



# Federal Register

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**Thursday,  
November 1, 2007**

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**Part III**

## **Department of Education**

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**34 CFR Parts 668, 674, 676 et al.  
Federal Student Aid Programs; Final Rule**

**DEPARTMENT OF EDUCATION****34 CFR Parts 668, 674, 676, 682, 685, 690, and 691**

[Docket ID ED-2007-OPE-0134]

RIN 1840-AC91

**Federal Student Aid Programs****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations on the Student Assistance General Provisions; Federal Perkins Loan (Perkins Loan) Program; Federal Supplemental Educational Opportunity Grant (FSEOG) Program; Federal Family Education Loan (FFEL) Program; William D. Ford Federal Direct Loan (Direct Loan) Program; Federal Pell Grant (Pell Grant) Program; Academic Competitiveness Grant (ACG) Program; and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Program. The regulations reduce administrative burden for program participants, provide benefits to students and borrowers, and protect taxpayers' interests.

**DATES:** *Effective Date:* These regulations are effective July 1, 2008.

*Implementation Date:* The Secretary has determined, in accordance with section 482(c)(2)(A) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1089(c)(2)(A)), that institutions, lenders, guaranty agencies, and loan servicers that administer Title IV, HEA programs may, at their discretion, choose to implement all provisions of these final regulations on or after November 1, 2007. For further information, see the section entitled Implementation Date of These Regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble.

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**SUPPLEMENTARY INFORMATION:** On August 8, 2007, the Secretary published a notice of proposed rulemaking (NPRM) for the Student Assistance General Provisions,

Perkins Loan Program, FSEOG Program, FFEL Program, Direct Loan Program, Pell Grant Program, ACG Program, and National SMART Grant Program in the **Federal Register** (72 FR 44620).

In the preamble to the NPRM, the Secretary discussed on pages 44621 through 44635 the major changes proposed in that document to strengthen and improve the administration of the Federal student financial aid programs authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). These include the following:

- Amending § 668.2 to add a definition for “professional degree” and to harmonize and consolidate definitions for “full-time student,” “graduate or professional student,” “half-time student,” “three-quarter time student,” and “undergraduate student.”

- Amending §§ 668.4, 668.22, 668.164, 682.200, 682.604, and 685.301 to align disbursements, with a few exceptions, for all Title IV grant and loan programs on a payment period basis.

- Amending § 668.10 to define “independent study” as a course of study with predefined objectives where a student works with a faculty member to decide how those objectives will be met.

- Amending §§ 668.21, 682.604, and 685.303 to consolidate all requirements addressing the treatment of Title IV funds (except Federal Work Study) when a student does not begin attendance in a payment period or period of enrollment by moving the requirements for FFEL and Direct Loan funds from §§ 682.604 and 685.303, respectively, to § 668.21.

- Amending § 668.22 to allow institutions to make a direct disbursement of any Title IV grant funds that make up a post-withdrawal disbursement without notifying a student and obtaining the student's permission.

- Amending § 668.164 to establish timeframes for returning Title IV, HEA program funds that an institution attempts to disburse directly to a student or parent, but the student or parent does not receive or negotiate those funds.

- Amending § 668.164 to allow institutions to pay for prior-year charges of up to \$200.

- Amending § 668.164(c) to modify the provisions for issuing a check and add new provisions expanding the use of electronic funds transfers (EFTs) to bank accounts that underlie stored-value cards and other transaction devices.

- Amending § 668.164(g) to extend the period within which an institution is allowed to make a late disbursement from 120 to 180 days and to eliminate an institution's ability to request funds after that period expires.

- Amending § 668.165(a) to require institutions to either obtain affirmative confirmation from a student prior to disbursing a loan or notify a student no earlier than 30 days before, but no later than seven days after crediting a student's account with loan proceeds, and give students 30 days to cancel all or a portion of the loan.

- Amending § 668.166 to expand the definition of excess cash to include Title IV, HEA program funds received from the Secretary that are deposited or transferred into the institution's Federal bank account as a result of an award cancellation, adjustment, or recovery; to eliminate the three percent excess cash tolerance option; and to simplify the provisions addressing the consequences for maintaining excess cash.

- Amending §§ 674.16 and 676.16 to eliminate the single disbursement provisions that currently exist in the Perkins Loan and FSEOG programs.

- Amending §§ 682.603 and 685.301 to allow institutions that use credit hours with terms that are at least nine weeks and substantially equal in length to make a full loan for a single term; and to allow institutions that use credit hours without terms or without terms that are substantially equal in length with no term less than nine weeks in length, or that use clock hours to certify a loan for the remaining balance of the student's annual loan limit for the remaining portion of a program for a transfer student or a student who has completed one degree and will immediately begin another degree at the same institution.

- Amending §§ 682.603 and 685.301 to allow students to progress to the next annual loan limit if they complete an academic year in calendar time in a nonstandard term credit hour program if the terms in that program are substantially equal in length and are at least nine weeks in length.

- Amending §§ 690.63 and 690.66 to allow institutions that offer programs with semesters, trimesters, or quarters and have terms for different cohorts of students that start periodically to use the same Pell formula as that used for traditional programs; to amend the Pell calculation for programs using clock hours or credit hours without terms; and to adjust the Pell calculation for correspondence study programs.

### Implementation Date of These Regulations

Section 482(c) of the HEA requires that regulations affecting programs under Title IV of the HEA be published in final form by November 1 prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulation may choose to implement earlier and the conditions under which the entity may implement the provisions early.

Consistent with the intent of this regulatory effort to strengthen and improve the administration of the Title IV, HEA programs, the Secretary is using the authority granted her under section 482(c) to designate all of the regulations included in this document for early implementation at the discretion of each institution, lender, guaranty agency, or servicer, as appropriate.

### Analysis of Comments and Changes

The regulations in this document were developed through the use of negotiated rulemaking. Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs under Title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations, the Secretary must conduct a negotiated rulemaking process to develop the proposed regulations. All proposed regulations must conform to agreements resulting from the negotiated rulemaking process unless the Secretary reopens that process or explains any departure from the agreements to the negotiated rulemaking participants.

These regulations were published in proposed form on August 8, 2007, in conformance with the consensus of the negotiated rulemaking committee. Under the committee's protocols, consensus meant that no member of the committee dissented from the agreed-upon language. The Secretary invited comments on the proposed regulations by September 7, and in response to the Secretary's invitation, 22 parties submitted comments on the proposed regulations. An analysis of the comments and the changes in the regulations since publication of the NPRM follows.

We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. We discuss other substantive issues under the sections of the regulations to which they pertain. Generally, we do

not respond to technical and other minor changes—and suggested changes the law does not authorize the Secretary to make. We also do not respond to comments pertaining to issues that were not within the scope of the NPRM.

#### General Definitions (§ 668.2)

Comments: In general, commenters supported the proposed changes in § 668.2. With regard to the definition of “full-time student,” one commenter requested that the Department not increase the number of clock hours required to be considered full-time as that would affect the amount of time a student must be enrolled to be considered part-time.

*Discussion:* These regulations do not include any provisions that increase the number of clock hours required for full-time students. The Department originally considered changing the number of clock hours required for a student to be considered a full-time student, but withdrew this proposal during the negotiated rulemaking sessions because this change could unfavorably affect part-time clock hour students.

*Change:* None.

*Comments:* We received comments from two institutions regarding the definitions of “graduate or professional student” and “undergraduate student” and the clarification of when a student is considered an undergraduate in a dual degree program. One of the commenters noted that this clarification is welcomed in light of the fact that “there has been considerable growth in such programs, often co-mingling undergraduate coursework, making it difficult to determine exact eligibility for Title IV aid. By considering such students to be undergraduates for the first three years of the academic program, this confusion will be greatly reduced.” The other commenter agreed with this regulatory change but only if institutions are allowed to use their own definition of academic year when determining the “third year.”

*Discussion:* The term “academic year” is defined in section 481 of the HEA. Generally, institutions that participate in the Title IV, HEA programs and measure their program length in credit hours are required to define their academic year as at least 30 weeks of instructional time during which a full-time student in an undergraduate program is expected to complete at least 24 semester or trimester credit hours or 36 quarter credit hours of study. Institutions that participate in the Title IV, HEA programs and measure their program length in clock hours are required to define their academic year

as at least 26 weeks of instructional time during which a full-time student in an undergraduate program is expected to complete at least 900 clock hours. However, the statutory purpose behind the definition of an academic year is to determine the minimum period of time for which we will pay a student an academic year's worth of financial aid. Determining “grade level” for the purpose of categorizing a student as either a graduate or professional student or an undergraduate student is not related to the issue the HEA addresses with the definition of an academic year. Therefore, we agree with the commenter who suggested that an institution can, without reference to the statutory definition of an academic year, define what a year is in its programs for purposes of determining when a student is an undergraduate student or a graduate or professional student.

*Change:* The definition of “graduate or professional student” in § 668.2 is amended by using the term “year” instead of “academic year” in paragraph (3). In addition, the definition of “undergraduate student” in § 668.2 is similarly amended by using the term “year” instead of “academic year” in those places that describe the length of a course of study or a program.

*Comment:* We received one comment requesting the Department to consider altering the definitions for “graduate or professional student” and “undergraduate student” to reflect the language that is currently used in the Department's Federal Student Aid (FSA) Handbook for consistency and clarity. In particular, the commenter asked the Department to (1) consider adopting the definition for an “undergraduate student” as it appears in the handbook, (2) use the term “program” consistently throughout the regulations, (3) change the term “institution of higher education” to “eligible institution” since the term “institution of higher education” is defined in the regulations to exclude proprietary institutions, (4) drop the word “first” in the phrases “first professional degree” and “first degree at the baccalaureate level,” and (5) use the term “mixed-degree programs” rather than “dual degree programs.”

*Discussion:* The definition of an “undergraduate student” in the FSA Handbook is “a student who is enrolled in a program of study that usually does not exceed four (and can be up to five) academic years in length and that is designed to lead to a degree or certificate at or below the baccalaureate level.” While this definition is correct, it does not address certain student eligibility or program specific

requirements that are covered in the more comprehensive definition in § 668.2. The definition of “undergraduate student” in § 668.2, which contains definitions that are relevant to all of the Title IV, HEA programs, was intended to incorporate requirements from the definition of “undergraduate student” currently in different program regulations. However, in proposing the definition of “undergraduate student,” we inadvertently omitted certain provisions currently in §§ 674.2, 675.2, and 676.2. Specifically, these sections describe an undergraduate student as a student enrolled in a course of study that usually does not exceed four years, or is enrolled in a four or five year program designed to lead to a degree. A student enrolled in a program of any longer period is considered an undergraduate student for only the first four years of that program.

The HEA refers to a student following a course of study, while institutions offer programs. A course of study refers to a student’s particular academic path in a program. For example, a student’s major would be considered a course of study. Program, as it appears in the HEA, refers to the overall bachelor’s program, which includes not only the course of study but also any other general coursework that may be required by an institution.

We understand the commenter’s concerns that the term “institution of higher education,” as defined in the regulations, appears to exclude proprietary institutions. Additionally, this term is not used in the definition of undergraduate student. Therefore, to address the commenter’s concerns and for consistency, we are removing the reference to an institution of higher education in the definition of graduate or professional student.

We agree with the commenter’s point regarding the use of the term “first degree at the baccalaureate level” in paragraph (1) of the definition for “undergraduate student” and the term “first professional degree.” Because a student can be considered an undergraduate student when taking courses below the baccalaureate level even after receiving a bachelor’s degree for purposes of the FFEL, Direct Loan, and Perkins Loan programs, the term “first degree at the baccalaureate level” in paragraph (1) will be amended. It is not necessary to specify whether a professional degree is a first professional degree for Title IV, HEA program purposes and, therefore, we will amend the definitions for “graduate or professional student” and “undergraduate student.” We will also

amend the term “first professional degree” to “professional degree” to clarify the Department’s intention when using this term in the regulations.

