



Friday
July 16, 1999

Part II

**Department of
Education**

**34 CFR Part 668
Student Assistance General Provisions;
Proposed Rule**

DEPARTMENT OF EDUCATION**34 CFR Part 668**

RIN 1840-AC73

Student Assistance General Provisions**AGENCY:** Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing student eligibility for 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 Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The proposed regulations implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (1998 Amendments). Most of the proposed changes simply conform current regulatory provisions to the statutory changes.

DATES: We must receive your comments on or before September 14, 1999.

ADDRESSES: Address all comments about these proposed regulations to Lloyd Horwich, U.S. Department of Education, P.O. Box 23272, Washington, DC 20202-3272. If you prefer to send your comments through the Internet, use the following address: senprm@ed.gov.

FOR FURTHER INFORMATION CONTACT: Lloyd Horwich. Telephone (202) 708-8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:**Invitation to Comment**

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

the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

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

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

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

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

Summary of Proposed Changes

The Secretary proposes to revise the current Student Assistance General Provisions, 34 CFR part 668, concerning student eligibility for financial assistance programs authorized under Title IV, HEA. The revisions implement changes made by the 1998 Amendments (Public Law 105-244, enacted October 7, 1998).

Negotiated Rulemaking Process

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the Act, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All published proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens the negotiated rulemaking process or provides a written

explanation to the participants in that process why the Secretary has decided to depart from the agreements.

To obtain public involvement in the development of the proposed regulations, we published a notice in the **Federal Register** (63 FR 59922, November 6, 1998) requesting advice and recommendations from interested parties concerning what regulations were necessary to implement Title IV of the HEA. We also invited advice and recommendations concerning which regulated issues should be subjected to a negotiated rulemaking process. We further requested advice and recommendations concerning ways to prioritize the numerous issues in Title IV, in order to meet statutory deadlines. Additionally, we requested advice and recommendations concerning how to conduct the negotiated rulemaking process, given the time available and the number of regulations that needed to be developed.

In addition to soliciting written comments, we held three public hearings and several informal meetings to give interested parties an opportunity to share advice and recommendations with the Department. The hearings were held in Washington, DC, Chicago, and Los Angeles, and we posted transcripts of those hearings to the Department's Information for Financial Aid Professionals website (<http://ifap.ed.gov>).

We then published a second notice in the **Federal Register** (63 FR 71206, December 23, 1998) to announce the Department's intention to establish four negotiated rulemaking committees to draft proposed regulations implementing Title IV of the HEA. The notice announced the organizations or groups believed to represent the interests that should participate in the negotiated rulemaking process and announced that the Department would select participants for the process from nominees of those organizations or groups. We requested nominations for additional participants from anyone who believed that the organizations or groups listed did not adequately represent the list of interests outlined in section 492 of the HEA. Once the four committees were established, they met to develop proposed regulations over the course of several months, beginning in January.

The proposed regulations contained in this NPRM reflect the final consensus of Committee III, which was made up of the following members:

Accrediting Commission of Career Schools and Colleges of Technology
American Association of Collegiate Registrars and Admissions Officers

American Association of Community Colleges
 American Association of Cosmetology Schools
 American Association of State Colleges and Universities
 American Council on Education
 Association of American Universities
 Career College Association
 Coalition of Higher Education Assistance Organizations
 Education Finance Council
 Legal Services Counsel/Legal Aid (a coalition)
 National Association of College and University Business Officers
 National Association for Equal Opportunity in Higher Education
 National Association of Graduate/Professional Students
 National Association of Independent Colleges and Universities
 National Association of State Student Grant and Aid Programs/National Council of Higher Education Loan Programs (a coalition)
 National Association of State Universities and Land-Grant Colleges
 National Association of Student Financial Aid Administrators
 National Direct Student Loan Coalition
 The College Board
 The College Fund/United Negro College Fund
 United States Department of Education
 United States Student Association
 U.S. Public Interest Research Group

As stated in the committee protocols, consensus means that there must be no dissent by any member in order for the committee to be considered to have reached agreement. Consensus was reached on all of the proposed regulations in this document.

Section 668.32 Student Eligibility—General

Home-Schooled Students

Section 484(d) of the HEA, as amended by the 1998 Amendments, allows a student who completes a secondary school education in a home school that is treated as a home school or private school under State law to be eligible to receive Title IV, HEA program funds. The Secretary proposes to amend § 668.32(e) to reflect that change.

The negotiating committee discussed the language of the 1998 Amendments, and how different States oversee home schools, and concluded that the statute would be implemented best by not adding any additional eligibility requirements for a home-schooled student beyond his or her State's home-school completion requirements.

