivering loan proceeds.

Discussion: Given the procedural and systemic changes necessary to implement this provision, the Secretary recognizes that the proposed change mandating that funds be returned to a lender within three business days after the institution receives the funds may initially place an unfair administrative burden on institutions. However, the Secretary continues to believe that loan funds received via EFT and master check should be disbursed within a shorter timeframe than currently exists to minimize interest costs to both the Federal taxpayer (subsidized loans) and to the borrower (unsubsidized loans). Accordingly, the Secretary believes that the intent of this requirement may best be accomplished by a phase-in. Thus, the Secretary has determined that for funds received from lenders during the period of July 1, 1997 through June 30, 1999, and may take up to 10 business days to deliver those funds to a student or return those funds to the lender. Starting on July 1, 1999 that period is reduced to three business days. The Secretary believes that the phase-in of this requirement will provide institutions and FFEL lenders and guaranty agencies ample time to implement procedural and systemic changes.

In addition, the Secretary has provided for exceptional circumstances such as determining the midpoint in a clock-hour program or academic year or the need for a student complete entrance interviews.

The Secretary clarifies that if the institution does not disburse the funds in accordance with the specified timeframe, the institution is required to return those funds to the lender within 10 business days after the last day the funds could have been disbursed. However, the Secretary recognizes that in some instances, students may establish eligibility to receive loan funds before loan funds are returned to the lender. Therefore, the Secretary clarifies that if a student becomes eligible for the loan funds during the 10 business day period in which the institution is processing the return of the loan proceeds and the institution has not yet returned those funds to the lender, the institution may deliver the funds to the student.

The Secretary also notes that suggested technical corrections that are not germane to these regulations will be considered in a future FFEL technical corrections package.

Changes: The Secretary is revising § 668.167(b) to provide that, for FFEL Program funds that a lender provides by EFT or master check to an institution on or after July 1, 1997 but before July 1, 1999, the institution must return those funds to the lender if it does not disburse them to the student or parent within 10 business days following the date the institution receives the funds. FFEL Program funds received by EFT or master check on or after July 1, 1999, must be returned if the institution does not disburse them within 3 business days following the date the institution receives the funds.

The Secretary is also revising § 668.167(b) to provide that the institution must return funds that were not disbursed within the specified timeframe promptly to the lender but no later than 10 business days after the last day those funds could have been disbursed. The Secretary is further revising the § 668.167(b) to provide that an institution may disburse funds to a borrower rather than return them to the lender if the borrower is eligible to receive those funds and the institution disburses those funds within the timeframe required for the return of those funds.

FFEL Institutions on the Reimbursement Payment Method (§ 668.167(d))

Comments: Several commenters, including institutions, and higher education associations, agreed that the reimbursement method may be appropriate for institutions that have difficulties administering Federal student aid funds, but strongly opposed the proposal to extend reimbursement limitations to FFEL Program funds. These commenters believed that since FFEL Program funds are disbursed by private lenders, the Secretary does not have the statutory authority to prevent these loan funds from reaching students. In addition, the commenters indicated that this proposal was inappropriate because it would place an enormous burden on affected institutions and would cause complications and worry for innocent borrowers. These commenters were also concerned that lenders would refuse to serve students at institutions subject to the proposed FFEL reimbursement procedures because of increased loan cancellations, borrower complaints, and other unspecified burdens to lenders.

One commenter representing a consumer banking association opposed the FFEL reimbursement procedures noting that the proposed limitations have never before been placed on the FFEL Program funds and that Congress has not provided for a ‘‘reimbursement’’ payment method for funds disbursed by a lender. The commenter asserted that students have a statutory right under the HEA to FFEL Program funds and that the Secretary does not have the statutory authority to withhold FFEL Program funds from borrowers.

Other commenters representing institutions declared that it made no sense to extend the reimbursement payment method to the FFEL Programs noting that lenders and guaranty agencies already exercise oversight of this loan program and that the Secretary’s involvement in the loan certification process would only add unnecessary burden. The commenters added that the proposed procedures would cause delays that would have a negative impact on students and institutions.

One commenter representing a guaranty agency requested the Secretary to clarify why an institution placed on the reimbursement payment method should have more time (30 days) to disburse FFEL Program funds than an institution that is not on reimbursement (3 days). The commenter believed that an institution on reimbursement should be aware of the time needed to provide the necessary documentation to the Secretary and should thus schedule loan disbursements accordingly.

Two commenters representing a nonprofit lender and secondary market and another commenter representing a national loan association suggested that instead of allowing institutions on reimbursement to hold FFEL Program funds for 30 days, the Secretary should require those institutions to follow the 30-day delayed disbursement requirements now in place for first-year, first-time borrowers. The commenters believed this 30-day delay would provide sufficient time for the Secretary to review borrower records. Alternatively, the first commenters requested the Secretary to clarify in final regulations the difference between the proposed timeframes for disbursing, holding, and returning FFEL Program funds. The commenters were concerned that loan proceeds for eligible students would be unnecessarily returned to lenders and wished to limit the number of circumstances under which this would happen.

Another commenter representing a guaranty agency agreed with the Secretary’s goal of increased assurance of compliance and equitable treatment across programs in which an institution participates but believed that the differences in the delivery system for the FFEL Programs may require a different solution. The commenter suggested that the Secretary work with all the parties in FFEL Program delivery process, especially guarantors, to develop more efficient yet still reliable methods for accomplishing the Secretary’s goal. As a possible alternative to the proposed rule, the commenter offered that an institution placed on the reimbursement payment method be required to work with its primary guarantor to monitor and ensure compliance. The Secretary could still, within such a system, specify the level of monitoring that would be required. The commenter concluded that one major advantage to developing such a plan would be that in many cases the guarantor would be able to be on-site at the institution more quickly and frequently and would be already familiar with the institution’s situation and systems through previous guaranty agency reviews.

One commenter from a legal organization representing student loan borrowers supported the reimbursement proposal for FFEL Program funds. The commenter stated that because institutions that are now placed on reimbursement for Federal Pell Grant funds have unfettered access to student loan funds, such institutions increase vigorously their recruiting and student loan activity to make up for Federal Pell Grant shortfalls. In addition, the commenter asserted that since reimbursement is often a precursor to an institution closing, students incur debts although it is almost inevitable that they will not receive the education and training for which that debt was incurred. The commenter noted that depending on the timing of the institution's closure vis-a-vis the student's enrollment, the closed institution discharge provision in 20 U.S.C. 1087(c) may require the Federal government to pay for such ill-advised loans to students at institutions on Federal Pell Grant reimbursement. The commenter concluded the reimbursement proposal was a measured and sound approach since it would require the Secretary's approval of a loan certification or disbursement on a case-by-case basis. Furthermore, the commenter agreed with the Secretary that the reimbursement limitations proposed for institutions that participate solely in the FFEL Programs would protect the Federal fiscal interest as well as the students' financial interests.

Discussion: The Secretary disagrees with the commenters who asserted that the Secretary has no authority to prevent an institution from certifying an FFEL loan application or disbursing loan proceeds to a borrower until certain conditions are met. The Secretary notes that section 432(a)(1) of the HEA authorizes the Secretary ''to prescribe such regulations as may be necessary to carry out the purposes of this part, ...'' Moreover, the conditions that must be met by an institution before it can disburse a loan or certify a loan application all relate to whether the borrower or applicant is eligible to receive an FFEL loan disbursement. Certainly, the Secretary has the authority to determine whether a recipient of title IV, HEA program funds is eligible to receive those funds, regardless of the source of those funds.

Finally, with regard to the comment that the Secretary is not authorized to establish a reimbursement system of payment for the FFEL Program, the Secretary reminds the commenter that institutions are not being place under the reimbursement system of payment for the FFEL Program. A critical component of the reimbursement system of payment is that an institution uses its own funds to make a title IV, HEA program payment and then seeks reimbursement from the Secretary for that payment. The Secretary is not requiring institutions to make such a payment to receive FFEL Program funds.

The Secretary also disagrees with the commenters who stated that is made no sense to extend the reimbursement payment method to the FFEL Programs because lenders and guaranty agencies exercise oversight of institutions participating under these loan programs. The Secretary notes that lender and guaranty agency oversight of institutions participating under the FFEL Programs is not exclusive but rather complimentary to the Secretary's oversight of institutions participating under all of the title IV, HEA programs. Moreover, since an institution is placed on reimbursement primarily because it failed to adequately or properly administer the title IV, HEA programs, the Secretary believes it is not only logical but compelling to subject FFEL Program funds to the level of review currently required of all other title IV, HEA program funds.