Finally, we believe the term “dual degree programs” is commonly used in the academic community. It is more descriptive of the types of programs to which the definitions apply and is less confusing than the term “mixed degree programs.”

*Changes:* Section 668.2 is amended by removing the word “first” in paragraphs (1), (2), and (3) of the definition for an “undergraduate student” and from paragraph (2) of the definition for “graduate or professional student.” Section 668.2 is further amended by removing the term “institution of higher education” from the definition of a “graduate or professional student” and by removing the word “first” from the term “first professional degree.” In addition, the definition of “undergraduate student” is amended to reflect the omitted provisions in §§ 674.2, 675.2, and 676.2.

*Payment Periods (§§ 668.4, 668.22, 668.164, 682.200, 682.604, and 685.301)*

*Comments:* One commenter believed that the regulatory provisions allowing an institution to disburse Title IV grant funds at such times and in such installments in each payment period as the institution determines best meets the student’s needs should also apply to the disbursement of FFEL and Direct Loan funds. Along these lines, the commenter asked the Department to clarify that an institution may delay the disbursement of an FFEL or Direct Loan until after the 60 percent point in the payment period, or pay in two substantially equal installments that coincide with the beginning dates of two consecutive modules that the student is scheduled to attend within a standard term.

*Discussion:* Nothing in the HEA or the regulations prohibits an institution from paying an FFEL or Direct Loan in installments during a payment period, provided that the disbursements are substantially equal and that no more than half of the loan amount for the period of enrollment is disbursed to the borrower prior to the mid-point of the period of enrollment. However, for an FFEL loan, an institution should confer with the lender or guaranty agency to confirm that they would permit such disbursements. For a Direct Loan, an institution may make such disbursements at the institution’s discretion and does not need to contact the Department. The Department notes that the provisions allowing an institution to pay a student at such

times and in such amounts as it determines best meet the student’s needs also applies to Perkins Loan funds.

The purpose of the provisions allowing an institution to disburse Title IV funds in installments within a payment period is to give institutions the ability to apportion the payment if doing so will be in the best interest of the student. For example, if a payment period is particularly long, an institution might choose to pay in multiple installments to ensure that a student will have funds to pay rent later in the payment period. However, as a general matter, Title IV funds must be provided to students in a timely manner to best assist them in paying their educational expenses. Consequently, an institution may not delay the disbursement of funds until after the 60 percent point, for example, to avoid the administrative burden of performing a Return of Title IV Funds calculation and the requirements that go along with it, or to prevent the student from having to return funds upon withdrawal.

*Change:* Section 668.164(b)(1)(ii) is amended to make clear that an institution may disburse Perkins Loan funds, within each payment period, at such time and in such amounts as it determines best meets the student’s needs.

*Comments:* One commenter asked the Department to clarify any difference between the term “successfully completes” as defined in the NPRM for completion of a payment period in certain types of educational programs, and the term “successfully completed” as used in the late disbursement provisions under § 668.164(g)(4)(ii). The commenter believes that the provision for making a late disbursement, which provides that an institution may not make a second or subsequent late disbursement of FFEL or Direct Loan funds unless the student successfully completed the period of enrollment for which the loan was intended, does not require the student to have passed the coursework associated with the hours in the period of enrollment. Two commenters suggested that the Secretary define “standard terms,” “nonstandard terms,” and “substantially equal in length” in the General Provisions Regulations under § 668.2 so that these terms would apply to all of the Title IV programs.

*Discussion:* The term “successfully completes,” or a variation of that term, has the same meaning for payment period purposes as it does for making late disbursements, i.e., the institution must consider the student to have passed the coursework associated with

the hours in the payment period or period of enrollment.

A standard term, as specifically noted in, for example, §§ 668.22(a)(ii)(5) and 690.63(a)(1), is a semester, trimester, or quarter. By inference, a nonstandard term is something other than that. The Department does not believe it is necessary to add definitions of “standard terms” and “nonstandard terms” in regulations that go beyond these general concepts. The only places the term “substantially equal in length” is used outside of the FFEL and Direct Loan regulations are where it is specifically needed in §§ 668.4 and 668.22 of the General Provisions regulations. The Department believes it is necessary to define the term in those two sections only. Therefore, we are adding in these final regulations in § 668.2 the same definition of “substantially equal in length” that we are adding in § 668.4.

*Change:* Section 668.22(l) is amended to include a definition of the term “substantially equal in length.”

*Transferring to a New Program at the Same Institution (§ 668.4)*

*Comments:* One commenter asked whether the proposed regulations allowing a student to be considered to remain in the same payment period when the student transfers into a second program would apply when the student transfers from a Business program to an Information Technology (IT) program at the same institution. In this case, the student is continuously enrolled, the payment periods are substantially equal in length, and the charges are the same, but the credits from the Business program that the student took in that payment period do not transfer to the IT program.

*Discussion:* The Department’s response, based on these facts, is no. We intend that § 668.4(g) will address those cases where there is very little change to a student’s academic circumstances and the student is changing over to the new program in a nearly seamless manner. In the commenter’s case, the coursework in the payment period the student is transferring out of would not be considered to be substantially similar to the coursework the student will be taking in the new program because none of the credits associated with that coursework transfer over to the new program. Therefore, the institution must treat the student as a withdrawal from the Business program, and calculate new payment periods for the student’s enrollment in the IT program. Based on this comment, the Department believes that it would be beneficial to clarify § 668.4(g).

*Changes:* Section 668.4(g)(3) is amended to clarify that for an institution to consider the student to remain in the same payment period the credits from the payment period the student is transferring out of must be accepted toward the new program.

*Return of Title IV Funds Calculated on a Payment Period Basis (§§ 668.4 and 668.22)*

*Comment:* One commenter did not agree with the proposed change that would require the use of the payment period that ends later for Return of Title IV Funds calculations for a student who withdrew from a credit hour program that is measured in nonstandard terms that are not substantially equal in length, when the student received aid under both payment period definitions—one for Title IV grant and Perkins Loan funds, and one for FFEL and Direct Loan funds. The commenter noted that a student who received aid under both payment period definitions would earn a different percentage of aid than a student with the same withdrawal date who received aid under only the shorter of the two payment periods. The commenter felt that students with the same withdrawal date should always earn the same percentage of aid, irrespective of the type of programs from which the student receives aid.

*Discussion:* As stated in the NPRM (72 FR 44626), to simplify the Return of Title IV Funds calculation and ease administrative burden, we believe that institutions should use consistent Title IV payment periods to the extent permitted under the HEA and regulations. However, as there are two payment period definitions to take into account for nonstandard term credit hour programs with terms that are not substantially equal in length, the Department sought a solution that is as equitable as possible without being exceedingly complicated. Although, as the commenter points out, a student who received aid under both payment period definitions would earn a different percentage of aid than a student with the same withdrawal date who received aid under only the shorter of the two payment periods, we believe the approach taken in these regulations is the best solution because the use of the shorter payment period would be substantially more complicated.

*Change:* None.

*Treatment of Title IV Grant and Loan Funds if a Recipient Does Not Begin Attendance (§§ 668.21, 682.604, and 685.303)*

*Comments:* Three commenters supported the proposed regulations consolidating the requirements for the treatment of Title IV funds when a student does not begin attendance. However, two other commenters felt that the proposed requirement that an institution return the amount of FFEL and Direct Loan funds paid to the institution on behalf of the student was new and did not reflect current regulations.

Two commenters suggested that regulatory language be added to reflect the statements in the preamble to the NPRM that (1) institutions would not be responsible for returning FFEL and Direct Loan funds that are disbursed directly to the student by the lender for a study-abroad program or for a student enrolled in a foreign school, and (2) a final demand letter must be issued to these students for such funds.

One commenter believed that the timeframe for an institution to return Title IV funds should be as soon as possible, but no later than 45 days after the date that the institution becomes aware that the student will not or has not begun attendance, rather than the proposed 30 days, to match the timeframe in § 668.22 for an institutional return of funds to the Title IV programs when a student withdraws.

*Discussion:* The Department notes that although the proposed requirements in §§ 682.604(d)(4)(ii) and 685.303(b)(3)(ii) did not specifically state that FFEL and Direct Loan funds paid to the institution on behalf of a student (i.e., parent PLUS loan funds) must be returned by the institution, the Department has previously interpreted the requirement that the institution return funds paid by the student to include parent PLUS loan funds. By including the phrase “on behalf of” in § 668.21 we intended to reflect this longstanding interpretation in the regulations.

We agree with the commenters’ suggestions to add regulatory language to address the treatment of FFEL and Direct Loan funds disbursed directly to the student by the lender for a study-abroad program or for a student enrolled in a foreign school when the student does not begin attendance.

As stated in the NPRM (72 FR 44628), the Department does not believe that an additional 15 days in the timeframe are necessary because, unlike the Return of Title IV Funds requirements in § 668.22, no calculation is required to determine

the amount of funds an institution must return.

*Changes:* Section 668.21(a)(2)(ii) is amended to make clear that an institution is not responsible for returning FFEL and Direct Loan funds that are disbursed directly to the student by the lender for a study-abroad program or for a student enrolled in a foreign school when the student does not begin attendance. In addition, § 668.21(a)(2)(ii) states that a final demand letter must be issued to students for such funds.

*Post-Withdrawal Disbursements of Grant Funds Made Directly to a Student (§ 668.22)*

*Comments:* Four commenters agreed with the proposal to remove the requirement that an institution notify and obtain the student's permission prior to making a direct disbursement of any Title IV grant funds that make up a post-withdrawal disbursement. One commenter believed the change would help streamline part of a complicated administrative process. However, one commenter urged the Department to establish one timeframe for late disbursements, disbursements of Title IV grant funds that make up a post-withdrawal disbursement, and post-withdrawal disbursements of Title IV loan funds. Two commenters believed that an institution should be required to make a direct disbursement of Title IV grant funds that make up a post-withdrawal disbursement as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew, rather than the proposed 30 days, to match the proposed timeframe for making a late disbursement. One commenter felt that an institution should be required to make such a disbursement as soon as possible, but no later than 45 days after the date of the institution's determination that the student withdrew, rather than the proposed 30 days, to match the timeframe for an institutional return of funds to the Title IV programs when a student withdraws. The commenter stated that most institutions are looking at this process at the same time a Return of Title IV Funds calculation is being done, so the timeframe should be the same. Four commenters felt that the requirement for making a post-withdrawal disbursement of Title IV loan funds should be changed to as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew, rather than the existing 120 days, to match the proposed timeframe for making a late disbursement. Another

commenter asked if it was permissible for an institution not to issue the direct disbursement of Title IV grant funds that make up a post-withdrawal disbursement if a student should wish not to receive it. The commenter noted that some students who plan to transfer to another institution may wish to use their Title IV grant eligibility at the new institution.

*Discussion:* Although the Secretary believes that, in the vast majority of cases, an institution will not need 45 days from the date it determines that a student withdrew to make a direct disbursement of Title IV grant funds to a student as a post-withdrawal disbursement, the Secretary agrees with the comment that making the timeframe consistent with the 45-day timeframe for the payment of an institutional return of unearned Title IV funds will give institutions one less timeframe to take into account. For the same reason, the Secretary agrees with the comment that the requirement for making a post-withdrawal disbursement of Title IV loan funds should be changed to "as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew" to match the timeframe for making a late disbursement. These funds are intended to cover educational expenses that have already occurred and must be provided to the student in a timely manner.

