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Student Assistance General Provisions, Federal Family Education Loan Program, the William D. Ford Federal Direct Loan (Direct Loan) Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 682, and 685

RIN 1845–AA02

Student Assistance General Provisions, Federal Family Education Loan Program, the William D. Ford Federal Direct Loan (Direct Loan) Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: We amend the Student Assistance General Provisions regulations governing participation in the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA programs) and the Federal Family Education Loan (FFEL) Program regulations. The student financial assistance programs include the Federal Pell Grant Program, the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) Programs), the William D. Ford Federal Direct Loan (Direct Loan) Program, the Federal Family Education Loan (FFEL) Program, and the Leveraging Educational Assistance Partnership (LEAP) Program (formerly called the State Student Incentive Grant (SSIG) Program). The Federal Family Education Loan Program regulations govern the Federal Stafford Loan Program (subsidized and unsubsidized), the Federal Supplemental Loans for Students Program (no longer active), the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly collectively known as the Guaranteed Student Loan Programs).

These regulations implement statutory changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1998 (Public Law 105–244, enacted October 7, 1998) (the 1998 Amendments) for the treatment of Title IV, HEA program funds when a student withdraws from an institution.

EFFECTIVE DATE: These regulations are effective July 1, 2000.

IMPLEMENTATION DATE: The Secretary has determined, in accordance with section 482(c)(2)(A) of the HEA, that institutions may, at their discretion, choose to implement in their entirety all provisions in § 668.22 and related provisions in §§ 668.8, 668.14, 668.16, 668.24, 668.25, 668.26, 668.83, 668.92, 668.95, 668.164, 668.171, 668.173, 682.207, 682.209, 682.604, 682.605, 682.607, 685.211, 685.215, 685.305, and 685.306 on or after November 1, 1999. Furthermore, pursuant to Section 484B(e) of the HEA, institutions are not required to implement these provisions until October 7, 2000 (two years from the enactment of the 1998 Amendments). If an institution chooses to implement the provisions of section 484B of the HEA after publication of these final regulations but before October 7, 2000, the institution—

- Must implement these regulations in their entirety;
- Must apply these regulations to all students who withdraw on or after the institution's implementation of these regulations (*i.e.*, not on a student-by-student basis); and
- Cannot revert back to the old provisions of § 668.22.

For further information see ''Implementation Date of These Regulations'' under the **SUPPLEMENTARY INFORMATION** section of this preamble.

FOR FURTHER INFORMATION CONTACT: Dan Klock or Wendy Macias, U.S. Department of Education, 400 Maryland Avenue, S.W., ROB–3, Room 3045, Washington, DC 20202–5344. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION: On August 6, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (64 FR 43024) proposing to implement statutory changes made to the HEA, by the 1998 Amendments for the treatment of Title IV, HEA program funds when a student withdraws from an institution. In the preamble to the NPRM, we discussed major changes to § 668.22 in the following areas:

- The conditions under which Title IV, HEA program funds would be required to be returned and the conditions under which a student would be owed a disbursement of Title IV, HEA program funds upon withdrawal of a student.
- The requirements for making a post-withdrawal disbursement to a student.
- The determination of a withdrawal date for a student who withdraws.
- The treatment of a leave of absence for Title IV, HEA program purposes.
- The calculation of the amount of Title IV, HEA program funds that a student has earned upon withdrawal, including differences in the calculation for clock-hour programs and credit-hour programs, and non-term programs and term programs.
- The responsibility of the institution to return Title IV, HEA program funds when a student withdraws.
- The responsibility of the student to return Title IV, HEA program funds upon withdrawal.
- The order in which Title IV, HEA program funds must be returned to the Title IV, HEA programs.
- A timeframe for the return of Title IV, HEA program funds by an institution, and a timeframe for an institution to determine a withdrawal date for a student who withdraws without notifying the institution.
- The consumer information that an institution must provide to a student regarding the results of a student's withdrawal.

In addition, in the preamble to the NPRM we discussed a proposed change to § 682.207(b)(1)(v) of the FFEL program regulations to require a lender that is making a direct disbursement to a student attending a foreign school to notify the foreign school that the disbursement was made.

These final regulations contain a few significant changes from the NPRM. These changes are explained fully in the *Analysis of Comments and Changes* elsewhere in this preamble.

Conforming changes have been made to the following sections: §§ 668.8, 668.14, 668.16, 668.24, 668.25, 668.26, 668.83, 668.92, 668.95, 668.164, 668.171, 668.173, 682.207, 682.209, 682.604, 682.605, 682.607, 685.211, 685.215, 685.305, and 685.306.

Implementation Date of These Regulations

Section 482(c) of the HEA (20 U.S.C. 1089(c)) 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 in 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. If the Secretary designates a regulation for early implementation, he may specify when and under what conditions the entity may implement it. The sections designated by the Secretary and the corresponding conditions for early implementation are set out under the heading IMPLEMENTATION DATE, above.