The Secretary thanks the commenters supporting the proposed reimbursement rules and appreciates their suggestions. With regard to the suggestion that the Secretary require institutions placed on reimbursement to follow the 30-day delayed disbursement requirements (now in place only for first-year, first-time borrowers) for all borrowers, the Secretary believes the suggested requirement would unnecessarily delay the disbursement of FFEL Program funds to eligible borrowers. Under the suggested requirement, an institution would certify a loan application by requesting the lender to provide loan funds 30 days after the date those funds would normally be provided. While the Secretary agrees that this procedure may minimize the return of FFEL Program funds to lenders, it would delay the disbursement of loan funds to all borrowers by 30 days. In contrast, under the proposed rules an institution is not precluded from disbursing or certifying a loan for a borrower earlier than 30 days provided that the institution seeks and obtains the Secretary's approval within that time.

The Secretary agrees with the merits of the recommendation that an institution placed on reimbursement be required to work with its primary guarantor. Therefore, under an arrangement where the guaranty agency is an entity approved by the Secretary as provided under § 668.167(d)(2), a guaranty agency may choose to work with institutions that are under the reimbursement payment method.

With regard to the comment as to why an institution placed on the reimbursement payment method should have more time (30 days) to disburse FFEL Program funds than an institution that is not on reimbursement (3 days), the additional time reflects the time an institution needs to submit documentation to the Secretary to support a student's eligibility for a FFEL Program loan, and the time the Secretary will take to review that documentation. However, that extra period of time is available only if the lender sends the FFEL funds to the institution by EFT or master check.

Changes: The Secretary is revising § 668.167(c)(2) to remove its applicability to an institution placed on reimbursement when the lender provides loan funds by paper check. In these instances the institution may retain the loan funds without disbursing them only for the 30-day timeframe provided in § 668.167(b)(1)(iii).

Final Regulatory Flexibility Analysis

The Secretary has determined that some small entities are likely to experience economic impacts from the proposed regulations. Thus, the Regulatory Flexibility Act (RFA) requires that an Initial Regulatory Flexibility Analysis (IRFA) of the economic impact on small entities be performed and that the analysis, or a summary thereof, be published in the notice of proposed rulemaking. The IRFA was performed and a summary was published. This Final Regulatory Flexibility Analysis (FRFA) discusses the comments received on the IRFA and fulfills the RFA requirements.

Summary of significant issues raised by the public comments on the Initial Regulatory Flexibility Analysis (IRFA), a summary of the assessment of the Department of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Changes were made in the final rule as a result of public comments. The biggest change that was made was to allow for a phase-in period of the shorter periods that institutions will hold title IV, HEA program funds before disbursing them.

Comments: The Secretary received eight comments on the methodology of the estimation of the economic impacts from five commenters. All five commenters stated that the initial analysis underestimated the economic costs. One stated that these regulations would cause the institution to hire a new full-time employee at a cost of

$30,000 per year. One simply asserted that the estimated cost of $230 for 10 hours is too low for these regulations but did not provide any more information. One commenter proposed that the just-in-time payment method would impose an increased paperwork burden that was not analyzed.

Discussion: The Secretary believes the paperwork burden estimates used in the NPRM are accurate. A new full-time staff person would supply about 2,000 hours of labor in a year. This is much more than is required for compliance with these regulations, which is estimated to be about 200 hours. However, there were several areas that might impose economic impacts of a smaller magnitude than were analyzed in the IRFA. These were discovered as a function of the comments received and a re-analysis of the rule.

Changes: The FRFA analyzes components that may impose economic impacts that the IRFA did not analyze.

Comments: Some commenters apparently did not understand the IRFA analysis. One commenter confused the estimate for the paperwork for the entire sector (10 hours per institution×175 institutions=1750 burden-hours) as the burden for a single institution. Another commenter stated that it would take substantially more than 10 hours for institutions to participate in the reimbursement payment method.

Discussion: The paperwork estimate for institutions that would be put on reimbursement as a result of this rule corresponds to the marginal increase in paperwork for institutions that are already on reimbursement for other title IV, HEA programs. As a result of these comments, the Secretary reanalyzed the paperwork burden and validated the earlier estimate of 10 hours per institution.

Changes: The FRFA will contain more easily understandable language to avoid the confusion in the IRFA.

Comments: Three commenters stated that delays on reimbursement might be longer that 18–20 days. One commenter suggested that it was important to look at more than just the average payment delay, since there may be a substantial number of small entities that experience significantly longer delays. It was suggested by several commenters that delays can be as long as 6 weeks.

Discussion: This is another area where the commenters apparently did not understand the IRFA analysis. The IRFA states that the average delay is 18–20 days. However, in calculating the interest costs, the more conservative delay estimate of 30 days was used. Delays of periods longer than 30 days that are attributable to the Department's action or inaction would not affect a significant number of small (or large) entities.

Changes: The FRFA will contain more easily understandable language to avoid the confusion in the IRFA.

Comments: One commenter took issue with the analysis of the number of disbursements associated with the reimbursement payment method. The commenter stated that the more typical situation would be for as many as 6 or 8 or more disbursements in a year, causing the institution to obtain a series of different short-term loans at varying face amounts to operate during the delay.

Discussion: This is another area where the commenter apparently did not understand the IRFA analysis. There is no presumption about the timing of the disbursements. Each loan is required by existing statute and regulations to be disbursed in at least two installments. These are the two installments that we analyzed. Small entities in the situation described would probably establish the need for a revolving fund with a bank. The costs associated with establishing such a fund is comparable to the costs we have outlined.

Changes: The analysis will discuss this situation.

Comments: One commenter took issue with the costs associated with the electronic processes component. This commenter stated that some institutions might have to buy a new computer, pay long distance charges, and install a dedicated phone line.

Discussion: This is an area where the IRFA did not analyze these costs. As a result of this comment, the FRFA does discuss the possibility that some institutions may have to purchase computer equipment. The FRFA also discusses the possibility that institutions may have to purchase some computer training or be charged by the Department for technical assistance calls. However, phone calls are free to the Department's 800 number. The Secretary does not think it would be necessary for a small institution to require a dedicated phone line to participate in the electronic processes of the Department.

Changes: The FRFA will discuss these costs.

Comments: Three commenters stated that the breadth of the IRFA analysis was insufficient. They stated that the analysis needs to look at more components than the reimbursement provision.

Discussion: The Secretary has reanalyzed the regulation and found additional areas where economic impacts may be imposed on small entities. The FRFA contains a discussion of these impacts. However, the IRFA does contain an analysis of the most significant economic impacts. While the additional areas of analysis of economic impacts may not, by themselves, constitute a significant economic impact, when taken together they might.

Changes: The summary of the FRFA looks at more than just reimbursement.

Comments: Two commenters stated that the Department must analyze this rule in conjunction with another NPRM that was published at the same time. These commenters indicated that the ''Financial Responsibility'' rule would have the effect of putting more institutions on the reimbursement payment method and that this analysis of the ''Cash Management'' rule should consider the economic impact on those institutions as well.

Discussion: The Secretary agrees with the general concept that proposed rules should be analyzed for their joint impact. In this particular situation, however, the proper place for that discussion is in the ''Financial Responsibility'' regulations. The costs of institutions being provisionally certified and then being put on reimbursement would occur as a result of any changes in the ''Financial Responsibility'' requirements. The effect of the ''Cash Management'' regulations is to extend reimbursement to FFEL. The costs of being put on reimbursement that would be imposed by any changes in the ''Financial Responsibility'' regulations would include the costs of being put on reimbursement for all title IV, HEA programs (consistent with this regulation). That is, the cost of being put on reimbursement for those institutions would be marginally higher as a result of these regulations. However, the public comment period has been extended on this component of the proposed ''Financial Responsibility'' regulations. The analysis of these costs will be included in the preamble to the final Financial Responsibility regulations.

Changes: The FRFA for both regulations will point out the cross-effects as outlined here.

Description of the reasons why action by the Department is being considered and a succinct statement of the objectives of, and legal basis for, the proposed rule.

The Secretary proposes these regulatory changes to further the implementation of the Department of Education initiatives to reduce burden and improve program accountability. More information about the need and justification for the proposed rule can be found in the preamble to the NPRM.

Description and estimate of the number of small entities to which the proposed rule will apply.