The Secretary does not agree with the suggestion that an institution should have 180 days to make a direct disbursement of Title IV grant funds to a student as a post-withdrawal disbursement. Additional time is provided for an institution to make a post-withdrawal disbursement of loan funds to allow for the required notification to the student, or parent in the case of a PLUS loan, and to receive a response. The Secretary emphasizes that an institution must return or disburse funds as soon as possible after determining that a student has withdrawn.

An institution must be able to document that its procedures call for it to get post-withdrawal disbursements to its students as soon as possible, and that it is consistently following those procedures.

These regulations require an institution to disburse directly to a student, as soon as possible, but no later than 45 days after the date of the institution's determination that the student withdrew, any amount of a post-withdrawal disbursement of grant funds that is not credited to the student's account. An institution may not delay its disbursement processes in order to

ascertain whether a student wishes to receive the grant funds to which the student is entitled. However, while the institution is processing the disbursement it may, at its discretion, notify the student that it may be beneficial to turn down all or a portion of the grant funds to preserve the student's grant eligibility for attendance at another institution. Of course, if a student independently contacts the institution and declines receipt of a grant disbursement, the institution is not required to make the disbursement.

*Changes:* Section 668.22(a)(5)(ii)(B)(1) is changed to require an institution to make a direct disbursement of Title IV grant funds to a student as a post-withdrawal disbursement as soon as possible, but no later than 45 days after the date it determines that a student withdrew.

Section 668.22(a)(5)(iii)(C) is changed to require that, after receiving confirmation that a student, or parent in the case of a PLUS loan, wants a post-withdrawal disbursement of Title IV loan funds credited to the student's account or disbursed directly, an institution must make a post-withdrawal disbursement of Title IV loan funds as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew.

*Cash Management—Recovery of Unclaimed Title IV Funds (§ 668.164(h))*

*Comments:* With regard to returning Title IV funds for a check that is not cashed, one commenter asked the Department to clarify (1) how this provision applies to Federal Work-Study (FWS) payroll checks and (2) the timeframes and processes for handling FWS funds. Another commenter from an institution suggested a one-year timeframe for resolving issues with unclaimed funds to coincide with the institution's business practice for reviewing, recovering, and returning Title IV funds.

*Discussion:* The Department agrees that it would be helpful to clarify how § 668.164(h) applies to FWS funds. The timeframes and processes for returning FWS funds are the same as those for other Title IV funds. However, the FWS funds that must be returned consist of only the Federal share of the student's payroll check or EFT payment.

With respect to the comment suggesting that we extend to one year the timeframe for returning unclaimed funds, we continue to believe that the Federal interest is better protected and the benefits to the student are greater (the student's loan balance is reduced) when the uncashed checks or

undeliverable Title IV payments are returned to the Secretary or FFEL Program lender sooner rather than later.

*Changes:* The regulations in § 668.164(h) are amended (1) to more clearly articulate the timeframes and processes for returning Title IV funds and (2) to specify that only the Federal share of FWS funds must be returned to the Secretary.

#### *Cash Management—Minor Prior-Year Charges (§ 668.164(d))*

*Comments:* Commenters generally agreed with the proposal to increase from \$100 to \$200 the amount of prior-year charges that may be paid with current-year funds. A few commenters suggested keeping the current provision that allows an institution to pay for more than \$100 (or \$200 under the proposed regulations) of prior-year charges if this payment will not prevent the student from paying current educational costs. One of these commenters reasoned that as a student progresses through grade levels the combination of increases in the student's loan amount and the availability of ACG and SMART funds would enable the student to pay for both current-year and prior-year charges out of current-year funds. The commenter suggested that in this situation using the student's credit balance to pay for any prior-year charges would be more beneficial to the student than issuing the credit balance to the student.

*Discussion:* As discussed in the preamble to the NPRM (72 FR 44629), the HEA provides that Title IV funds that a student is eligible to receive for an award year are intended to be used for that award year. The Department originally promulgated regulations allowing the use of current year Title IV funds to pay for minor prior-year charges strictly as an administrative convenience, not as a way for an institution to circumvent the law by maximizing a student's current-year awards to pay for accumulated prior-year balances. In exchange for increasing from \$100 to \$200 the amount of minor prior-year charges that may be paid with current-year funds, the negotiated rulemaking committee agreed to remove the exception that allowed an institution to pay for more prior-year charges under certain circumstances.

*Change:* None.

#### *Cash Management—Electronic Disbursements of Title IV Funds (§ 668.164(c))*

*Comment:* A commenter suggested expanding the proposed definition of "bank account" in § 668.164(c)(2) to

include accounts at credit unions that are insured by the National Credit Union Share Insurance Fund (NCUSIF).

*Discussion:* We agree. NCUSIF is an arm of the National Credit Union Administration (NCUA), which is the independent Federal agency that charters and supervises Federal credit unions. NCUA, backed by the full faith and credit of the U.S. government, operates the NCUSIF.

*Changes:* The definition of "bank account" in § 668.164(c)(2) is amended to include accounts insured by the NCUSIF.

*Comment:* One commenter suggested extending from 21 to at least 45 days the period during which a student could pick up a check at the institution. The commenter stated that institutions frequently have outdated addresses for students and that providing more time for students either to pick up checks or to arrange another method of disbursement would be preferable to returning student checks. The commenter also suggested that direct payments of less than \$100 be exempt from the check-mailing requirement.

*Discussion:* As mentioned in the preamble to the NPRM (72 FR 44630), the cases underlying this proposed provision were ones in which an institution would notify a student that a credit-balance check was available for immediate pick-up, but there was no check produced by the institution. Instead, the student would be directed to a Web site where the student would choose to receive the credit balance in one of three ways: (1) By an EFT to the student's bank account, (2) by an EFT to a bank account opened on behalf of the student by the institution, or (3) by a check. We have no issue with an institution asking a student to go to a Web site to make a disbursement selection as long as the institution pays any credit balance to the student within the 14-day regulatory timeframes regardless of whether the student makes a selection, chooses not to, or simply neglects to make one. However, we are concerned that an institution might request and receive Title IV funds and credit the student's account, but not pay the credit balance because the student did not make a disbursement selection. The Department emphasizes that it is the sole responsibility of the institution to make a timely credit balance payment to a student. This provision ensures that an institution produces a check that a student may pick up at a specified location at the institution. If the student does not pick up the check within 21 days, the institution must mail it to the student, disburse the credit balance to the student in some other way, or

immediately return the credit-balance funds.

With respect to the comment about exempting direct payments of less than \$100 from the check-mailing requirement, the commenter did not provide, and we do not see, any basis for an exemption.

*Change:* None.

*Comment:* One commenter recommended amending the proposed provision in § 668.164(c)(3) under which an institution must obtain written affirmative consent from a student or parent to open a bank account by permitting the institution to obtain the student's or parent's consent in accordance with the Electronic Signatures in the Global and National Commerce Act (E-Sign Act).

*Discussion:* An institution must comply with the provisions of the E-Sign Act irrespective of whether those provisions are referenced in these Title IV regulations. The negotiated rulemaking committee agreed to include a simple but specific consent requirement in the regulations instead of relying solely on the E-Sign Act, which may be interpreted and implemented in different ways.

*Change:* None.

*Comment:* One commenter suggested two changes to the proposed provision under which an institution must ensure that a student has convenient access to branch offices of the bank or ATMs of the bank or affiliated bank for the purpose of making free cash withdrawals. First, the commenter recommended that the term "affiliated" be defined to mean a bank under the same common ownership and control as the bank in which the account was opened. Second, the commenter suggested defining the term "convenient access" to require that a branch office or ATM of the bank in which the account was opened be located within 10 miles of the main campus of an institution, except for students enrolled in a distance education program offered by the institution.

*Discussion:* The suggested definition of "affiliated" is too narrow. In the context of these regulations, the term "affiliated" means any relationship or arrangement between the bank where an account is opened and any other bank that permits a student to make free cash withdrawals from the student's accounts. With regard to convenient access, we agree that some geographical limits are needed, but these limits apply only to students who are on or near the institution's campus. We believe it would be unreasonable to require an institution to ensure that students enrolled in its distance education

programs have convenient access to branch offices or ATMs that offer free cash withdrawals regardless of where those students reside.

*Changes:* Section 668.164(c)(3)(v) is amended by replacing “affiliated bank” with “another bank.” Section 668.164(c)(3)(v) is amended to describe “convenient access” as having a branch office of the bank or an ATM located (1) on the institution’s campus, (2) in institutionally-owned or operated facilities, or (3) immediately adjacent to and accessible from the campus, consistent with the definition of “Public Property” in § 668.46(a).

*Comment:* One commenter suggested that the regulations clarify that service providers who help institutions disburse credit-balance funds electronically are “third-party servicers” as provided in § 668.2 and, therefore, subject to annual audit and financial responsibility requirements. The commenter contended that a number of service providers do not comply with these requirements and requested that the Department act proactively to reduce the Federal financial risk and the risk posed to the institutions involved.

*Discussion:* As provided under § 668.23(a)(3) and (c), third-party servicers for institutions must submit compliance audits but are not subject to financial standards and are not required to submit financial audits. If the commenter’s description of service providers refers to banks that enter into agreements with institutions to issue and service stored-value cards, we have heretofore not considered the third-party servicer definition in § 668.2 to apply to banking services provided to institutions.

With regard to any information the commenter may have about any parties that should, but do not, comply with Title IV regulations, the commenter should notify the Department’s Office of the Inspector General.

*Change:* None.

*Comments:* One commenter disagreed with the provision in § 668.164(c)(3), under which an institution may request, but not require or rely upon, the student to open a bank account. The commenter believed that an institution should have the flexibility to require a student to authorize an EFT, noting that this practice is used by many employers for payroll purposes.

*Discussion:* The Department intended to make it easier for an institution to make EFT payments by removing the requirement in § 668.165(b)(1)(i) that the institution first obtain authorization to disburse Title IV funds to a bank account designated by the student or parent. The provisions proposed in

§ 668.164(c)(3) relate to situations where the institution opens a bank account on behalf of the student (or is actively involved in opening the account) for the purpose of making EFT payments of Title IV funds to that account. For these cases only, the institution must obtain the consent of the student or parent before it opens the bank account. In all other cases, the Department agrees that an institution may establish a policy requiring a student to provide bank account information or open an account at a bank of the student’s choosing, as long as this policy does not delay the disbursement of Title IV funds to the student. Thus, if a student does not provide bank account information or does not maintain a bank account—e.g., the student does not qualify for a bank account or refuses to open an account—the institution must nevertheless disburse the Title IV funds to the student in a timely manner by some other means.

*Changes:* Section 668.164(c)(3) is amended to provide that an institution may establish a policy requiring students to provide bank account information or open an account at a bank of the student’s choosing.

*Cash Management—Late Disbursements (§ 668.164(g))*

*Comment:* One commenter representing a guaranty agency urged the Department to consider an exception appeal process under which a late disbursement could be made after the proposed 180-day period. The commenter stated that a student should not be harmed by an oversight or anomaly in the institution’s or lender’s process and offered that the FFEL Program guarantor could monitor and manage this exception process, eliminating the need for the institution to contact the Department.

*Discussion:* While we appreciate the guaranty agency’s offer, this change is not being made to respond to a workload issue. Rather, our experience with providing an exception process for making late disbursements is that institutions tend to rely on this process rather than implementing effective administrative controls for making timely disbursements. We believe that extending the timeframe from 120 days to 180 days provides institutions, lenders, and guaranty agencies more than sufficient time to identify and make late disbursements to students who may be affected by oversight and process anomalies.

*Change:* None.