Under proposed § 668.32(e)(4), to be eligible to receive Title IV, HEA program funds, a home-schooled student must satisfy the home-school completion requirements of the State in

which the student was home-schooled. Thus, if a State requires a home-schooled student to obtain a secondary school completion credential for home-school study that is more than an attestation that the student was exempt from the State's mandatory school attendance law, the student must obtain such a credential to be eligible for Title IV, HEA program funds. If the State does not require the student to obtain such a credential, the student will satisfy § 668.32(e)(4) based on the exemption from the State's mandatory school attendance law.

For purposes of Title IV, HEA program aid, the Secretary will allow a home-schooled student to self-certify his or her eligibility in the same way a high school graduate or GED recipient may.

Statement of Educational Purpose

The proposed regulations amend § 668.32(h), which governs a student's filing of his or her Statement of Educational Purpose, to comply with changes made to the HEA by the 1998 Amendments. Previously, a student who received a loan under the FFEL program had to file the Statement with the lender. Under proposed § 668.32(h), a student simply would be required to file the Statement with the Secretary.

Technical Corrections and Cross-References

The Secretary proposes to amend § 668.32(k)(7) to reflect the name-change of the SSIG program to the LEAP program. The Secretary proposes to add as § 668.32(l) a cross-reference that reflects the student eligibility criterion concerning drug convictions added by the 1998 Amendments and implemented by the proposed addition of § 668.40.

Section 668.38 Enrollment in Telecommunications and Correspondence Courses

Prior to the 1998 Amendments, section 484(l) of the HEA provided that a student enrolled in a telecommunications course would not be considered to be enrolled in a correspondence course under certain circumstances, including that the student was enrolled in a program that led to an associate, bachelor, or graduate degree. The 1998 Amendments amended section 484(l) by adding another category of students to be similarly treated: students who are enrolled in programs of one academic year or longer that lead to a certificate. The proposed regulations amend § 668.38(b) to reflect that change.

Thus, under proposed § 668.38(b), the Secretary does not consider a student enrolled in a telecommunications course at an institution of higher education (as defined in § 668.38(b)(2)) to be enrolled in a correspondence course, if the student is enrolled in a program described in the preceding paragraph, and the number of telecommunications and correspondence courses offered by the institution is less than half the total number of courses offered by the institution.

The 1998 Amendments also restricted the type of institution at which telecommunications courses can be considered not to be correspondence courses. Proposed § 668.38(b)(2) reflects that restriction. It defines an institution of higher education as one which is not described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Education Act, and at which at least half of the programs of study lead to an associate, bachelor, or graduate degree. If the student is enrolled in telecommunications courses at an institution other than an institution of higher education as defined by proposed § 668.38(b)(2), those courses are considered correspondence courses.

Section 668.40 Suspension of Eligibility for Drug-Related Offenses

The 1998 Amendments added section 484(r) to the HEA. Under that subsection, a student who has been convicted under Federal or State law of possession or sale of a controlled substance, regardless of when the conviction occurred, is ineligible for Title IV, HEA program funds for the period specified in that subsection.

The periods of ineligibility, which begin as of the date of the conviction, are as follows:

If convicted of an offense involving the possession of a controlled substance, the ineligibility period is:

First offense	1 year.
Second offense	2 years.
Third offense	Indefinite.

If convicted of an offense involving the sale of a controlled substance, the ineligibility period is:

First offense	2 year.
Second offense	Indefinite.

The Secretary proposes to add § 668.40(a) and (b) to implement those statutory provisions. Note that for purposes of determining a student's

eligibility for Title IV assistance, a conviction means a conviction that is on a student's record at the time the student's eligibility is being determined. Therefore, a conviction that was reversed, set aside, or removed from the student's record is not relevant.

Because the statutory ineligibility periods begin on the date of conviction, if a student has been convicted of both possession and sale of a controlled substance and the two ineligibility periods overlap, the periods run concurrently for the time during which they overlap. The start of the ineligibility period for the later conviction is not postponed until the ineligibility period for the earlier conviction ends. For example, if a student is convicted on July 1, 2000 for the first time for possession of a controlled substance and convicted on January 1, 2001 for the first time for sale of a controlled substance, the student will regain eligibility on January 1, 2003.