The Secretary has adopted the U.S. Small Business Administration (SBA) Size Standards for this analysis. The RFA directs that small entities are the sole focus of the Regulatory Flexibility Analysis. There are three types of small entities that are analyzed here. They are: for-profit entities with total annual revenue below $5,000,000; non-profit entities with total annual revenue below $5,000,000; and entities controlled by governmental entities with populations below 50,000. An estimate of the proportion of entities in each of these categories was calculated using the best available data from the National Center for Education Statistics Integrated Postsecondary Education Data System (IPEDS) survey for academic year 1993–94. These estimates were applied to Department administrative files, where no data element for total revenue is available. The estimates are that 1,690 small for-profit entities, 660 small non-profit entities and 140 small governmental entities will be covered by the proposed rule. Where exact data were not available to estimate the proportion of small entities, data elements were chosen that would have overestimated, rather than underestimated, the proportion.

Estimate of the number of institutions experiencing economic impacts from rule and estimates of the economic impacts.

This rule can be partitioned for analysis purposes into 12 components. Each component is analyzed separately. As discussed in the response to comments above, each component was reanalyzed for possible adverse economic impacts as a result of comments received. The following components are expected to have a positive or neutral economic impact: uniform payment period; restructure regulations; just-in-time payment method; separate bank accounts; payment period; late disbursements; and, excess cash exemption. The following components have the potential to impose adverse economic impacts on small entities: electronic processes; student notification; disbursement timeframes/returning undisbursed funds; and reimbursement extension to FFEL. A summary of the analysis of the economic impact of each of these components follows.

Electronic Processes Component

Institutions will be required to use electronic processes that the Secretary provides on a substantially free basis. Institutions may have to obtain computer hardware and computer training in order to participate. It is estimated that a new computer would cost $1,500 and computer training might cost as much as $500. Institutions that are heavy users of technical assistance may be charged as much as $100 per year for this assistance. Changing to electronic processes may require changes in an institution's accounting system and/or the institution's SFA delivery system. The costs of these changes are entirely dependent on the characteristics of the institution under consideration and can not be reliably estimated.

Student Notification Component

This component increases these students notification and authorization requirements on institutions. This is estimated to require an additional 195.6 hours, as discussed in the paperwork burden section. Using a loaded labor rate of $20.00 per hour, this would cost $3,912 per institution. It is further estimated that between one and three students per thousand will take advantage of the loan cancellation provision. It is assumed that most of these students will arrange for an alternative method of paying for their postsecondary education and there will be no additional economic costs associated with accommodating their request since current regulations require such requests to be accommodated. However, there may be a few students who have changed their mind about attending the postsecondary education program within the first few days. It is this student that these regulations are designed to protect. The cost of unenrolling such a student will vary from program to program, but is estimated to be between $100 and $1,000. Data do not exist that would allow for precise estimation of the number of small entities that would experience adverse economic impacts. However, if we assume that each small entity has approximately 100 students, then between three and eight institutions will need to unenroll a student each year and be required to obtain a refund from that student outside of the student's loan proceeds. These estimates are based on the best professional judgment of student financial aid staff knowledgeable in this area. Data are not readily available that would allow for more precise estimation of these costs.

Disbursement Timeframes Component

Currently, institutions are not allowed to request loan funds from lenders sooner than 13 days before the first day of classes of the payment period. This component clarifies that this timeframe applies to all loan disbursements, not just the first disbursement. This component also clarifies that, in the case of students who are subject to delayed disbursement, the institution cannot request loan funds more than three days before the loan funds are scheduled to be made available to the borrower. The economic impact of this component is described below in the context of returning funds not disbursed within three days.

Returning Undisbursed Funds Component

This provision will change the time that institutions can keep their funds, requiring institutions to return funds not disbursed within 3 business days (or an additional 10 under certain circumstances), except that this provision will be phased in gradually over 3 years. This analysis compares the cost when the provision is fully phased in. There is a potential loss of funds for those institutions who have been delaying 45 days and putting the money in interest-bearing accounts. It is assumed that between 40 percent and 60 percent of small entities are currently receiving funds through EFT transfers and that these institutions are holding funds between 30 and 40 days. Lenders bill the Department for in-school interest subsidy payments three days after disbursing them electronically. Thus, the Department is paying between 27 and 37 days of in-school interest subsidy to lenders without the student having the use of these funds for educational expenses. At the same time, institutions will lose the use of these funds for the same period (30 to 40 days). The economic impact of losing the use of these funds is difficult to quantify. Not enough is known about the cash flow practices of particular institutions to determine the impact, but it is assumed to have some impact.

Reimbursement Extension to FFEL Component

This component will require institutions that participate in the FFEL program and that are on the reimbursement payment method for other title IV, HEA programs, or for which the Secretary determines there is a need to strictly monitor FFEL Program funds, to submit documentation from existing sources to the Secretary or an approved entity, that supports the certification of FFEL Program applications or supports intended disbursements of FFEL Program funds. The FFEL Program disbursements at an institution could be delayed for an estimated average of 18–20 days until approval for those certifications or disbursements is received by the institution, costing the institution potential interest expenses and paperwork expenses for the submission of supporting documentation. For this analysis, the delay was assumed to be longer than the 18–20 day average. This analysis uses a 30-day period, even though the average is 10–12 days less.

As of July 31, 1996, there were 307 institutions being paid on a reimbursement basis, estimated at 257 for-profit entities, 36 non-profit entities, and 14 governmental entities. Of the 307 institutions, 175 participated in the FFEL Programs and had loan activity during the 1995 fiscal year. Where exact data were not available to estimate the cost to small entities, data elements were chosen that would have overestimated rather than underestimated the cost. For example, information is not available on the proportion of these institutions that are small versus the number that are large. For this analysis, in order to prevent an underestimate, all 175 institutions were assumed to be small entities.

The economic impact that these entities would experience is that associated with the need to advance funds to student before receiving the payment from the Secretary. Some entities that have funds readily available will be losing the interest that those funds would have received had they been deposited in an interest-bearing account. Some entities that do not have funds readily available may be required to borrow funds in order to operate during the 18–20 days prior to receiving funds from the Secretary. Since the borrowing rate is higher than the saving rate, only the latter case is analyzed. However, it is understood that this represents an overestimate of the actual costs experienced by real entities. Also, since some entities will experience longer delays that the 18–20 day average, this analysis considers that funds will be borrowed for 30 days since delays are rarely, if ever, longer than this for institutions on the reimbursement method of payment. In order to provide a reasonable range for the cost estimates, the Secretary analyzed the case for small entities with low FFEL volume and small entities with high FFEL volume.

More than 60 percent of the 175 institutions that could be affected by these proposed regulations had a FFEL programs loan volume of less than $900,000 during the 1995 fiscal year. Therefore, for most institutions, based upon an interest rate equal to the prime rate plus 4 percent (8.25%+4%=12.25%) for two short-term loans, one for each disbursement for a period of 30 days, the cost per institution would be an estimated $9,062 in interest expenses. The potential loss of interest earnings that could have accrued for the delayed FFEL Program funds during that time is estimated at 3 percent equaling an estimated $2,219.

In addition to the interest expenses, there would be an estimated cost of $230 per institution for increased paperwork as a result of submitting to the Secretary or approved entity documentation in support of the certification of loan applications or the disbursement of FFEL Program funds to eligible borrowers. The cost is a result of an estimated increase of 10 hours of paperwork by an employee at a loaded labor rate of $20 per hour, and $3.00 in postage for an average of 10 mailings.

Less than 15 percent of the 175 institutions identified had a loan volume of $3,300,000 or greater. For an institution in this category, the interest expenses for the total amount of loan commitments under the same conditions above would equal an estimated $33,226. The potential loss of interest earnings on those funds equals an estimated $8,137 per institution.

As a result, the total potential cost per school in interest expenses and increased paperwork for the 105 small entities, subject to the extension of the reimbursement payment method provisions of this regulation, with FFEL volume below $900,000 is estimated at $11,511. For the approximately 26 small entities subject to the extension of the reimbursement payment method provisions of this rule with FFEL Program volume above $3,300,000, the total potential cost per school is estimated at $41,593. These costs are estimates and the costs experienced by actual institutions will undoubtedly be different. These estimates should be used as illustrative examples only of the expenses incurred by low and high volume schools. Middle volume schools will have expenses between these two extremes.

Description of the steps the Department has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.

The Department has undertaken several actions in these regulations to minimize the economic impacts on small (and large) entities. For instance, the adoption of a uniform payment period is expected to simplify administration of the title IV, HEA programs. The final rule removes some prescriptive requirements for maintaining funds in separate accounts for institutions under the just-in-time payment method. The final rule simplifies and removes redundant provisions in the late disbursement regulations.