*Loan Cancellation Notice and Affirmative Confirmation of a Loan (§ 668.165(a))*

*Comments:* Several commenters agreed with the flexible approach in the NPRM allowing an institution to either affirmatively confirm that a student wants a loan or comply with more stringent loan notification and cancellation provisions. A few commenters requested that the Department provide examples of an affirmative confirmation of a loan.

*Discussion:* The Department would consider an affirmative confirmation to be a student response, either in electronic form or on paper, accepting the loan or loans offered by the institution. Examples of affirmative confirmation by a student are an award letter signed by the student accepting the loan award or a process whereby the student accesses a secure Web site to inform the institution that the student accepts the loan.

*Change:* None.

*Minimum Period for Certifying or Originating a Loan (§§ 682.603 and 685.301)*

*Comments:* Several commenters supported the proposed change allowing transfer students to obtain the remaining portion of their current annual loan limit for the remaining portion of their program or academic year. However, one commenter questioned how this would work in practice. The commenter asked whether the number of transfer credits accepted or the number of transfer credits earned during the overlapping loan period would have any bearing on the implementation of this proposed change. The commenter asked us to consider the example of a student with a loan period of 11/12/06 to 9/30/07 at a previous institution that transferred with 18 credits to a new institution where the student had a loan period of 8/15/07 to 5/25/08. The student received \$2,000 (out of a possible \$3,500) at the first institution for a loan period that overlapped the loan period at the second institution. The commenter stated that under the previous regulations the second institution could only provide the student, for the second loan period of 8/15/07 to 5/25/08, with \$1,500, *i.e.*, the difference between what the student could have received at the first institution (\$3,500) and what the student did receive there (\$2,000). The commenter wondered how the second institution could award loan funds to the student in this example under the proposed regulations.



Another commenter inquired about the proposed regulation that allows institutions to certify or originate new loans for students when they complete a degree program using a loan period of less than an academic year and then begin another degree program for the remainder of the same academic year at the same institution. The commenter suggested that students in non-degree programs should receive similar treatment. Another commenter asked whether this proposal would address a student who finished a bachelor's degree and immediately began a master's degree at the same institution in the same way that it addressed a student who finished an associate's degree and immediately began a bachelor's degree.

Another commenter asked us to clarify whether the meaning of the phrase "substantially equal in length" in §§ 682.603(g)(4) and 685.301(c)(4), is applicable to all references in §§ 682.603 and 685.301 where that phrase is used.

*Discussion:* In the first commenter's example, a student, eligible for \$3,500, who received a loan of \$2,000 for a loan period of 11/12/06 to 9/30/07 at one institution and who transferred with 18 credits to a second institution where the student would normally have a loan period of 8/15/07 to 5/25/08, could, under these final regulations, receive a loan at the second institution for the balance of the annual loan limit for the balance of the academic year that started at the first institution. Neither the number of credits transferred into the second institution nor the number of credits earned during the overlapping loan period is relevant. Thus, this student, if otherwise eligible, could receive a loan of \$1500 for a loan period of 8/15/07 to 9/30/07. Note that if the overlapping loan period were sufficiently short (perhaps less than a month) some lenders might decline to make a loan. In that case, the student would not receive a loan for that short period of time and would end up with a new loan period starting on the day after the old loan period ended. After the balance of the loan period from the first institution ends (*i.e.*, starting on 10/1/07), the student could receive a new loan for a new academic year (or for the remainder of the program if there were less than an academic year remaining in the student's program), irrespective of whether the 10/1/07 date coincided with the start of the student's classes, as long as the student was enrolled and eligible at that time.

With regard to the comment about whether a student who finished a bachelor's degree and immediately

began a master's degree at the same institution would be treated in the same way as a student who finished an associate's degree and immediately began a bachelor's degree, we note that the regulations do not differentiate between types of degree programs. And with regard to the suggestion that students in non-degree programs should be treated the same way as students in degree programs are treated, we agree that they should be. Accordingly, all situations are addressed in the same manner when a student finishes one program for which the student's last loan was for less than an academic year and immediately starts another program at the same institution. That is, the institution may certify or originate a loan for the remainder of the academic year for the remaining balance of the student's annual loan limit at the loan level associated with the new program.

Finally, because it would more accurately describe our intent, we agree with the commenter's suggestion to apply the meaning of the phrase "substantially equal in length" to all of §§ 682.603 and 685.301.

*Changes:* Sections 682.603(f)(1)(iii) and 685.301(a)(9)(iii) are amended by removing the wording that restricted these regulations to degree programs. Also, we have clarified that the meaning of "substantially equal in length" in §§ 682.603(g)(4) and 685.301(c)(4) is applicable to all of §§ 682.603 and 685.301.

#### *Annual Loan Limit Progression* (§§ 682.603 and 685.301)

*Comments:* One commenter stated that a student in a nonstandard term credit hour program with terms that are substantially equal in length, where the terms are at least eight weeks in length rather than the proposed nine weeks in length, should progress to the next loan limit when the student completes an academic year in calendar time. The commenter noted that eight-week terms are a natural subdivision of the 16-week standard semester used for traditional students, and should be treated in the same manner as standard terms.

Another commenter stated that a student in any nonstandard term credit hour program with terms that are substantially equal in length, not just those with terms that are at least nine weeks in length, should progress to the next loan limit when the student completes an academic year in calendar time. The commenter noted that the disbursement requirements in the regulations published in the **Federal Register** on November 1, 2000 (65 FR 65616), with which these regulations are supposed to be consistent, did not make

such a distinction. The commenter also noted that a student in a nonstandard term credit hour program, with terms that are substantially equal in length but not at least nine weeks in length, does not have to successfully complete a payment period to advance to the next payment period. The commenter suggests that the student could progress to the next payment period even if the student failed some or all of the courses in the payment period. However, under the proposed changes, the student who failed some or all of the courses in the payment period would not progress to the next annual loan limit until the student successfully completes the failed hours.

One commenter asked the Department to clarify that an institution may certify or originate a Stafford loan increase for a student attending a nonstandard term program with substantially equal terms of the appropriate length when that student's grade level standing advances and that student gains eligibility for a higher Stafford annual loan limit during an academic year. The commenter also asked the Department to clarify whether an institution must prorate the FFEL or Direct Loan Stafford annual loan limit for a student attending an undergraduate program offered in nonstandard terms that are substantially equal in length, and of the appropriate minimum length, when the student is enrolled in a final period of study consisting of fewer terms than are in the academic year.

*Discussion:* The Department proposed the nine-week minimum for purposes of defining when a single term loan may be made in a nonstandard term program with terms that are substantially equal in length. As noted in the preamble to the NPRM (72 FR 44632 and 44633), the Department believes that the minimum length should be close to the length of the shortest standard term, a quarter, in order to justify single term loan certification or origination and standard term-based annual loan limit progression. We do not believe that eight-week terms are sufficiently close to 10-week quarters for this expanded purpose.

The commenter is correct that the requirements for completion of a payment period for purposes of disbursement within the loan period for students in nonstandard-term credit hour programs with terms that are substantially equal in length do not distinguish between those terms that are at least nine weeks in length and those that are not. For completion of a payment period, all students in nonstandard term credit hour programs with terms that are substantially equal

in length, irrespective of the length of those terms, are treated the same as students in standard term programs. That is, they do not have to successfully complete (i.e., pass the coursework in) a payment period to advance to the next payment period. However, the student who failed to complete the coursework in an academic year would not progress to the next academic year, and thus regain eligibility for the next annual loan limit, until the student successfully completes the failed hours. This restriction has historically been applied to clock hour programs, non-term credit hour programs, and nonstandard term credit hour programs. Many of these programs have tended to be shorter in duration and more focused on providing vocational skills. Although we have provided more flexibility in making loan disbursements by payment period for all nonstandard term credit hour programs with terms that are substantially equal in length within the loan period, we do not believe that we should extend similar flexibility to these programs in the area of loan certification or origination and annual loan limit progression. We believe doing so would result in increasing student loan indebtedness for students who are not making adequate progress toward their educational goals and who, as a result, may be at greater risk of dropping out and defaulting on their student loans.

For the same reason, an institution may not certify or originate a FFEL or Direct Loan increase for a student attending a nonstandard term credit hour program with terms substantially equal in length, that are not at least nine weeks in length, when that student's grade level standing advances. That is, we would not allow a student to gain eligibility for a higher Stafford annual loan limit during an academic year in this situation. Likewise, an undergraduate student attending a final period of study in any nonstandard term credit hour program is subject to proration of the annual loan limit while enrolled in the defined number of terms in the program's academic year but attending less than the number of credit hours for that defined academic year.

*Change:* None.

*Processing the Borrower's Loan Proceeds and Counseling Borrowers (§§ 682.604 and 685.301)*

*Comment:* None.

*Discussion:* FFEL and Direct loans may be certified or originated for a single payment period (e.g., a single semester) for institutions that measure progress in credit hours and use a semester, trimester, or quarter system, or have terms that are substantially equal

in length with no term less than nine weeks in length. Sections 682.604(c)(6)(ii) and 685.301(b)(3)(ii) address the delivery and disbursement of loan proceeds when a loan is certified or originated for a single payment period. Basically, loans made for a single payment period must be paid to the student in two installments. However, in proposing changes to these sections of the regulations in the NPRM, we inadvertently included language that would modify that basic requirement for standard terms and terms that are substantially equal in length with no term less than nine weeks in length when no change was intended for those terms. Currently an institution may not make the second payment of funds until the calendar midpoint of the loan period. The NPRM proposed to change that requirement to one in which the institution could not make the second payment of funds until the student successfully completes half the number of credit or clock hours and half the number of weeks of instructional time in the payment period. This change was not intended for standard terms and terms that are substantially equal in length with no term less than nine weeks in length and, indeed, would create a situation most of the time for those terms in which a student would not be able to receive the second half of the loan until the student was finished with the loan period (e.g., until the student was finished with the semester for which the student was borrowing money).

*Change:* Sections 682.604(c)(6)(ii) and 685.301(b)(3)(ii) are amended, with respect to the required two deliveries of loan proceeds (FFEL) and two payments of a loan (Direct Loan) when the loan is made for a single term, to apply the current requirements for single (standard) term loans to standard terms and terms that are substantially equal in length with no term less than nine weeks in length.

*Calculation of a Pell Grant (§§ 690.63 and 690.66)*

*Comment:* Several commenters supported the proposed change in the Pell Grant calculations for programs using credit hours without terms or clock hours and for correspondence courses using credit hours without terms. They stated that the proposed changes would provide greater equity for students attending clock hour institutions by removing the current double proration of Pell Grant awards that affects these students in some situations.

*Discussion:* We appreciate the commenters' support.

*Change:* None.

*Method of Disbursement (§§ 690.78 and 691.78)*

*Comment:* None.

*Discussion:* During our intradepartmental review we found that the disbursement provisions in §§ 690.78 and 691.78 have been replaced or superseded by the provisions in the Cash Management Regulations in subpart K of part 668 of the Title IV regulations. This change was inadvertently omitted from the proposed regulations.

*Changes:* We have removed and reserved §§ 690.78 and 691.78.

**Executive Order 12866**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this final regulatory action will not have an annual effect on the economy of more than \$100 million. Therefore, this action is not "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866. In the interests of transparency and public information, the Secretary nonetheless has assessed the potential costs and benefits of this regulatory action and has determined the benefits justify the costs. This assessment was discussed in detail in the NPRM. The Department received no comments on the regulatory impact analysis portion of the NPRM.