Section 484(r) of the HEA further provides that a student can regain eligibility, regardless of the number or type of convictions on the student's record, by successfully completing a drug rehabilitation program that complies with criteria established by the Secretary and that includes two unannounced drug tests. The proposed regulations establish criteria for an acceptable drug rehabilitation program in § 668.40(d)(2). Under the proposed criteria, a drug rehabilitation program must (1) have received or be qualified to receive funds directly or indirectly under a Federal, State, or local government program, (2) be administered or recognized by a Federal, State, or local government agency or court, (3) have received or be qualified to receive payment directly or indirectly from a State-licensed insurance company, or (4) be administered or recognized by a State-licensed hospital, health clinic or medical doctor. The Secretary believes, and the rest of Committee III concurs, that these criteria would ensure the availability of a wide-range of opportunities for students to regain their eligibility, and that an acceptable drug rehabilitation program would have to be approved by an entity qualified to make such an assessment.

Having reviewed the language of the new statutory provision and its legislative history, the Secretary believes, and the rest of Committee III concurs, that Congress intended the drug rehabilitation relief provision to be available at the same time students are subject to the loss of eligibility. Members of Congress specifically

indicated in statements on the floor of Congress that students should be able to regain Title IV, HEA program eligibility if they complete a rehabilitation program. Since the HEA requires that acceptable rehabilitation programs comply with criteria prescribed by the Secretary in regulations and such regulations (as proposed in this NPRM) will not be effective until July 1, 2000, this new student eligibility provision will not be implemented until July 1, 2000. Until that time no student will be determined to be ineligible for Title IV assistance under the new provision.

Nonetheless, a student's actions between now and the effective date of the regulations may affect eligibility. For example, a first conviction for possession of a controlled substance on February 1, 2000, will make a student ineligible for Title IV assistance from July 1, 2000—the effective date of the regulations—through January 31, 2001—one year from the date of the conviction. If the conviction were the student's second, the student would not regain eligibility until February 1, 2002. Because of the serious consequences to some students of the new provision and because there are certain actions that they could take to mitigate those consequences, the Secretary strongly encourages, but is not requiring, institutions to inform their students of this provision and to help students understand how their actions might affect their future eligibility. For example, students whose Title IV assistance otherwise would be jeopardized under the new law can avoid a loss of eligibility by completing an acceptable drug rehabilitation program before July 1, 2000.

The Secretary will not require institutions to question their Federal aid applicants about drug-related matters. The Secretary intends to use the 2000–2001 aid application processes—Free Applications for Federal Student Aid (FAFSA) and Student Aid Report (SAR)—to collect needed information from applicants and to report the results to schools on Institutional Student Information Records (ISIRs). The Secretary has been working with representatives from the higher education community in planning these new and sensitive processes, and will keep the community updated as these plans are developed.

Executive Order 12866

1. Potential Costs and Benefits

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

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

In assessing the potential costs and benefits of this regulatory action—both quantitative and qualitative—we have determined that the benefits would justify the costs.

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

We note that, as these proposed regulations were subject to negotiated rulemaking, the costs and benefits of the various requirements were discussed thoroughly by negotiators. The resultant consensus reached on a particular requirement generally reflected agreement on the best possible approach to that requirement in terms of cost and benefit.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comments on whether there may be further opportunities to reduce any potential costs or to increase any potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the Title IV, HEA programs.

Elsewhere in this preamble, we discuss the potential costs and benefits of these proposed regulations under the heading *Regulatory Flexibility Act Certification*.

2. Clarity of the Regulations

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

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 668.32, *Student eligibility—general*.)

- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

- What else could we do to make the proposed regulations easier to understand?

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

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Entities affected by these regulations are institutions of higher education that participate in the Title IV, HEA programs. These institutions are defined as small entities, according to the U.S. Small Business Administration, if they are: for-profit or nonprofit entities with total revenue of \$5,000,000 or less; or entities controlled by governmental entities with populations of 50,000 or less. These proposed regulations would not impose a significant economic impact on a substantial number of small entities. The regulations would benefit both small and large institutions, without requiring significant changes to current institutional system operations, through: the further simplification of the filing of a student's Statement of Educational Purpose; and the expansion of Title IV eligibility provisions regarding home-schooled students and students enrolled in telecommunications and correspondence courses. These proposed regulations also implement the new statutory criterion for Title IV eligibility concerning convictions for possession or sale of a controlled substance. This provision was discussed extensively as part of the negotiated rulemaking process, and the Secretary believes that the proposal to implement this change through the use of the student aid application processes is the best approach and would prevent unnecessary administrative burden on institutions.

The Secretary invites comments from small institutions as to whether the proposed changes would have a significant economic impact on them.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR Part 79.