In addition, the final rule includes a gradual phase-in of the new disbursement timeframes. This phase-in is a change from the proposal described in the NPRM. This change was undertaken in response to public comment regarding the economic impacts of the new timeframes. This step will help to minimize the economic impact on small (and large) entities.

Description of significant alternatives which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

While the Department considered alternative means of satisfying many specific provisions, as discussed in the preamble to both the NPRM and the preamble to this final rule, there are no other significant alternatives that would satisfy the same legal and policy objectives while minimizing the impact on small entities. The proposed approach balances regulatory reform and improved accountability in a proper fashion. Consistent with the Secretary's regulatory relief initiative, participating institutions are subject to the minimum requirements that adequately protects the Federal fiscal interest. In fact, several components of the proposed rule reduce the regulatory burden on participating institutions. The Secretary believes that the proposed approach is the least complicated and burdensome for small (and large) entities involved in the administration of the title IV, HEA programs while still allowing for the proper protection of the Federal fiscal interests and the interests of students and their parents.

For the purposes of performing this regulatory flexibility analysis, the alternative of ''no action'' could be considered a significant alternative. If the Secretary did not undertake any action in this area, small (and large) entities would not experience the economic impacts imposed by these regulations. However, as described in the preamble to the final rule, the Secretary believes that this action is required to further Department initiatives and to better protect the Federal fiscal interest. This is discussed further below.

The factual, policy, and legal reasons for selecting the alternative adopted in the final rule.

The factual, policy, and legal reasons for selecting the alternative adopted in the final rule are discussed above and elsewhere in this preamble. The alternative ''no action'' would not adequately protect the Federal fiscal interest, as discussed above and elsewhere in this preamble.

The use of the proposed requirement will enable the Secretary to better discharge the responsibilities of managing the title IV, HEA programs funds, to promote parallel requirements across the title IV, HEA programs, and to better safeguard the Federal fiscal interest and the interests of students.

Why each one of the other significant alternatives to the rule considered by the Department which affect the impact on small entities was rejected.

The alternative ''no action'' was rejected because this alternative would not adequately protect the Federal fiscal interest, as discussed above and elsewhere in this preamble.

Conclusion

A substantial number of small entities are likely to experience significant economic impacts from the proposed rule. However, the Secretary has concluded that the costs are outweighed by the benefits. In this case, the benefits are better protection of the Federal fiscal interest and improved service to students.

The adverse economic impacts experienced by some small (and large) entities is balanced by the positive economic impacts accruing to the U.S. taxpayer. These positive impacts arise (1) from the ability of the Secretary to ensure that eligible students receive title IV, HEA program funds in the amount for which they are eligible in cases where there is a need to strictly monitor title IV, HEA program funds at an institution and, (2) from the protection of students and the Federal interest in the title IV, HEA programs.

The use of the proposed requirement will enable the Secretary to better discharge the responsibilities of managing the title IV, HEA programs funds, to promote parallel requirements across the title IV, HEA programs, and to better safeguard the Federal fiscal interest and the interests of students.

Waiver of Notice of Proposed Rulemaking

In accordance with Section 431 (b)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1232(b)(2)(A), and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed rules and regulations. However, the Secretary amends § 668.162(a) as a final rule to revise the procedure for presenting cash requests to the Department under the exemption from rulemaking requirements in 5 U.S.C. 553(b)(A) for rules of agency procedure.

Paperwork Reduction Act of 1995

Sections 668.16, 668.165, 668.167 contain information collection requirements. As required by the Paperwork Reduction Act of 1995, the U.S. Department of Education has submitted a copy of these sections to OMB for its review. (44 U.S.C. 3504(h)).

Assessment of Educational Impact

In the NPRM published September 23, 1996, the Secretary requested comment on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

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

List of Subjects

34 CFR Part 668

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

34 CFR Part 674, 675, and 676

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

34 CFR Part 682

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

34 CFR Part 685

Administrative practice and procedure, Colleges 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.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 Federal State Student Incentive Grant Program; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program)

Dated: November 22, 1996.

Richard W. Riley,

Secretary of Education.

The Secretary amends parts 668, 674, 675, 676, 682, 685, and 690 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

Subpart A—General

2. Section 668.4 is added to read as follows:

§ 668.4 Payment period.

(a) *Payment period for an eligible program that has academic terms and measures progress in credit hours.* For a student enrolled in an eligible program that is offered in semesters, trimesters, quarters, or other academic terms and measures progress in credit hours, the payment period is the semester, trimester, quarter, or other academic term.

(b) *Payment periods for an eligible program that measures progress in credit hours and does not have academic terms or measures progress in clock hours.* (1) For a student enrolled in an eligible program that is one academic year or less in length—

(i) The first payment period is the period of time in which the student completes the first half of the program as measured in credit or clock hours; and

(ii) The second payment period is the period of time in which the student completes the second half of the program as measured in credit or clock hours.

(2) For a student enrolled in an eligible program that is more than one academic year in length—

(i) For the first academic year and any subsequent full academic year as measured in credit or clock hours—

(A) The first payment period is the period of time in which the student completes the first half of the academic year as measured in credit or clock hours; and

(B) The second payment period is the period of time in which the student completes the second half of that academic year;

(ii) For any remaining portion of an eligible program that is more than one-half an academic year but less than a complete academic year—

(A) The first payment period is the period of time in which a student completes the first half of the remaining portion of the eligible program as measured in credit or clock hours; and

(B) The second payment period is the period of time in which the student completes the remainder of the eligible program; and

(iii) For any remaining portion of an eligible program that is not more than half an academic year as measured in credit or clock hours, the payment period is the remainder of that eligible program.

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, if a student is enrolled in an eligible program that measures progress in credit hours and the student cannot earn half the credit hours in the program under paragraph (b)(1) of this section or half of the remaining portion of the eligible program under paragraph (b)(2)(i) and (b)(2)(ii) of this section until after the calendar midpoint between the first and last scheduled days of class, the second payment period begins on the later of—

(i) The calendar midpoint between the first and last scheduled days of class of the program or academic year; or

(ii) The date, as determined by the institution, that the student has completed half of the academic coursework.

(4) If, in an academic year, in a program of less than an academic year, or in the remaining portion of an eligible program under paragraph (b)(2) of this section, an institution chooses to have more than two payment periods, the rules in paragraphs (b)(1) through (b)(3) of this section are modified to reflect the increased number of payment periods. For example, if an institution chooses to have three payment periods in an academic year, each payment period must correspond to one-third of the academic year.

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

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

3. Section 668.16 is amended by removing ''and'' at the end of paragraph (m)(2)(ii), removing the period at the end of paragraph (n), and inserting ''; and'', and adding a new paragraph (o) to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(o) Participates in the electronic processes that the Secretary—

(1) Provides at no substantial charge to the institution; and

(2) Identifies through a notice published in the Federal Register.

* * * * *

(Authority: 20 U.S.C. 1082, 1085, 1094, 1099c)

4. Subpart K is revised to read as follows:

Subpart K—Cash Management

§ 668.161 Scope and purpose.

(a) *General.* (1) This subpart establishes the rules and procedures under which a participating institution requests, maintains, disburses, and otherwise manages title IV, HEA program funds. This subpart is intended to—

(i) Promote sound cash management of title IV, HEA program funds by an institution;

(ii) Minimize the financing costs to the Federal government of making title IV, HEA program funds available to a student or an institution; and

(iii) Minimize the costs that accrue to a student under a title IV, HEA loan program.

(2) The rules and procedures that apply to an institution under this subpart also apply to a third-party servicer.

(3) As used in this subpart—

(i) The title IV, HEA programs include only the Federal Pell Grant, FSEOG, Federal Perkins Loan, FWS, Direct Loan, and FFEL programs;

(ii) The term ''parent'' means a parent borrower under the PLUS programs;

(iii) With regard to the FFEL Programs, the term ''disburse'' means the same as deliver loan proceeds under 34 CFR Part 682 of the FFEL Program regulations; and

(iv) A day is a calendar day unless otherwise specified.

(4) *FWS Program.* An institution must follow the disbursement procedures in 34 CFR 675.16 for paying a student his or her wages under the FWS Program instead of the disbursement procedures and requirements under this subpart.