*Need for Federal Regulatory Action*

These final regulations address a broad range of issues affecting students,

borrowers, schools, lenders, guaranty agencies, secondary market participants, and third-party servicers participating in one or more of the Perkins Loan, FSEOG, FFEL, Direct Loan, Pell Grant, ACG, and National SMART Grant programs. Prior to the start of negotiated rulemaking, a list of proposed regulatory changes was developed from advice and recommendations by interested parties and organizations submitted through testimony at public hearings and written comments submitted directly to the Department of Education in Washington, DC. Staff within the Office of Postsecondary Education also identified issues for discussion and negotiation.

*Regulatory Alternatives Considered*

A broad range of alternatives to the proposed regulations was considered as part of the negotiated rulemaking process. These alternatives were reviewed in detail in the NRPM under the Reasons sections accompanying the discussion of each proposed regulatory provision. In assessing the budgetary impact of these alternatives, the Department considered the effect of possible changes on the size or timing of Federal student aid disbursements. In all cases, the alternatives considered—which generally dealt with the consolidation or clarification of existing definitions, procedures, or processes to simplify program administration—did not have a measurable effect on Federal costs. No comments or additional information have been received since the publication of the NPRM to cause the Department to reconsider this determination.

*Benefits*

Many of the final regulations consolidate existing regulations, codify existing interpretations and guidance, or make minor changes intended to establish consistent definitions or streamline program operations across the various Federal student aid programs. The Department determined that the additional clarity and enhanced efficiency resulting from these changes represent benefits with little or no countervailing costs or additional burden. This determination is strongly supported by the fact that the negotiated rulemaking committee reached consensus on the proposed regulations. No comments or additional information have been received since the publication of the NPRM to cause the Department to reconsider this determination.

Benefits provided in these regulations include the clarification or consolidation of rules or definitions

involving enrollment statuses, independent study for direct assessment programs, cash management rules, disbursement and payment periods, return of Title IV aid, and the calculation of Pell Grant awards. None of these provisions were determined to have a substantial economic impact.

*Costs*

Because entities affected by these regulations already participate in the Title IV, HEA programs, these lenders, guaranty agencies, and institutions of higher education must have already established systems and procedures in place to meet program eligibility requirements. All of the final regulations involve changes in specific parameters associated with existing guidance rather than entirely new requirements. Accordingly, entities wishing to continue to participate in the Federal student aid programs have already absorbed most of the administrative costs related to implementing these final regulations. Marginal costs associated with these regulations, which are not expected to be significant, are primarily related to one-time system changes that are an unavoidable cost of continued program participation. The provisions impose no costs to individual students and loan borrowers. None of these provisions were determined to have a substantial economic impact or impose a significant burden; and no comments or information has been received since the publication of the NPRM that would cause the Department to reconsider this determination.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading Paperwork Reduction Act of 1995.

*Accounting Statement*

As required by OMB Circular A-4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 1 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these final regulations.

TABLE 1.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]

Category	Transfers
Annualized Monetized Transfers .....	\$0.00

**Regulatory Flexibility Act Certification**

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. These final regulations would affect institutions of higher education, lenders, and guaranty agencies that participate in Title IV, HEA programs and individual students and loan borrowers. The U.S. Small Business Administration (SBA) Size Standards define these institutions as “small entities” if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Guaranty agencies are State and private nonprofit entities that act as agents of the Federal government, and as such are not considered “small entities” under the Regulatory Flexibility Act. Individuals are also not defined as “small entities” under the Regulatory Flexibility Act.

A significant percentage of the schools and lenders participating in the Federal student loan programs meet the definition of “small entities.” While these schools and lenders fall within the SBA size guidelines, the final regulations do not impose significant new costs on these entities. In the NPRM the Secretary invited comments from small institutions as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief. The Department received no comments on the regulatory flexibility act portion of the NPRM.

**Paperwork Reduction Act of 1995**

This regulation contains information collection requirements that were reviewed as part of the comment period on the NPRM. The Department received no comments on the Paperwork Reduction Act portion of the NPRM.

In regard to other information collection requirements described in the NPRM, the Paperwork Reduction Act of 1995 does not require a response to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of

information in these final regulations at the end of the affected sections of the regulations.

**Assessment of Educational Impact**

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Family Education Loan Program; 84.037 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.268 William D. Ford Federal Direct Loan Program; 84.375 Academic Competitiveness Grants; and 84.376 SMART Grants)

**List of Subjects**

*34 CFR Part 668*

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

*34 CFR Parts 674 and 676*

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

*34 CFR Parts 682 and 685*

Administrative practice and procedure, Colleges and universities, Education, Loans program—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

*34 CFR Parts 690 and 691*

Colleges and universities, Elementary and secondary education, Grant programs—education, Student aid.

Dated: October 23, 2007.

**Margaret Spellings**,  
*Secretary of Education.*

■ For the reasons discussed in the preamble, the Secretary amends parts 668, 674, 676, 682, 685, 690, and 691 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. 1001, 1002, 1003, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

■ 2. Section 668.2(b) is amended by adding, in alphabetical order, the definitions *Graduate or professional student*, *Half-time student*, *Professional degree*, *Three-quarter time student*, and *Undergraduate student* and revising the definition of *Full-time student* to read as follows:

**§ 668.2 General definitions.**

\* \* \* \* \*

(b) \* \* \*

*Full-time student:* An enrolled student who is carrying a full-time academic workload, as determined by the institution, under a standard applicable to all students enrolled in a particular educational program. The student's workload may include any combination of courses, work, research, or special studies that the institution considers sufficient to classify the student as a full-time student. However, for an undergraduate student, an institution's minimum standard must equal or exceed one of the following minimum requirements:

(1) For a program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), 12 semester hours or 12 quarter hours per academic term.

(2) For a program that measures progress in credit hours and does not use terms, 24 semester hours or 36 quarter hours over the weeks of instructional time in the academic year, or the prorated equivalent if the program is less than one academic year.

(3) For a program that measures progress in credit hours and uses nonstandard terms (terms other than semesters, trimesters or quarters) the number of credits determined by—

(i) Dividing the number of weeks of instructional time in the term by the number of weeks of instructional time in the program's academic year; and

(ii) Multiplying the fraction determined under paragraph (3)(i) of this definition by the number of credit hours in the program's academic year.

(4) For a program that measures progress in clock hours, 24 clock hours per week.

(5) A series of courses or seminars that equals 12 semester hours or 12 quarter hours in a maximum of 18 weeks.

(6) The work portion of a cooperative education program in which the amount of work performed is equivalent to the academic workload of a full-time student.

(7) For correspondence coursework, a full-time courseload must be—

(i) Commensurate with the full-time definitions listed in paragraphs (1) through (6) of this definition; and

(ii) At least one-half of the coursework must be made up of non-correspondence coursework that meets one-half of the institution's requirement for full-time students.

(Authority: 20 U.S.C. 1082 and 1088)

\* \* \* \* \*

*Graduate or professional student:* A student who—

(1) Is not receiving title IV aid as an undergraduate student for the same period of enrollment;

(2) Is enrolled in a program or course above the baccalaureate level or is enrolled in a program leading to a professional degree; and

(3) Has completed the equivalent of at least three years of full-time study either prior to entrance into the program or as part of the program itself.

(Authority: 20 U.S.C. 1082 and 1088)

*Half-time student:* (1) Except as provided in paragraph (2) of this definition, an enrolled student who is carrying a half-time academic workload, as determined by the institution, that amounts to at least half of the workload of the applicable minimum requirement outlined in the definition of a full-time student.

(2) A student enrolled solely in a program of study by correspondence who is carrying a workload of at least 12 hours of work per week, or is earning at least six credit hours per semester, trimester, or quarter. However, regardless of the work, no student

enrolled solely in correspondence study is considered more than a half-time student.

(Authority: 20 U.S.C. 1082 and 1088)

\* \* \* \* \*

*Professional degree:* A degree that signifies both completion of the academic requirements for beginning practice in a given profession and a level of professional skill beyond that normally required for a bachelor's degree. Professional licensure is also generally required. Examples of a professional degree include but are not limited to Pharmacy (Pharm.D.), Dentistry (D.D.S. or D.M.D.), Veterinary Medicine (D.V.M.), Chiropractic (D.C. or D.C.M.), Law (L.L.B. or J.D.), Medicine (M.D.), Optometry (O.D.), Osteopathic Medicine (D.O.), Podiatry (D.P.M., D.P., or Pod.D.), and Theology (M.Div., or M.H.L.).

(Authority: 20 U.S.C. 1082 and 1088)

\* \* \* \* \*

*Three-quarter time student:* An enrolled student who is carrying a three-quarter-time academic workload, as determined by the institution, that amounts to at least three quarters of the work of the applicable minimum requirement outlined in the definition of a full-time student.

(Authority: 20 U.S.C. 1082 and 1088)

\* \* \* \* \*

*Undergraduate student:* (1) A student who is enrolled in an undergraduate course of study that usually does not exceed four years, or is enrolled in a longer program designed to lead to a degree at the baccalaureate level. For purposes of 34 CFR 690.6(c)(5) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(2) In addition to meeting the definition in paragraph (1) of this definition, a student is only considered an undergraduate for purposes of the Federal Supplemental Educational Opportunity Grant (FSEOG) Program, the Federal Pell Grant Program, the Academic Competitiveness Grant (ACG) Program, and National Science and Mathematics Access to Retain Talent (SMART) Grant Program if the student has not yet earned a baccalaureate or professional degree. However, for purposes of 34 CFR 690.6(c)(5) students who have completed a baccalaureate program of study and who are subsequently completing a State-required teacher certification program are treated as undergraduates.

(3) For purposes of dual degree programs that allow individuals to

complete a bachelor's degree and either a graduate or professional degree within the same program, a student is considered an undergraduate student for at least the first three years of that program.

(4) A student enrolled in a four to five year program designed to lead to an undergraduate degree. A student enrolled in a program of any other, longer length is considered an undergraduate student for only the first four years of that program.

(Authority: 20 U.S.C. 1082 and 1088)

\* \* \* \* \*

■ 3. Section 668.4 is revised to read as follows:

**§ 668.4 Payment period.**

(a) *Payment periods for an eligible program that measures progress in credit hours and uses standard terms or nonstandard terms that are substantially equal in length.* For a student enrolled in an eligible program that measures progress in credit hours and uses standard terms (semesters, trimesters, or quarters), or for a student enrolled in an eligible program that measures progress in credit hours and uses nonstandard terms that are substantially equal in length, the payment period is the academic term.

(b) *Payment periods for an eligible program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length.* For a student enrolled in an eligible program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length—

(1) For Pell Grant, ACG, National SMART Grant, FSEOG, and Perkins Loan program funds, the payment period is the academic term;

(2) For FFEL and Direct Loan program funds—

(i) For a student enrolled in an eligible program that is one academic year or less in length—

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the program and half of the number of weeks of instructional time in the program; and

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

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

(A) For the first academic year and any subsequent full academic year—

(1) The first payment period is the period of time in which the student successfully completes half of the

number of credit hours in the academic year and half of the number of weeks of instructional time in the academic year; and

(2) The second payment period is the period of time in which the student successfully completes the academic year;

(B) For any remaining portion of an eligible program that is more than half an academic year but less than a full academic year in length—

(1) The first payment period is the period of time in which the student successfully completes half of the number of credit hours in the remaining portion of the program and half of the number of weeks of instructional time remaining in the program; and

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

(C) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

(c) *Payment periods for an eligible program that measures progress in credit hours and does not have academic terms or for a program that 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 successfully completes half of the number of credit hours or clock hours, as applicable, in the program and half of the number of weeks of instructional time in the program; and

(ii) The second payment period is the period of time in which the student successfully completes the program or the remainder of the program.