Assessment of Educational Impact

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

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List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Student aid, Reporting and recordkeeping requirements.

Dated: July 8, 1999.

Richard W. Riley,
Secretary of Education.

(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 LEAP; and 84.268 William D. Ford Federal Direct Loan Programs)

The Secretary proposes to amend part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

2. Section 668.32 is amended as follows:

A. In paragraph (e)(2), by removing "or";

B. In paragraph (e)(3), by removing the period at the end of the paragraph and adding in its place a semi-colon, and adding "or" after the semi-colon;

C. By adding a new paragraph (e)(4) to read as follows;

D. In paragraph (h), by removing "or in the case of a loan made under the FFEL Program, with the lender";

E. In paragraph (j), by removing the "and" after the semi-colon;

F. In paragraph (k)(7), by removing "SSIG" and adding in its place, "LEAP," by removing the period at the end of the paragraph and adding in its place a semi-colon, and adding "and" after the semi-colon; and

G. By adding paragraph (l) to read as follows.

§ 668.32 Student eligibility—general.

* * * * *

(e) * * *

(4) Was home-schooled, and either—
(i) Obtained a secondary school completion credential for home school (other than a high school diploma or its recognized equivalent) provided for under State law; or

(ii) If State law does not require a home-schooled student to obtain the credential described in paragraph (e)(4)(i) of this section, has completed a secondary school education in a home school setting that qualifies as an exemption from compulsory attendance requirements under State law.

* * * * *

(l) Is not ineligible under 34 CFR 668.40.

3. Section 668.38 is amended by revising paragraph (b) to read as follows:

§ 668.38 Enrollment in telecommunications and correspondence courses.

* * * * *

(b) (1) For purposes of this section, a student enrolled in a telecommunications course at an institution of higher education is not enrolled in a correspondence course, if—

(i) The student is enrolled in a program that leads to a certificate for a program of study of 1 year or longer, or an associate, bachelor, or graduate degree; and

(ii) The number of telecommunications and correspondence courses the institution offered during its latest completed

award year was fewer than 50 percent of all the courses the institution offered during that same year.

(2) For purposes of paragraph (b)(1) of this section, an institution of higher education is one—

(i) That is not an institute or school described in section 521(4)(C) of the Carl D. Perkins Vocational and Applied Technology Act; and

(ii) At which at least 50 percent of the programs of study offered by the institution during its latest completed award year led to an associate, bachelor, or graduate degree.

(3) For purposes of paragraph (b)(1)(ii) of this section, the institution must calculate the number of courses using the provisions contained in 34 CFR 600.7(b)(2).

4. Section 668.40 is added to read as follows:

668.40 Conviction for possession or sale of illegal drugs.

(a)(1) A student is ineligible to receive Title IV, HEA program funds if the student has been convicted of an offense involving the possession or sale of illegal drugs for the period described in paragraph (b) of this section. However, the student may regain eligibility before that period expires under the conditions described in paragraph (c) of this section.

(2) For purposes of this section, a conviction means only a conviction that

is on a student's record at the time the student's eligibility is being determined. A conviction that was reversed, set aside, or removed from the student's record is not relevant for purposes of this section.

(3) For purposes of this section, an illegal drug is a controlled substance as defined by section 102(6) of the Controlled Substances Act (21 U.S.C. 801(6)), and does not include alcohol or tobacco.

(b)(1) *Possession.* Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for possession of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for one year after the date of conviction;

(ii) Two times for possession of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for two years after the date of the second conviction; or

(iii) Three or more times for possession of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for an indefinite period after the date of the third conviction.

(2) *Sale.* Except as provided in paragraph (c) of this section, if a student has been convicted—

(i) Only one time for sale of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for two years after the date of conviction; or

(ii) Two or more times for sale of illegal drugs, the student is ineligible to receive Title IV, HEA program funds for an indefinite period after the date of the second conviction.

(c) If a student successfully completes a drug rehabilitation program described in paragraph (d) of this section after the student's most recent drug conviction, the student regains eligibility on the date the student successfully completes the program.

(d) A drug rehabilitation program referred to in paragraph (c) of this section is one which—

(1) Includes at least two unannounced drug tests; and

(2)(i) Has received or is qualified to receive funds directly or indirectly under a Federal, State, or local government program;

(ii) Is administered or recognized by a Federal, State, or local government agency or court;

(iii) Has received or is qualified to receive payment directly or indirectly from a State-licensed insurance company; or

(iv) Is administered or recognized by a State-licensed hospital, health clinic or medical doctor.

(Authority: 20 U.S.C. 1091(r))

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