(b) *Federal interest in title IV, HEA program funds.* Except for funds received by an institution for administrative expenses and for funds used for the Job Location and Development Program under the FWS Programs, funds received by an institution under the title IV, HEA programs are held in trust for the intended student beneficiaries and the Secretary. FFEL program funds are also held in trust for the lenders and guaranty agencies, in addition to the student beneficiaries and the Secretary, under 34 CFR 682.207. The institution, as a trustee of Federal funds, may not use or hypothecate (*i.e.*, use as collateral) title IV, HEA program funds for any other purpose.

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

§ 668.162 Requesting funds.

(a) *General.* (1) The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution in advance of the institution's need for those funds (advance payment method), by the date the institution needs those funds (just-in-time payment method), or by reimbursing an institution for disbursements already made to eligible students and parents (reimbursement payment method).

(2) Each time an institution requests funds from the Secretary, the institution must identify the amount of funds requested by program and fiscal year designation that the Secretary assigned to the authorization for those funds.

(b) *Advance payment method.* Under the advance payment method—

(1) An institution submits a request for funds to the Secretary. The institution's request for funds may not exceed the amount of funds the institution needs immediately for disbursements the institution has made or will make to eligible students and parents;

(2) If the Secretary accepts that request, the Secretary initiates an electronic funds transfer (EFT) of that amount to a bank account designated by the institution; and

(3) The institution must disburse the funds requested as soon as administratively feasible but no later than three business days following the date the institution received those funds.

(c) *Just-in-time payment method.* Under the just-in-time payment method—

(1) For each student or parent that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student or parent. As part of those records, the

institution reports the date and amount of the disbursements that it will make or has made to that student or that student's parent;

(2) For each record the Secretary accepts for a student or parent, the Secretary provides by EFT the corresponding disbursement amount to the institution on or before the date reported by the institution for that disbursement;

(3) When the institution receives the funds for each record accepted by the Secretary, the institution may disburse those funds based on its determination at the time the institution transmitted that record to the Secretary that the student is eligible for that disbursement; and

(4) The institution must report any adjustment to a previously accepted record within the time established by the Secretary in a notice published in the Federal Register.

(d) *Reimbursement payment method.* Under the reimbursement payment method—

(1) An institution must first make disbursements to students and parents for the amount of funds those students and parents are eligible to receive under the Federal Pell Grant, Direct Loan, and campus-based programs before the institution may seek reimbursement from the Secretary for those disbursements. The Secretary considers an institution to have made a disbursement if the institution has either credited a student's account or paid a student or parent directly with its own funds;

(2) An institution seeks reimbursement by submitting to the Secretary a request for funds that does not exceed the amount of the actual disbursements the institution has made to students and parents included in that request;

(3) As part of the institution's reimbursement request, the Secretary requires the institution to—

(i) Identify the students for whom reimbursement is sought; and

(ii) Submit to the Secretary or entity approved by the Secretary documentation that shows that each student and parent included in the request was eligible to receive and has received the title IV, HEA program funds for which reimbursement is sought; and

(4) The Secretary approves the amount of the institution's reimbursement request for a student or parent and pays the institution that amount, if the Secretary determines with regard to that student or parent that the institution—

(i) Accurately determined the student's eligibility for title IV, HEA program funds;

(ii) Accurately determined the amount of title IV, HEA program funds paid to the student or parent; and

(iii) Submitted the documentation required under paragraph (d)(3) of this section.

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

§ 668.163 Maintaining and accounting for funds.

(a)(1) *Bank or investment account.* An institution must maintain title IV, HEA program funds in a bank or investment account that is Federally insured or secured by collateral of value reasonably equivalent to the amount of those funds.

(2) For each bank or investment account that includes title IV, HEA program funds, an institution must clearly identify that title IV, HEA program funds are maintained in that account by—

(i) Including in the name of each account the phrase ''Federal Funds''; or

(ii)(A) Notifying the bank or investment company of the accounts that contain title IV, HEA program funds and retaining a record of that notice; and

(B) Except for a public institution, filing with the appropriate State or municipal government entity a UCC–1 statement disclosing that the account contains Federal funds and maintaining a copy of that statement.

(b) *Separate bank account.* The Secretary may require an institution to maintain title IV, HEA program funds in a separate bank or investment account that contains no other funds if the Secretary determines that the institution failed to comply with—

(1) The requirements in this subpart;

(2) The recordkeeping and reporting requirements in subpart B of this part; or

(3) Applicable program regulations.

(c) *Interest-bearing or investment account.* (1) An institution must maintain the Fund described in § 674.8(a) of the Federal Perkins Loan Program regulations in an interest-bearing bank account or investment account consisting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States. Interest or income earned on Fund proceeds are retained by the institution as part of the Fund.

(2) Except as provided in paragraph (c)(3) of this section, an institution must maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account as described in paragraph (c)(1) of this section.

(3) An institution does not have to maintain Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing bank account or an investment account for an award year if—

(i) The institution drew down less than a total of $3 million of those funds in the prior award year and anticipates that it will not draw down more than that amount in the current award year;

(ii) The institution demonstrates by its cash management practices that it will not earn over $250 on those funds during the award year; or

(iii) The institution requests those funds from the Secretary under the just-in-time payment method.

(4) If an institution maintains Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing or investment account, the institution may keep the initial $250 it earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over $250.

(d) *Accounting and internal control systems and financial records.* (1) An institution must maintain accounting and internal control systems that—

(i) Identify the cash balance of the funds of each title IV, HEA program that are included in the institution's bank or investment account as readily as if those program funds were maintained in a separate account; and

(ii) Identify the earnings on title IV, HEA program funds maintained in the institution's bank or investment account.

(2) An institution must maintain its financial records in accordance with the provisions under § 668.24.

(e) *Standard of conduct.* An institution must exercise the level of care and diligence required of a fiduciary with regard to maintaining and investing title IV, HEA program funds.

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

§ 668.164 Disbursing funds.

(a) *Disbursement.* (1) Except as provided in paragraph (a)(2) of this section, an institution makes a disbursement of title IV, HEA program funds on the date that the institution credits a student's account at the institution or pays a student or parent directly with—

(i) Funds received from the Secretary;

(ii) Funds received from a lender under the FFEL Programs; or

(iii) Institutional funds used in advance of receiving title IV, HEA program funds.

(2) If, earlier than 10 days before the first day of classes of a payment period,

or for a student subject to the requirements of § 682.604(c)(5) or § 685.303(b)(4) earlier than 30 days after the first day of the payment period, an institution credits a student's institutional account with institutional funds in advance of receiving title IV, HEA program funds, the Secretary considers that the institution makes that disbursement on the 10th day before the first day of classes, or the 30th day after the beginning of the payment period for a student subject to the requirements of § 682.604(c)(5) or § 685.303(b)(4).

(b) *Disbursements by payment period.* (1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. Except as provided in paragraph (g) of this section, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

(2) The provisions of paragraph (b)(1) of this section do not apply to the disbursement of FWS Program funds.

(3) For a student enrolled in an eligible program at an institution that measures academic progress in clock hours, in determining whether the student completes the clock hours in a payment period, an institution may include clock hours for which the student has an excused absence if—

(i) The institution has a written policy that permits excused absences; and

(ii) The number of excused absences under the written policy for purposes of this paragraph does not exceed the lesser of—

(A) The policy on excused absences of the institution's accrediting agency or, if the institution has more than one accrediting agency, the agency designated under 34 CFR part 600.11(b);

(B) The policy on excused absences of any State agency that licenses the institution or otherwise legally authorizes the institution to operate in the State; or

(C) Ten percent of the clock hours in the payment period.

(4) For purposes of paragraph (b)(3) of this section, an ''excused absence'' is an absence that a student does not have to make up.

(c) *Direct payments.* An institution pays a student or parent directly by—

(1) Releasing to the student or parent a check provided by a lender to the institution under an FFEL Program;

(2) Issuing a check or other instrument payable to and requiring the endorsement or certification of the student or parent. An institution issues a check by—

(i) Releasing or mailing the check to a student or parent; or

(ii) Notifying the student or parent that the check is available for immediate pickup;

(3) Initiating an electronic funds transfer (EFT) to a bank account designated by the student or parent; or

(4) Dispensing cash for which an institution obtains a signed receipt from the student or parent.

(d) *Crediting a student's account at the institution.*

(1) Without obtaining the student's or parent's authorization under § 668.165, an institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy current charges for—

(i) Tuition and fees;

(ii) Board, if the student contracts with the institution for board; and

(iii) Room, if the student contracts with the institution for room.