(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—

(A) The first payment period is the period of time in which the student successfully completes half of the number of credit hours or clock hours, as applicable, in the academic year and half of the number of weeks of instructional time in the academic year; and

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

(ii) For any remaining portion of an eligible program that is more than half an academic year but less than a full academic year in length—

(A) The first payment period is the period of time in which the student

successfully completes half of the number of credit hours or clock hours, as applicable, in the remaining portion of the program and half of the number of weeks of instructional time remaining in the program; and

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

(iii) For any remaining portion of an eligible program that is not more than half an academic year, the payment period is the remainder of the program.

(3) For purposes of paragraphs (c)(1) and (c)(2) of this section, if an institution is unable to determine when a student has successfully completed half of the credit hours or clock hours in a program, academic year, or remainder of a program, the student is considered to begin the second payment period of the program, academic year, or remainder of a program at the later of the date, as determined by the institution, on which the student has successfully completed—

(i) Half of the academic coursework in the program, academic year, or remainder of the program; or

(ii) Half of the number of weeks of instructional time in the program, academic year, or remainder of the program.

(d) *Application of the cohort default rate exemption.* Notwithstanding paragraphs (a), (b), and (c) of this section, if 34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies to an eligible program that measures progress in credit hours and uses nonstandard terms, an eligible program that measures progress in credit hours and does not have academic terms, or an eligible program that measures progress in clock hours, the payment period for purposes of FFEL and Direct Loan funds is the loan period for those portions of the program to which 34 CFR 682.604(c)(10) or 34 CFR 685.301(b)(8) applies.

(e) *Excused absences.* For purposes of this section, in determining whether a student successfully completes the clock hours in a payment period, an institution may include clock hours for which the student has an excused absence (i.e., an absence that a student does not have to make up) if—

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

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

(i) 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 600.11(b);

(ii) 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

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

(f) *Re-entry within 180 days.* If a student withdraws from a program described in paragraph (c) of this section during a payment period and then reenters the same program within 180 days, the student remains in that same payment period when he or she returns and, subject to conditions established by the Secretary or by the FFEL lender or guaranty agency, is eligible to receive any title IV, HEA program funds for which he or she was eligible prior to withdrawal, including funds that were returned by the institution or student under the provisions of § 668.22.

(g) *Re-entry after 180 days or transfer.*

(1) Except as provided in paragraph (g)(3) of this section, and subject to the conditions of paragraph (g)(2) of this section, an institution calculates new payment periods for the remainder of a student's program based on paragraph (c) of this section, for a student who withdraws from a program described in paragraph (c) of this section, and—

(i) Reenters that program after 180 days;

(ii) Transfers into another program at the same institution within any time period; or

(iii) Transfers into a program at another institution within any time period.

(2) For a student described in paragraph (g)(1) of this section—

(i) For the purpose of calculating payment periods only, the length of the program is the number of credit hours and the number of weeks of instructional time, or the number of clock hours and the number of weeks of instructional time, that the student has remaining in the program he or she enters or reenters; and

(ii) If the remaining hours and weeks constitute half of an academic year or less, the remaining hours constitute one payment period.

(3) Notwithstanding the provisions of paragraph (g)(1) of this section, an institution may consider a student who transfers into another program at the same institution to remain in the same payment period if—

(i) The student is continuously enrolled at the institution;

(ii) The coursework in the payment period the student is transferring out of is substantially similar to the

coursework the student will be taking when he or she first transfers into the new program;

(iii) The payment periods are substantially equal in length in weeks of instructional time and credit hours or clock hours, as applicable;

(iv) There are little or no changes in institutional charges associated with the payment period to the student; and

(v) The credits from the payment period the student is transferring out of are accepted toward the new program.

(h) *Definitions.* For purposes of this section—

(1) Terms are *substantially equal in length* if no term in the program is more than two weeks of instructional time longer than any other term in that program; and

(2) A student *successfully completes* credit hours or clock hours if the institution considers the student to have passed the coursework associated with those hours.

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

■ 4. Section 668.10 is amended by:

■ A. In paragraph (a)(3)(ii), removing the word “or” immediately after the reference “668.4(a)” and adding, in its place, the punctuation “,”, and by adding the words “, or (c),” immediately after the parenthetical “(b)”.

■ B. Revising paragraph (a)(3)(iii).

■ C. Removing paragraphs (a)(3)(v) and (3)(vi).

The revision reads as follows:

**§ 668.10 Direct assessment programs.**

(a) \* \* \*

(3) \* \* \*

(iii) A week of instructional time in a direct assessment program is any seven-day period in which at least one day of educational activity occurs. Educational activity in a direct assessment program includes regularly scheduled learning sessions, faculty-guided independent study, consultations with a faculty mentor, development of an academic action plan addressed to the competencies identified by the institution, or, in combination with any of the foregoing, assessments. It does not include credit for life experience. For purposes of direct assessment programs, independent study occurs when a student follows a course of study with predefined objectives but works with a faculty member to decide how the student is going to meet those objectives. The student and faculty member agree on what the student will do (e.g., required readings, research, and work products), how the student's work will be evaluated, and on what the relative timeframe for completion of the work will be. The student must interact with the faculty member on a regular

and substantive basis to assure progress within the course or program.

\* \* \* \* \*

■ 5. Section 668.21 is revised to read as follows:

**§ 668.21 Treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution.**

(a) If a student does not begin attendance in a payment period or period of enrollment—

(1) The institution must return all title IV, HEA program funds that were credited to the student's account at the institution or disbursed directly to the student for that payment period or period of enrollment, for Federal Perkins Loan, FSEOG, Federal Pell Grant, ACG, and National SMART Grant program funds; and

(2) For FFEL and Direct Loan funds—

(i)(A) The institution must return all FFEL and Direct Loan funds that were credited to student's account at the institution for that payment period or period of enrollment; and

(B) The institution must return the amount of payments made directly by or on behalf of the student to the institution for that payment period or period of enrollment, up to the total amount of the loan funds disbursed;

(ii) For remaining amounts of FFEL or Direct Loan funds disbursed directly to the student for that payment period or period of enrollment, including funds that are disbursed directly to the student by the lender for a study-abroad program in accordance with § 682.207(b)(1)(v)(C)(1) or for a student enrolled in a foreign school in accordance with § 682.207(b)(1)(v)(D), the institution is not responsible for returning the funds, but must immediately notify the lender or the Secretary, as appropriate, when it becomes aware that the student will not or has not begun attendance so that the lender or Secretary will issue a final demand letter to the borrower in accordance with 34 CFR 682.412 or 34 CFR 685.211, as appropriate; and

(iii) Notwithstanding paragraph (a)(2)(ii) of this section, if an institution knew that a student would not begin attendance prior to disbursing FFEL or Direct Loan funds directly to the student for that payment period or period of enrollment (e.g., the student notified the institution that he or she would not attend, or the institution expelled the student), the institution must return those funds.

(b) The institution must return those funds for which it is responsible under paragraph (a) of this section to the respective title IV, HEA program as soon as possible, but no later than 30 days

after the date that the institution becomes aware that the student will not or has not begun attendance.

(c) For purposes of this section, the Secretary considers that a student has not begun attendance in a payment period or period of enrollment if the institution is unable to document the student's attendance at any class during the payment period or period of enrollment.

(d) In accordance with procedures established by the Secretary or FFEL Program lender, an institution returns title IV, HEA funds timely if—

(1) The institution deposits or transfers the funds into the bank account it maintains under § 668.163 as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

(2) The institution initiates an electronic funds transfer (EFT) as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance;

(3) The institution initiates an electronic transaction, as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance, that informs an FFEL lender to adjust the borrower's loan account for the amount returned; or

(4) The institution issues a check as soon as possible, but no later than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance. An institution does not satisfy this requirement if—

(i) The institution's records show that the check was issued more than 30 days after the date that the institution becomes aware that the student will not or has not begun attendance; or

(ii) The date on the cancelled check shows that the bank used by the Secretary or FFEL Program lender endorsed that check more than 45 days after the date that the institution becomes aware that the student will not or has not begun attendance.

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

■ 6. Section 668.22 is amended by:

■ A. Revising paragraph (a)(5).

■ B. Adding paragraphs (e)(5)(iii) and (l)(5).

The revision and additions read as follows:

**§ 668.22 Treatment of title IV funds when a student withdraws.**

(a) \* \* \*

(5)(i) A post-withdrawal disbursement must be made from available grant funds before available loan funds.

(ii)(A) If outstanding charges exist on the student's account, the institution may credit the student's account up to the amount of outstanding charges with all or a portion of any—

(1) Grant funds that make up the post-withdrawal disbursement in accordance with § 668.164(d)(1) and (d)(2); and

(2) Loan funds that make up the post-withdrawal disbursement in accordance with § 668.164(d)(1), (d)(2), and (d)(3) only after obtaining confirmation from the student or parent in the case of a parent PLUS loan, that they still wish to have the loan funds disbursed in accordance with paragraph (a)(5)(iii) of this section.

(B)(1) The institution must disburse directly to a student any amount of a post-withdrawal disbursement of grant funds that is not credited to the student's account. The institution must make the disbursement as soon as possible, but no later than 45 days after the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(2) The institution must offer to disburse directly to a student, or parent in the case of a parent PLUS loan, any amount of a post-withdrawal disbursement of loan funds that is not credited to the student's account, in accordance with paragraph (a)(5)(iii) of this section.

(3) The institution must make a direct disbursement of any loan funds that make up the post-withdrawal disbursement only after obtaining the student's, or parent's in the case of a parent PLUS loan, confirmation that the student or parent still wishes to have the loan funds disbursed in accordance with paragraph (a)(5)(iii) of this section.

(iii)(A) The institution must provide within 30 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section, a written notification to the student, or parent in the case of parent PLUS loan, that—

(1) Requests confirmation of any post-withdrawal disbursement of loan funds that the institution wishes to credit to the student's account in accordance with paragraph (a)(5)(ii)(A)(2) of this section, identifying the type and amount of those loan funds and explaining that a student, or parent in the case of a parent PLUS loan, may accept or decline some or all of those funds;

(2) Requests confirmation of any post-withdrawal disbursement of loan funds that the student, or parent in the case of a parent PLUS loan, can receive as a direct disbursement, identifying the type and amount of these title IV funds and explaining that the student, or



parent in the case of a parent PLUS loan, may accept or decline some or all of those funds;

(3) Explains that a student, or parent in the case of a parent PLUS loan, who does not confirm that a post-withdrawal disbursement of loan funds may be credited to the student's account may not receive any of those loan funds as a direct disbursement unless the institution concurs;

(4) Explains the obligation of the student, or parent in the case of a parent PLUS loan, to repay any loan funds he or she chooses to have disbursed; and

(5) Advises the student, or parent in the case of a parent PLUS loan, that no post-withdrawal disbursement of loan funds will be made, unless the institution chooses to make a post-withdrawal disbursement based on a late response in accordance with paragraph (a)(5)(iii)(C) of this section, if the student or parent in the case of a parent PLUS loan, does not respond within 14 days of the date that the institution sent the notification, or a later deadline set by the institution.

(B) The deadline for a student, or parent in the case of a parent PLUS loan, to accept a post-withdrawal disbursement under paragraph (a)(5)(iii)(A) of this section must be the same for both a confirmation of a direct disbursement of the post-withdrawal disbursement of loan funds and a confirmation of a post-withdrawal disbursement of loan funds to be credited to the student's account.