(2) After obtaining the appropriate authorization from a student or parent under § 668.165, the institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy—

(i) Current charges that are in addition to the charges described in paragraph (d)(1) of this section that were incurred by the student at the institution for educationally related activities; and

(ii) Minor prior award year charges if these charges are less than $100 or if the payment of these charges does not, and will not, prevent the student from paying his or her current educational costs.

(3) If an institution disburses Direct Loan Program funds by crediting a student's account at the institution, the institution must first credit the student's account with those funds to pay for outstanding current and authorized charges.

(4) For purposes of this paragraph, current charges refers to charges assessed the student by the institution for—

(i) The current award year; or

(ii) The loan period for which an institution certified or originated a loan under the FFEL or Direct Loan programs.

(e) *Credit balances.* Whenever an institution disburses title IV, HEA program funds by crediting a student's account and the total amount of all title IV, HEA program funds credited exceeds the amount of tuition and fees, room and board, and other authorized charges the institution assessed the student, the institution must pay the resulting credit balance directly to the student or parent as soon as possible but—

(1) No later than 14 days after the balance occurred if the credit balance occurred after the first day of class of a payment period; or

(2) No later than 14 days after the first day of class of a payment period if the credit balance occurred on or before the first day of class of that payment period.

(f) *Early disbursements.* Except as provided under paragraph (f)(3) of this section—

(1) If a student is enrolled in a credit-hour educational program that is offered in semester, trimester, or quarter academic terms, the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is 10 days before the first day of classes for a payment period.

(2) If a student is enrolled in a credit-hour educational program that is not offered in semester, trimester, or quarter academic terms, or in a clock hour educational program the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is the later of—

(i) Ten days before the first day of classes of the payment period; or

(ii) The date the student completed the previous payment period for which he or she received title IV, HEA program funds, except that this provision does not apply to the payment of Direct Loan or FFEL program funds under the conditions described in 34 CFR 685.301 (b)(3)(ii), (b)(5), and (b)(6) and 34 CFR 682.604 (c)(6)(ii), (c)(7), and (c)(8), respectively.

(3) The earliest an institution may disburse the initial installment of a loan under the Direct Loan or FFEL programs to a first-year, first-time borrower as described in 34 CFR 682.604(c) and 34 CFR 685.303(b)(4) is 30 days after the first day of the student's program of study.

(g) *Late disbursements*—(1) *Ineligible students who may receive a late disbursement.* An institution may make a late disbursement under paragraph (g)(2) of this section, if the student became ineligible solely because—

(i) For purposes of the Direct Loan and FFEL programs, the student is no longer enrolled at the institution as at least a half-time student for the loan period; and

(ii) For purposes of the Federal Pell Grant, FSEOG, and Federal Perkins Loan programs, the student is no longer enrolled at the institution for the award year.

(2) *Conditions for late disbursements.* An institution may disburse funds under a title IV, HEA program to an ineligible student and to the parent of an ineligible student as described in

paragraph (g)(1) of this section if, before the date the student became ineligible—

(i) The institution received a SAR from the student or an ISIR from the Secretary and the SAR or ISIR has an official expected family contribution calculated by the Secretary; and

(ii)(A) For a Direct Loan Program loan, the institution created the electronic origination record for that loan. An institution may not make a late second or subsequent disbursement of a Direct Subsidized or Direct Unsubsidized loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(B) For an FFEL Program loan, the institution certified an application for that loan. An institution may not make a late second or subsequent disbursement of a Stafford loan unless the student has graduated or successfully completed the period of enrollment for which the loan was intended;

(C) For a Direct Loan or FFEL Program loan, the student completed the first 30 days of his or her program of study if the student was a first-year, first-time borrower as described in 34 CFR 682.604(c)(5) or 685.303(b)(4);

(D) For a Federal Pell Grant Program award, the institution received a valid SAR from the student or a valid ISIR from the Secretary; and

(E) For a Federal Perkins Loan Program loan or an FSEOG Program award, the student was awarded a loan or grant.

(3) *Making a late disbursement.* If a student or a parent borrower qualifies for a late disbursement under paragraphs (g) (2) and (3) of this section, the institution—

(i) May make that late disbursement of title IV, HEA program funds only if the funds are used to pay for educational costs that the institution determines the student incurred for the period in which the student was enrolled and eligible; and

(ii) Must make the late disbursement no later than 90 days after the date that student becomes ineligible under paragraph (g)(1) of this section.

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

§ 668.165 Notices and authorizations.

(a) *Notices.* (1) Before an institution disburses title IV, HEA program funds for any award year, the institution must notify a student of the amount of funds that the student or his or her parent can expect to receive under each title IV, HEA program, and how and when those funds will be disbursed. If those funds include Direct Loan or FFEL Program funds, the notice must indicate which funds are from subsidized loans and which are from unsubsidized loans.

(2) If an institution credits a student's account at the institution with Direct Loan, FFEL, or Federal Perkins Loan Program funds, the institution must notify the student, or parent of—

(i) The date and amount of the disbursement;

(ii) The student's right, or parent's right to cancel all or a portion of that loan or loan disbursement and have the loan proceeds returned to the holder of that loan. However, the institution does not have to provide this information with regard to FFEL Program funds unless the institution received the loan funds from a lender through an EFT payment or master check; and

(iii) The procedures and the time by which the student or parent must notify the institution that he or she wishes to cancel the loan or loan disbursement.

(3) The institution must send the notice described in paragraph (a)(2) of this section—

(i) No earlier than 30 days before and no later than 30 days after crediting the student's account at the institution; and

(ii) Either in writing or electronically. If the institution sends the notice electronically, it must require the recipient of the notice to confirm receipt of the notice and must maintain a copy of that confirmation.

(4) (i) A student or parent must inform the institution if he or she wishes to cancel all or a portion of a loan or loan disbursement.

(ii) The institution must return the loan proceeds, cancel the loan, or do both, in accordance with applicable program regulations if the institution receives a loan cancellation request either—

(A) Within 14 days after the date the institution sends the notice described in paragraph (a)(2) of this section; or

(B) If the institution sends the notice described in paragraph (a)(2) of this section more than 14 days prior to the first day of the payment period, by the first day of the payment period.

(iii) If a student or parent requests a loan cancellation after the period set forth in paragraph (a)(4)(ii) of this section, the institution may return the loan proceeds, cancel the loan, or do both, in accordance with applicable program regulations.

(5) An institution must inform a student or parent in writing or electronically regarding the outcome of any cancellation request.

(b) *Student or parent authorizations.* (1) If an institution obtains written authorization from a student or parent, as applicable, the institution may—

(i) Disburse title IV, HEA program funds to a bank account designated by the student or parent;

(ii) Use the student's or parent's title IV, HEA program funds to pay for charges described in § 668.164(d)(2) that are included in that authorization; and

(iii) Except if prohibited by the Secretary under the reimbursement method, hold on behalf of the student or parent any title IV, HEA program funds that would otherwise be paid directly to the student or parent under § 668.164(e).

(2) In obtaining the student's or parent's authorization to perform an activity described in paragraph (b)(1) of this section, an institution—

(i) May not require or coerce the student or parent to provide that authorization;

(ii) Must allow the student or parent to cancel or modify that authorization at any time; and

(iii) Must clearly explain how it will carry out that activity.

(3) A student or parent may authorize an institution to carry out the activities described in paragraph (b)(1) of this section for the period during which the student is enrolled at the institution.

(4)(i) If a student or parent modifies an authorization, the modification takes effect on the date the institution receives the modification notice.

(ii) If a student or parent cancels an authorization to use title IV, HEA program funds to pay for authorized charges under § 668.164(d)(2), the institution may use title IV, HEA program funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student or parent cancels an authorization to hold title IV, HEA program funds under paragraph (b)(1)(iii) of this section, the institution must pay those funds directly to the student or parent as soon as possible but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess student funds under paragraph (b)(1)(iii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student or parent in a subsidiary ledger account designed for that purpose;

(ii) Maintain, at all times, cash in its bank account in an amount at least equal to the amount of funds the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balance on loan funds by the end of the loan period and any remaining other title IV, HEA program funds by the end of the last payment period in the award year for which they were awarded.

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

§ 668.166 Excess cash.

(a) *General.* (1) The Secretary considers excess cash to be any amount of title IV, HEA program funds, that an institution does not disburse to students or parents by the end of the third business day following the date the institution received those funds from the Secretary. Except as provided in paragraph (b) of this section, an institution must return promptly to the Secretary any amount of excess cash in its account or accounts.

(2) The provisions in this section do not apply to the title IV, HEA program funds that an institution receives from the Secretary under the just-in-time payment method.

(b) *Excess cash tolerances.* (1) If an institution draws down title IV, HEA program funds in excess of its immediate cash needs, the institution may maintain the excess cash balance in the account the institution established under § 668.164 only if—

(i) In the award year preceding that drawdown, the amount of that excess cash balance is less than—

(A) For a period of peak enrollment at the institution during which that drawdown occurs, three percent of its total prior-year drawdowns; or

(B) For any other period, one percent of its total prior-year drawdowns; and

(ii) Within the next seven days, the institution eliminates its excess cash balance by disbursing title IV, HEA program funds to students or parents for at least the amount of that balance.

(2) For the purposes of this section, a period of peak enrollment at an institution occurs when at least 25 percent of the institution's students start classes during a given 30-day period. For any award year, an institution calculates the percentage of students who started classes during a given 30-day period by—

(i) For the prior award year in which the 30-day period began, determining the number of students who started classes during that period;

(ii) Determining the total number of students who started classes during the entire award year used in paragraph (b)(2)(i) of this section;

(iii) Dividing the number of students in paragraph (b)(2)(i) of this section by the number of students in paragraph (b)(2)(ii) of this section; and

(iv) Multiplying the result obtained in paragraph (b)(2)(iii) of this section by 100.

(3) For the purpose of determining the total amount of title IV, HEA program funds under paragraph (b)(1)(i) of this section, an institution that participates in the Direct Loan Program may include, for the latest year for which the Secretary has complete data, the total amount of loans guaranteed under the FFEL Program for students attending the institution during that year.

(c) *Consequences for maintaining excess cash balances.* (1) If the Secretary finds that an institution maintains in its account excess cash balances greater than those allowed under paragraph (b) of this section, the Secretary—

(i) As provided in paragraph (c)(2) of this section, requires the institution to reimburse the Secretary for the costs the Secretary deems to have incurred in making those excess funds available to the institution; and

(ii) May initiate a proceeding to fine, limit, suspend, or terminate the institution's participation in one or more title IV, HEA programs under subpart G of this part.

(2) For the purposes of this section, upon a finding that an institution has maintained excess cash, the Secretary—

(i) Considers the institution to have issued a check on the date that the check cleared the institution's bank account, unless the institution demonstrates to the satisfaction of the Secretary that it issued the check shortly after the institution wrote the check; and

(ii) Calculates, or requires the institution to calculate, a liability for maintaining excess cash balances in accordance with procedures established by the Secretary. Under those procedures, the Secretary assesses a liability that is equal to the difference between the earnings that the excess cash balances would have yielded if invested under the applicable current value of funds rate and the actual interest earned on those balances. The current value of funds rate is an annual percentage rate, published in a Treasury Financial Manual (TFM) bulletin, that reflects the current value of funds to the Department of Treasury based on certain investment rates. The current value of funds rate is computed each year by averaging investment rates for the 12-month period ending every September. The TFM bulletin is published annually by the Department of Treasury. Each annual bulletin identifies the current value of funds rate and the effective date of that rate.

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

§ 668.167 FFEL Program funds.

(a) *Requesting FFEL Program funds.* In certifying a loan application for a borrower under § 682.603—

(1) An institution may not request a lender to provide it with loan funds by EFT or master check earlier than—

(i) Twenty-seven days after the first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Thirteen days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford Loan Program borrowers; and

(2) An institution may not request a lender to provide it with loan funds by check requiring the endorsement of the borrower earlier than—

(i) The first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Thirty days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford borrowers; and

(3) (i) An institution may not request a lender to provide it with loan funds by EFT or master check for any Federal PLUS Program loan earlier than provided in paragraph (a)(1) of this section.

(ii) An institution may not request a lender to provide loan funds by check requiring the endorsement of the borrower for any Federal PLUS Program loan earlier than provided in paragraph (a)(2) of this section.

(b) *Returning funds to a lender.* (1) Except as provided in paragraph (c) of this section, an institution must return FFEL Program funds to a lender if the institution does not disburse those funds to a student or parent for a payment period within—

(i) Ten business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT or master check on or after July 1, 1997 but before July 1, 1999;

(ii) Three business days following the date the institution receives the funds if the lender provides those funds to the institution by EFT and master check on or after July 1, 1999; or

(iii) Thirty days after the institution receives the funds if a lender provides those funds by a check payable to the borrower or copayable to the borrower and the institution.

(2) If the institution does not disburse the loan funds as specified in paragraph (b)(1) or (c) of this section, the institution must return those funds to the lender promptly but no later than 10 business days after the date the

institution is required to disburse the funds.

(3) If an institution must return loan funds to the lender under paragraph (b)(2) of this section and the institution determines that the student is eligible to receive the loan funds, the school may disburse the funds to the student or parent rather than return them to the lender provided the funds are disbursed prior to the end of the applicable timeframe under paragraph (b)(2) of this section.

(c) *Delay in returning funds to a lender.* An institution may delay returning FFEL program funds to a lender for—

(1) Ten business days after the date set forth in paragraph (b)(1) of this section if—

(i)(A) The institution does not disburse FFEL Program funds to a borrower because the student did not complete the required number of clock or credit hours in a preceding payment period; and

(B) The institution expects the student to complete required hours within this 10-day period; or

(ii)(A) The student has not met all the FFEL Programs eligibility requirements; and

(B) The institution expects the student to meet those requirements within this 10-day period; or

(2) Thirty days after the date set forth in paragraph (b) of this section for funds a lender provides by EFT or master check if the Secretary places the institution on the reimbursement payment method under paragraph (d) or (e) of this section.

(d) *An institution placed under the reimbursement payment method.* (1) If the Secretary places an institution under the reimbursement payment method for the Federal Pell Grant, Direct Loan or campus-based programs, the institution—

(i) May not disburse FFEL Program funds to a borrower until the Secretary approves a request from the institution to make that disbursement for that borrower; and

(ii) If prohibited by the Secretary, may not certify a borrower's loan application until the Secretary approves a request from the institution to make that certification for that borrower.

(2) In order for the Secretary to approve a disbursement or certification request from the institution, the institution must submit documentation to the Secretary or entity approved by the Secretary that shows that each borrower included in that request whose loan has not been disbursed or certified is eligible to receive that disbursement or certification.

(3) Pending the Secretary's approval of a disbursement or certification request, the Secretary may—

(i) Prohibit the institution from endorsing a master check or obtaining a borrower's endorsement of any loan check the institution receives from a lender;

(ii) Require the institution to maintain loan funds that it receives from a lender via EFT in a separate bank account that meets the requirements under § 668.164; and

(iii) Prohibit the institution from certifying a borrower's loan application.

(e) *An institution participating solely in the FFEL Programs.* If the FFEL Programs are the only title IV, HEA programs in which an institution participates and the Secretary determines that there is a need to monitor strictly the institution's participation in those programs, the Secretary may subject the institution to the conditions and limitations contained in paragraph (d) of this section.

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

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

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

6. Section 674.2(a) is amended by adding the term ''Payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 674.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

7. Section 674.2(b) is amended by removing the definition of the term ''*Payment period''.

8. Section 674.16 is amended by removing in paragraphs (d) (1) and (e) ''§ 668.165'' and adding, in its place, ''§ 668.164''; by removing paragraph (g) and by redesignating paragraphs (h), (i), and (j) as paragraphs (g), (h), and (i), respectively.

PART 675—FEDERAL WORK-STUDY PROGRAMS

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

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

10. Section 675.2(a) is amended by revising the introductory clause to read as follows:

§ 675.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR 668:

* * * * *

11. Section 675.2(b) is amended by removing the definition of the term ''*Payment period''.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

12. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070–3, unless otherwise noted.

13. Section 676.2(a) is amended by adding the term ''Payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 676.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

14. Section 676.2(b) is amended by removing the definition of the term ''*Payment period''.

* * * * *

§ 676.16 [Amended]

15. Section 676.16 is amended by removing in paragraph (c) ''§ 668.165'' and adding, in its place, ''§ 668.164''; by removing paragraph (e) and by redesignating paragraphs (f) and (g) as paragraphs (e) and (f), respectively.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

17. Section 682.200(a)(1) is amended by adding the term ''payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 682.200 Definitions.