(C) If the student, or parent in the case of a parent PLUS loan, submits a timely response that confirms that they wish to receive all or a portion of a direct disbursement of the post-withdrawal disbursement of loan funds, or confirms that a post-withdrawal disbursement of loan funds may be credited to the student's account, the institution must disburse the funds in the manner specified by the student, or parent in the case of a parent PLUS loan, as soon as possible, but no later than 180 days after the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(D) If a student, or parent in the case of a parent PLUS loan, submits a late response to the institution's notice requesting confirmation, the institution may make the post-withdrawal disbursement of loan funds as instructed by the student, or parent in the case of a parent PLUS loan (provided the institution disburses all the funds accepted by the student, or parent in the case of a parent PLUS loan), or decline to do so.

(E) If a student, or parent in the case of a parent PLUS loan, submits a late response to the institution and the institution does not choose to make the post-withdrawal disbursement of loan funds, the institution must inform the student, or parent in the case of a parent PLUS loan, in writing of the outcome of the post-withdrawal disbursement request.

(F) If the student, or parent in the case of a parent PLUS loan, does not respond to the institution's notice, no portion of the post-withdrawal disbursement of loan funds that the institution wishes to credit to the student's account, nor any portion of loan funds that would be disbursed directly to the student, or parent in the case of a parent PLUS loan, may be disbursed.

(iv) An institution must document in the student's file the result of any notification made in accordance with paragraph (a)(5)(iii) of this section of the student's right to cancel all or a portion of loan funds or of the student's right to accept or decline loan funds, and the final determination made concerning the disbursement.

\* \* \* \* \*

(e) \* \* \*

(5) \* \* \*

(iii) For a program that measures progress in credit hours and uses nonstandard terms that are not substantially equal in length, if the institution uses the payment period to determine the treatment of title IV grant or loan funds for a category of students found in paragraph (e)(5)(ii)(B) of this section, the institution must—

(A)(1) For students in the category who are disbursed or could have been disbursed aid using both the payment period definition in § 668.4(b)(1) and the payment period definition in § 668.4(b)(2), use the payment period during which the student withdrew that ends later; and

(2) If in the payment period that ends later there are funds that have been or could have been disbursed from overlapping payment periods, the institution must include in the return calculation any funds that can be attributed to the payment period that ends later; and

(B) For students in the category who are disbursed or could have been disbursed aid using only the payment period definition in § 668.4(b)(1) or the payment period definition in § 668.4(b)(2), use the payment period definition for which title IV, HEA program funds were disbursed for a student's calculation under this section.

\* \* \* \* \*

(l) \* \* \*

(5) Terms are "substantially equal in length" if no term in the program is more than two weeks of instructional time longer than any other term in that program.

\* \* \* \* \*

■ 7. Section 668.161 is amended by revising paragraph (b) to read as follows:

§ 668.161 Scope and purpose.

\* \* \* \* \*

(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, the Secretary, or lender or a guaranty agency under the FFEL programs. 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.

\* \* \* \* \*

■ 8. Section 668.164 is amended by:  
■ A. Revising paragraphs (b), (c), and (d).

■ B. Revising paragraph (g)(4)(i).

■ C. Adding a new paragraph (h).

The revisions and addition read as follows:

§ 668.164 Disbursing funds.

\* \* \* \* \*

(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. An institution must disburse title IV, HEA program funds once each payment period unless—

(i) For FFEL and Direct Loan funds, 34 CFR 682.604(c)(6)(ii) or 34 CFR 685.301(b)(3) applies;

(ii) For Federal Perkins Loan, FSEOG, Federal Pell Grant, ACG, and National SMART Grant funds, an institution chooses to make more than one disbursement in each payment period in accordance with 34 CFR 674.16(b)(3), 34 CFR 676.16(a)(3), 34 CFR 690.76, or 34 CFR 691.76, as applicable; or

(iii) Other program regulations allow or require otherwise.

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

(3) 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.



(c) *Direct payments.* (1) An institution pays a student or parent directly by—

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

(ii) Issuing a check payable to and requiring the endorsement of the student or parent. An institution issues a check on the date that it—

(A) Mails the check to the student or parent; or

(B) Notifies the student that the check is available for immediate pickup at a specified location at the institution. The institution may hold the check for up to 21 days after the date it notifies the student. If the student does not pick up the check within this 21-day period, the institution must immediately mail the check to the student or parent, initiate an EFT to the student's or parent's bank account, or return the funds to the appropriate title IV, HEA program;

(iii) Initiating an EFT to a bank account designated by the student or parent; or

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

(2) For purposes of this section, "bank account" means an account insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF). This account may be a checking, savings, or similar account that underlies a stored-value card or other transaction device.

(3) An institution may establish a policy requiring its students to provide bank account information or open an account at a bank of their choosing as long as this policy does not delay the disbursement of title IV, HEA program funds to students. Consequently, if a student does not comply with the institution's policy, the institution must nevertheless disburse the funds to the student using a method described in paragraph (c) of this section in accordance with any timeframes required under subpart k of this part. In cases where the institution opens a bank account on behalf of a student or parent, establishes a process the student or parent follows to open a bank account, or similarly assists the student or parent in opening a bank account, the institution must—

(i) Obtain in writing affirmative consent from the student or parent to open that account;

(ii) Before the account is opened, inform the student or parent of the terms and conditions associated with accepting and using the account;

(iii) Not make any claims against the funds in the account without the written permission of the student or parent,

except for correcting an error in transferring the funds in accordance with banking protocols;

(iv) Ensure that the student or parent does not incur any cost in opening the account or initially receiving any type of debit card, stored-value card, other type of automated teller machine (ATM) card, or similar transaction device that is used to access the funds in that account;

(v) Ensure that the student has convenient access to a branch office of the bank or an ATM of the bank in which the account was opened (or an ATM of another bank), so that the student does not incur any cost in making cash withdrawals from that office or these ATMs. This branch office or these ATMs must be located on the institution's campus, in institutionally-owned or operated facilities, or, consistent with the meaning of the term "Public Property" as defined in § 668.46(a), immediately adjacent to and accessible from the campus;

(vi) Ensure that the debit, stored-value or ATM card, or other device can be widely used, e.g., the institution may not limit the use of the card or device to particular vendors; and

(vii) Not market or portray the account, card, or device as a credit card or credit instrument, or subsequently convert the account, card, or device to a credit card or credit instrument.

(d) *Crediting a student's account at the institution.* An institution may use title IV, HEA program funds to credit a student's account at the institution to satisfy—

(1) Current year charges for—

(i) Tuition and fees;

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

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

(iv) If the institution obtains the student's or parent's authorization under § 668.165(b), other educationally related charges incurred by the student at the institution; and

(2) Prior award year charges for a total of not more than \$200 for—

(i) Tuition and fees, room, or board; and

(ii) If the institution obtains the student's or parent's authorization under § 668.165(b), other educationally related charges incurred by the student at the institution.

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \*

(i) An institution may not make a late disbursement later than 180 days after the date of the institution's determination that the student

withdrew, as provided in § 668.22, or for a student who did not withdraw, 180 days after the date the student otherwise becomes ineligible.

\* \* \* \* \*

(h) *Returning funds.* (1) Notwithstanding any State law (such as a law that allows funds to escheat to the State), an institution must return to the Secretary, lender, or guaranty agency, any title IV, HEA program funds, except FWS program funds, that it attempts to disburse directly to a student or parent but the student or parent does not receive or negotiate those funds. For FWS program funds, the institution is required to return only the Federal portion of the payroll disbursement.

(2) If an institution attempts to disburse the funds by check and the check is not cashed, the institution must return the funds no later than 240 days after the date it issued that check.

(3)(i) If a check is returned to the institution, or an EFT is rejected, the institution may make additional attempts to disburse the funds, provided that those attempts are made not later than 45 days after the funds were returned or rejected. In cases where the institution does not make another attempt, the funds must be returned before the end of this 45 day period; and

(ii) No later than the 240 day period described in paragraph (h)(2) of this section, the institution must cease any additional disbursement attempts and immediately return those funds.

\* \* \* \* \*

■ 9. Section 668.165 is amended by:

■ A. Revising paragraph (a).

■ B. Revising paragraph (b)(1).

The revisions read as follows:

**§ 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) Except in the case of a post-withdrawal disbursement made in accordance with § 668.22(a)(5), 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 anticipated 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, if the institution releases a check provided by a lender under the FFEL Program, the institution is not required to provide this information; and

(iii) The procedures and 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 provide the notice described in paragraph (a)(2) of this section in writing—

(i) No earlier than 30 days before, and no later than 30 days after, crediting the student's account at the institution, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(ii) No earlier than 30 days before, and no later than seven days after, crediting the student account at the institution, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

(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 program regulations provided that the institution receives a loan cancellation request—

(A) The later of the first day of a payment period or 14 days after the date it notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution obtains affirmative confirmation from the student under paragraph (a)(6)(i) of this section; or

(B) Within 30 days of the date the institution notifies the student or parent of his or her right to cancel all or a portion of a loan, if the institution does not obtain affirmative confirmation from the student under paragraph (a)(6)(i) of this section.

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

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

(6) For purposes of this section—

(i) Affirmative confirmation is a process under which an institution obtains written confirmation of the types and amounts of title IV, HEA program loans that a student wants for an award year before the institution

credits the student's account with those loan funds; and

(ii) An institution is not required to return any loan proceeds that it disbursed directly to a student or parent.

(b) \* \* \*

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

(i) 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

(ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment 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). Under this provision, the institution may issue a stored-value card or other similar device that allows the student or parent to access those funds at his or her discretion to pay for educationally related expenses.

\* \* \* \* \*

■ 10. Section 668.166 is revised to read as follows:

**§ 668.166 Excess cash.**

(a) *General.* (1) The Secretary considers excess cash to be any amount of title IV, HEA program funds, other than Federal Perkins Loan 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—

(i) Received those funds from the Secretary; or

(ii) Deposited or transferred to its Federal account previously disbursed title IV, HEA program funds received from the Secretary, such as those resulting from award adjustments, recoveries, or cancellations.

(2) The provisions of 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.* An institution may maintain for up to seven days an amount of excess cash that does not exceed one percent of the total amount of funds the institution drew down in the prior award year. The institution must return immediately to the Secretary any amount of excess cash over the one-percent tolerance and any amount remaining in its account after the seven-day tolerance period.

(c) *Consequences for maintaining excess cash.* Upon a finding that an institution maintains excess cash for any amount or timeframe over that

allowed in the tolerance provisions in paragraph (b) of this section, the actions the Secretary may take include, but are not limited to—

(1) Requiring the institution to reimburse the Secretary for the costs the Secretary incurred in providing that excess cash to the institution; and

(2) Providing funds to the institution under the reimbursement payment method or cash monitoring payment method described in § 668.163(d) and (e), respectively.

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

**PART 674—FEDERAL PERKINS LOAN PROGRAM**

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

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

**§ 674.2 [Amended]**

■ 12. Section 674.2 is amended by:

■ A. In paragraph (a), adding to its list, in alphabetical order, the terms *Graduate or professional student*, *Half-time student*, and *Undergraduate student*.

■ B. In paragraph (b), removing the definitions for *Graduate or professional student*, *Half-time graduate or professional student*, *Half-time Undergraduate student*, and *Undergraduate student*.

**§ 674.16 [Amended]**

■ 13. Section 674.16 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as paragraphs (g) and (h), respectively.

**PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM**

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

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

**§ 676.2 [Amended]**

■ 15. Section 676.2 is amended by:

■ A. In paragraph (a), adding to its list, in alphabetical order, the term *Undergraduate student*.

■ B. In paragraph (b), removing the definition for *Undergraduate student*.

**§ 676.16 [Amended]**

■ 16. Section 676.16 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

**PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM**

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

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

■ 18. Section 682.200 is amended by:

■ A. In paragraph (a)(1), adding to its list, in alphabetical order, the terms *Graduate and professional student*, *Half-time student*, and *Undergraduate student*.

■ B. In paragraph (b), removing the definitions for *Graduate or professional student*, *Half-time student*, and *Undergraduate student* and revising the definition of *Period of Enrollment*.

The revision reads as follows:

**§ 682.200 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Period of enrollment.* The period for which a Stafford, SLS, or PLUS loan is intended. The period of enrollment must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time, an academic year, or the length of the student's program of study in weeks of instructional time). The period of enrollment is also referred to as the loan period.

\* \* \* \* \*

**§ 682.207 [Amended]**

■ 19. Section 682.207(e) is amended by removing the parenthetical “(10)” and adding, in its place, the parenthetical “(8)”.

**§ 682.208 [Amended]**

■ 20. Section 682.208(f)(1)(iii)(A) is amended by removing the figure “§ 682.604(d)(4)” and adding, in its place, the figure “34 CFR 668.21(a)(2)(ii)”.

■ 21. Section 682.603 is amended by:

■ A. Revising paragraph (f)(1).

■ B. Redesignating paragraphs (g), (h), and (i) as paragraphs (h), (i), and (j), respectively.

■ C. Adding a new paragraph (g).

■ D. In the introductory text of newly redesignated paragraph (h)(1) and the text of newly redesignated paragraph (h)(2), removing the parenthetical “(10)” and adding, in its place, the parenthetical “(8)”.

The revision and addition read as follows:

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

\* \* \* \* \*

(f)(1)(i) The minimum period of enrollment for which a school may certify a loan application is—

(A) At a school that measures academic progress in credit hours and

uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single term (e.g., a semester or quarter); or

(B) Except as provided in paragraphs (f)(1)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(1) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(2) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school with credit or clock hours from another school, and the prior school certified or originated a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may certify a loan for the remaining portion of the program or academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may certify a loan for the remainder of the academic year. In this case the school may certify a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the loan level associated with the new program.

\* \* \* \* \*

(g)(1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine

weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

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

\* \* \* \* \*

■ 22. Section 682.604 is amended by:

■ A. Revising paragraph (c)(6).

■ B. Removing paragraphs (c)(7) and (c)(8).

■ C. Redesignating paragraphs (c)(9), (c)(10), and (c)(11) as paragraphs (c)(7), (c)(8), and (c)(9), respectively.

■ D. In newly redesignated paragraph (c)(9), removing the parenthetical “(g)” and adding, in its place, the parenthetical “(h)”.

■ E. Revising paragraph (d)(3).

■ F. Removing paragraph (d)(4).

The revisions read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(6) Unless the provision of § 682.207(d) applies—

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

(ii) If a loan period is one payment period, the school must make at least two deliveries of loan proceeds during that payment period.

(A) For a loan certified under § 682.603(f)(1)(i)(A), 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; or

(B) For a loan certified under § 682.603(f)(1)(i)(B), the school may not make the second delivery until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

\* \* \* \* \*

(d) \* \* \*

(3) If a student does not begin attendance in the period of enrollment—

(i) Disbursed loan proceeds must be handled in accordance with 34 CFR 668.21; and

(ii) Undelivered loan funds held by the school must be handled in accordance with 34 CFR 668.167.

\* \* \* \* \*

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

■ 23. The authority citation for part 685 continues to read as follows:

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

■ 24. Section 685.102 is amended by:

■ A. In paragraph (a)(1), adding to its list, in alphabetical order, the terms *Full-time student*, *Graduate or professional student*, *Half-time student*, and *Undergraduate student*.

■ B. In paragraph (a)(3), removing from its list, the terms *Full-time student*, *Graduate or professional student*, and *Undergraduate student*.

■ C. In paragraph (b), removing the definition of *Half-time student* and revising the definition of *Period of enrollment*.

The revision reads as follows:

**§ 685.102 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Period of enrollment:* The period for which a Direct Subsidized, Direct Unsubsidized, or Direct PLUS Loan is intended. The period of enrollment must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time; an academic year; or the length of the program of study in weeks of instructional time). The period of enrollment is also referred to as the loan period.

\* \* \* \* \*

■ 25. Section 685.301 is amended by:

■ A. Redesignating paragraph (a)(9)(ii) as paragraph (a)(9)(iv).

■ B. Revising paragraph (a)(9)(i).

■ C. Adding new paragraphs (a)(9)(ii) and (iii).

■ D. Revising paragraphs (b)(2) and (b)(3).

■ E. Removing paragraphs (b)(5) and (b)(6).

■ F. Redesignating paragraphs (b)(7) and (b)(8) as paragraphs (b)(5) and (b)(6), respectively.

■ G. Redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

■ H. Adding a new paragraph (c).

The revisions and additions read as follows:

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

(a) \* \* \*

(9)(i) The minimum period of enrollment for which a school may originate a Direct Loan application is—

(A) At a school that measures academic progress in credit hours and uses a semester, trimester, or quarter system, or has terms that are substantially equal in length with no term less than nine weeks in length, a single academic term (e.g., a semester or quarter); or

(B) Except as provided in paragraph (a)(9)(ii) or (iii) of this section, at a school that measures academic progress in clock hours, or measures academic progress in credit hours but does not use a semester, trimester, or quarter system and does not have terms that are substantially equal in length with no term less than nine weeks in length, the lesser of—

(1) The length of the student's program (or the remaining portion of that program if the student has less than the full program remaining) at the school; or

(2) The academic year as defined by the school in accordance with 34 CFR 668.3.

(ii) For a student who transfers into a school with credit or clock hours from another school, and the prior school originated or certified a loan for a period of enrollment that overlaps the period of enrollment at the new school, the new school may originate a loan for the remaining portion of the program or academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit.

(iii) For a student who completes a program at a school, where the student's last loan to complete that program had been for less than an academic year, and the student then begins a new program at the same school, the school may originate a loan for the remainder of the academic year. In this case the school may originate a loan for an amount that does not exceed the remaining balance of the student's annual loan limit at the

loan level associated with the new program.

\* \* \* \* \*

(b) \* \* \*

(2) An institution must disburse the loan proceeds on a payment period basis in accordance with 34 CFR 668.164(b).

(3) Unless paragraphs (b)(4) or (b)(8) of this section applies—

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

(ii) If a loan period is one payment period, the school must make at least two disbursements during that payment period.

(A) For a loan originated under § 685.301(a)(9)(i)(A), 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; or

(B) For a loan originated under § 685.301(a)(9)(i)(B), the school may not make the second disbursement until the student successfully completes half of the number of credit hours or clock hours and half of the number of weeks of instructional time in the payment period.

\* \* \* \* \*

(c) *Annual loan limit progression based on completion of an academic year.* (1) If a school measures academic progress in an educational program in credit hours and uses either standard terms (semesters, trimesters, or quarters) or nonstandard terms that are substantially equal in length, and each term is at least nine weeks of instructional time in length, a student is considered to have completed an academic year and progresses to the next annual loan limit when the academic year calendar period has elapsed.

(2) If a school measures academic progress in an educational program in credit hours and uses nonstandard terms that are not substantially equal in length or each term is not at least nine weeks of instructional time in length, or measures academic progress in credit hours and does not have academic terms, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

(i) The student's completion of the weeks of instructional time in the student's academic year; or

(ii) The date, as determined by the school, that the student has successfully completed the academic coursework in the student's academic year.

(3) If a school measures academic progress in an educational program in

clock hours, a student is considered to have completed an academic year and progresses to the next annual loan limit at the later of—

- (i) The student's completion of the weeks of instructional time in the student's academic year; or
- (ii) The date, as determined by the school, that the student has successfully completed the clock hours in the student's academic year.

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

\* \* \* \* \*

■ 26. Section 685.303 is amended by revising paragraph (b)(3) to read as follows:

**§ 685.303 Processing loan proceeds.**

\* \* \* \* \*

(b) \* \* \*

(3) If a student does not begin attendance in the period of enrollment, disbursed loan proceeds must be handled in accordance with 34 CFR 668.21.

\* \* \* \* \*

**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.

**§ 690.2 [Amended]**

- 28. Section 690.2 is amended by:
  - A. In paragraph (b), adding to its list, in alphabetical order, the terms *Half-time student*, *Three-quarter-time student*, and *Undergraduate student*.
  - B. In paragraph (c), removing the definitions for *Half-time student*, *Less-than-half-time student*, *Three-quarter-time student*, and *Undergraduate student*.
- 29. Section 690.63 is amended by revising paragraphs (a)(1) and (e) to read as follows:

**§ 690.63 Calculation of a Federal Pell Grant for a payment period.**

(a)(1) Programs using standard terms with at least 30 weeks of instructional time. A student's Federal Pell Grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

- (i) The student is enrolled in an eligible program that—
  - (A) Measures progress in credit hours;
  - (B) Is offered in semesters, trimesters, or quarters; and
  - (C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and
- (ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(1) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(2) The program is offered exclusively in semesters, trimesters, or quarters; and

(3) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

\* \* \* \* \*

(e) *Programs using credit hours without terms or clock hours.* The Federal Pell Grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining the student's Scheduled Federal Pell Grant using the Payment Schedule; and

(2) Multiplying the amount determined under paragraph (e)(1) of this section by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}};$$

or (ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

\* \* \* \* \*

■ 30. Section 690.66 is amended by revising paragraph (a) to read as follows:

**§ 690.66 Correspondence study.**

(a) An institution calculates the Federal Pell Grant for a payment period

for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

- (1) Determining the student's annual award using the half-time Disbursement Schedule; and

(2) Multiplying the annual award determined from the Disbursement Schedule for a half-time student by the lesser of—

(i)

$$\frac{\text{The number of credit hours in the payment period}}{\text{The number of credit hours in the program's academic year}};$$

or (ii)

The number of weeks of instructional time in the payment period  
-----  
The number of weeks of instructional time in the program's academic year

\* \* \* \* \*

**§ 690.78 [Removed]**

■ 31. Section 690.78 is removed and reserved.

\* \* \* \* \*

**PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS**

■ 32. The authority citation for part 691 continues to read as follows:

**Authority:** 20 U.S.C. 1070a-1, unless otherwise noted.

**§ 691.2 [Amended]**

■ 33. Section 691.2 is amended by:

■ A. In paragraph (b), adding to its list, in alphabetical order, the term *Undergraduate student*.

■ B. In paragraph (d), removing the definition for *Undergraduate student*.

**§ 691.8 [Amended]**

■ 34. Section 691.8 is amended by removing paragraph (c).

■ 35. Section 691.63 is amended by:

■ A. Revising paragraphs (a)(1) and (e).

■ B. In paragraph (h)(2), removing the words “, and, for a credit-hour program, weeks of instructional time,” and, adding in their place, the words “ and weeks of instructional time”.

The revisions read as follows:

**§ 691.63 Calculation of a grant for a payment period.**

(a)(1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C) Requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(1) The institution starts its terms for different cohorts of students on a periodic basis (e.g., monthly);

(2) The program is offered exclusively in semesters, trimesters, or quarters; and

(3) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and re-enroll in a subsequent term.

\* \* \* \* \*

(e) *Programs using credit hours without terms or clock hours.* The grant for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by—

(1) Determining that the student is attending at least full-time;

(2) Determining the student's ACG or National SMART Grant Scheduled Award; and

(3) Multiplying the ACG or National SMART Grant amount determined under paragraph (e)(2) of this section by the lesser of—

(i)

The number of credit or clock hours in the payment period  
-----  
The number of credit or clock hours in the program's academic year

or

(ii)

The number of weeks of instructional time in the payment period  
-----  
The number of weeks of instructional time in the program's academic year

\* \* \* \* \*

**§ 691.78 [Removed]**

■ 36. Section 691.78 is removed and reserved.

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