(a)(1) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

18. Section 682.207 is amended by removing the word ''separate'' and adding, ''in accordance with § 668.163 after the word ''maintained'' in paragraph (b)(1)(ii)(B); removing the word ''separate'', and adding ''in accordance with § 668.163'' after the word ''maintained'' in paragraph

(b)(1)(ii)(C); removing the word ''separate'' and adding ''in accordance with § 668.163'' after the word ''maintained'' in paragraph (b)(1)(v)(B)(*1*); revising paragraphs (c)(3) and (4) and adding new paragraph (c)(5); and revising paragraph (d) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) * * *

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

(4) If one or more scheduled disbursements have elapsed before a lender makes a disbursement and the student is still enrolled, the lender may include in the disbursement loan proceeds for previously scheduled, but unmade, disbursements.

(5) A lender is not required to make more than one disbursement if a school is not in a State.

(d)(1) A lender may disburse loan proceeds after the student has ceased to be enrolled on at least a half-time basis.

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

(i)(A) Only if the school certified the loan application 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;

(B) Only if the student completed the first 30 days of his or her program of study if the student was a first-year, first time borrower as described in § 682.604(c)(5) of this section; and

(C) Only if the student graduated or successfully completed the period of enrollment for which the loan was intended, in the case of a second or subsequent disbursement.

(3) The lender shall give notice to the school that the loan proceeds have been disbursed in accordance with (d)(1) of this section at the time the lender sends the loan proceeds to the school.

19. Section 682.603 is amended by amending paragraph (b)(4) by adding the word ''and'' after the semicolon; revising paragraph (b)(5); removing paragraph (b)(6); removing and reserving paragraph (c); and revising paragraph (h)(1) to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

* * * * *

(b) * * *

(5) The schedule for disbursement of the loan proceeds, which must reflect the delivery of the loan proceeds as set forth in § 682.604(c)(6).

* * * * *

(h) *Requesting loan proceeds.* (1) Pursuant to paragraph (b)(5) of the section, a school may not request the disbursement by the lender for loan proceeds earlier than the period specified in § 668.167.

* * * * *

20. Section 682.604, paragraph (a) is amended by revising the paragraph heading, designating the text as paragraph (a)(1), and adding new paragraphs (a)(2) and (a)(3); paragraph (b) is amended by revising the paragraph heading; paragraph (b)(2)(ii) is removed and reserved; paragraph (b)(2)(iii) is amended by removing ''34 CFR Part 668'' and adding, in its place, ''§ 668.26''; paragraph (c)(2)(i) is amended by removing ''45'' and adding, in its place, ''30''; paragraph (c)(2)(ii)(A) is amended by removing ''45'' and adding, in its place, ''30''; paragraph (c)(2)(ii)(B) is amended by removing ''668.165(b)(2)'' and adding, in its place, ''668.164(e)''; paragraphs (c)(3)(i) and (ii) are revised; paragraph (c)(4) is amended by removing ''§ 682.605(c)'' and adding, in its place, ''§ 668.22(j)''; paragraphs (c)(6) through (c)(9) are added; paragraph (d)(1)(i) is amended by removing ''§ 668.165(c)(2)'' and adding, in its place, ''§ 668.164''; paragraph (d)(2) is revised; paragraph (d)(3) is amended by removing ''or does not begin attendance on a delayed basis as provided in § 682.604(b)(2)(ii),'' and removing ''30 days after the first day of that period of enrollment'' and adding, in its place, ''the period specified in § 668.167''; and paragraph (e) is revised to read as follows:

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

(a) *General.* (1) * * *

(2) Prior to a school delivering or crediting an FFEL loan account by EFT or master check, the school must provide the student or parent borrower with the notice as described under § 668.165.

(3) If the school is placed under the reimbursement payment method as provided under § 668.162, a school shall not disburse a loan, as provided in § 668.167.

(b) *Releasing loan proceeds.* * * *

(c) * * *

(3) * * *

(i) Deliver the proceeds to the student or parent borrower as specified in § 668.164; or

(ii) Credit the student's account in accordance with paragraph (d)(1) of this section and § 668.164, notify the student or parent borrower in writing that it has so credited that account, and deliver to the student or parent borrower the remaining loan proceeds not later than the timeframe specified in 668.164.

* * * * *

(c) * * *

(6) Notwithstanding any other provision of this section, unless § 682.207(c) (4) or (5) applies—

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

(ii) If a loan period is one payment period, the school shall 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) If an educational program measures academic progress in credit hours and does not use semesters, trimesters, or quarters, the school may not deliver a second disbursement until the later of—

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

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

(8) If an educational program measures academic progress in clock hours, the school may not deliver a second disbursement until the later of—

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

(ii) The date, as determined by the school, that the student has completed half of the clock hours in the loan period.

(9) The school must deliver loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(d) * * *

(2) For purposes of paragraphs (c)(2)(i), (c)(2)(ii) and (c)(3) of this section, a school may not deliver loan proceeds earlier than the timeframe specified in § 668.164.

* * * * *

(e) *Processing a late disbursement.*

(1) A school may process a late disbursement received from a lender under § 682.207(d) in accordance with § 668.164(g).

(2) If the total amount of the late disbursement and all prior disbursements is greater than that portion of the borrower's educational charges, the school shall return the balance of the borrower's loan proceeds to the lender with a notice certifying—

(i) The beginning and ending dates of the period during which the borrower was enrolled at the school as an eligible student during the loan period or payment period; and

(ii) The borrower's corrected financial need for the loan for that period of enrollment or payment period.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

21. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

22. Section 685.102 is amended in paragraph (a)(1) by adding the term ''payment period'' in alphabetical order and revising the introductory clause to read as follows:

§ 685.102 Definitions.

(a) (1) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

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

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

* * * * *

(b) *Determining disbursement dates and amounts.* (1) Before disbursing a loan, a school that originates loans shall determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

(2) Unless paragraph (b)(5), (6), or (7) of this section applies, an institution shall disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraph (b)(4), (5), or (6) of this section applies—

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

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

(4)(i) If one or more payment periods have elapsed before a school makes a disbursement, the school may include in the disbursement loan proceeds for completed payment periods; or

(ii) If the loan period is equal to one payment period and more than one-half of it has elapsed, the school may include in the disbursement loan proceeds for the entire payment period.

(5) If an educational program measures academic progress in credit hours and does not use semesters, trimesters, or quarters, the school may not make a second disbursement until the later of—

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

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

(6) If an educational program measures academic progress in clock hours, the school may not make a second disbursement until the later of—

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

(ii) The date, as determined by the institution, that the student has completed half of the clock hours in the loan period.

(7) The school must disburse loan proceeds in substantially equal installments, and no installment may exceed one-half of the loan.

(8) A school not in a State is not required to make more than one disbursement.

* * * * *

24. Section 685.303(d) is revised to read as follows:

§ 685.303 Processing loan proceeds.

* * * * *

(d) *Late Disbursement.* A school may make a late disbursement according to the provisions found under 34 CFR 668.164(g).

25. Section 685.303(c) is amended by removing the citation ''668.165'' at the end of the paragraph and adding, in its place, ''668.164''.

§ 685.309 [Amended]

26. Section 685.309(e) is amended by removing the citation ''668.164'' at the end of the paragraph and adding, in its place, ''668.163''.

PART 690—FEDERAL PELL GRANT PROGRAM

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

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

28. Section 690.2 is amended by revising the section heading, adding the term ''Payment period'' in alphabetical order in paragraph (a) and revising the introductory clause of paragraph (a) to read as follows:

§ 690.2 Definitions.

(a) The definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

* * * * *

§ 690.3 [Removed and reserved]

29. Section 690.3 is removed and reserved.

30. Section 690.75 is amended by removing paragraph (b) and by redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively.

§ 690.78 [Amended]

31. Section 690.78 is amended by removing in paragraph (a) ''§ 668.165'' and adding, in its place, ''§ 668.164''.

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PANAMA CANAL COMMISSION

35 CFR Parts 133 and 135

RIN 3207–AA38

Tolls for Use of Canal; Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This rule announces a two-phase toll-rate increase—8.2 percent on January 1, 1997 followed by a 7.5 percent increase on January 1, 1998. Record traffic demand on the Canal's transit capacity has necessitated an expanded and accelerated capital program. Absent a toll increase, the Commission anticipates capital program expenditures will contribute to a significant deficit in FY's 1996–1998. The toll increase is legally mandated to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements.

This action increases toll rates for: merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, from $2.21 to $2.39 per PC/UMS Net Ton in January 1997, and to $2.57 in January 1998; vessels in ballast without passengers or cargo, from $1.76 to $1.90 per PC/UMS Net Ton in January 1997, and to $2.04 in January 1998; and other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, from $1.23 to $1.33 per ton of displacement in January 1997, and to $1.43 in January 1998.