Discussion of Student Financial Assistance Regulations Development Process

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 6, 1999. With the exception of provisions relating to the ''50% discount'' on Title IV grant funds that a student must return, which are located in § 668.22(h)(3)(ii), the proposed regulations reflected 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 15, 1999, and 176 comments were received. An analysis of the comments and of the changes in the proposed regulations follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes in the proposed regulations, and we do not respond to comments suggesting changes that the Secretary is not authorized by law to make.

Analysis of Comments and Changes

General

Comments: A few commenters believed that the proposed rules were too complicated. Some commenters requested that we prepare and distribute worksheets to clarify the application of the final regulations. A few commenters thought that we should distribute or make available a software program that institutions could use to calculate the treatment of Title IV, HEA program funds when a student withdraws. A couple of the commenters requested that we provide institutions with examples of how the regulations should be applied when a student withdraws during a summer term. A few commenters believed that the proposed rules simplified the process of returning Title IV, HEA program funds when a student withdraws.

Discussion: We believe that some of the commenters' general concerns about the complexity of the proposed rules may be caused by statutory provisions. We have responded throughout the *Analysis of Comments and Changes* to commenters' specific concerns about complexity caused by particular provisions of the proposed regulations. Prior to the effective date of these final regulations, we will provide worksheets and software that may be used to calculate the treatment of Title IV, HEA program funds when a student withdraws. We will provide examples of and guidance on the applicability of the final regulations after publication through appropriate Department publications and training.

Changes: None.

Comments: Several commenters contended that these proposed rules would have a negative financial impact on institutions. Several of these commenters suggested changes to the ''50 percent discount'' requirement of § 668.22(h) to alleviate some of the financial burden. Seven of the commenters stated that, because two calculations were now necessary, one to determine the treatment of Title IV, HEA program funds, and one to determine earned institutional charges under the institution's refund policy, their institution would have to expend funds to hire additional personnel. Two of the commenters contended that institutions would have to expend funds to purchase software in order to perform the calculation correctly.

Discussion: To the extent that there is any financial burden, we believe that it is due to the statutory changes made to the requirements for determining the amount of Title IV, HEA program funds that must be returned to the Title IV, HEA programs. Commenters' more specific concerns with the financial implications of this rule, including the concern that institutions will now have to perform two calculations and comments on the ''50 percent discount,'' are discussed in detail in the *Analysis of Comments* and Changes for § 668.22(g) and § 668.22(h). As noted above, we will assist institutions with the calculation of earned Title IV, HEA program funds when a student withdraws by providing worksheets, software, and examples of the calculation.

Changes: None.

Comments: A couple of commenters felt that the proposed rules are unfair to clock hour institutions. One commenter, a federation representing the professional beauty industry, believed that the rules unfairly penalize students who attend clock hour institutions, such as cosmetology schools. The commenter was concerned that, as a result, students would be discouraged from pursuing cosmetology careers.

Discussion: We believe that the provisions that specifically affect clock-hour institutions are in keeping with statutory intent. These provisions are an attempt to recognize the manner in which clock-hour programs operate. We have responded throughout the *Analysis of Comments and Changes* to commenters' concerns in this area.

Changes: None.

Effective Date

Coments: A few commenters requested that we delay implementation of the final rules in order to establish pilot programs to evaluate the impact of the rules on students and institutions, and to allow institutions the time necessary to properly implement the final regulations. One commenter suggested that institutions that choose to implement section 484B of the HEA prior to the required implementation date of October 7, 2000 be used as the pilot sites. Specifically, one of these commenters contended that the rules should be delayed because institutions have been, and will continue to be, focused on Year 2000 (Y2K) issues, and will not be able to focus on the implementation of the new rules. One commenter recommended that these rules be effective for students who begin an enrollment period on or after October 7, 2000 and withdraw from the institution on or after October 7, 2000. One commenter requested that institutions be permitted to implement early (prior to the required effective date of October 7, 2000) one portion of the requirements of § 668.22 without having to implement the entire requirements.

Discussion: We believe that the statutorily required implementation date of October 7, 2000 provides institutions with sufficient time to assess the impact of these requirements, to make any necessary administrative and systems changes, and to notify all potentially affected students of the changes. As these provisions of section 484B of the HEA apply to students who withdraw from an institution, we believe that these regulations should apply to any student who withdraws on or after October 7, 2000, rather than to any student who begins an enrollment period on of after that date and subsequently withdraws. Because the provisions of section 484B of the HEA, as revised by the 1998 Amendments, are a significant departure from the requirements of section 484B prior to the 1998 Amendments, we do not believe that it is reasonable to permit an institution to implement select portions of the implementing final regulations prior to October 7, 2000. If an institution chooses to implement these final regulations prior to October 7, 2000, it must implement them in their entirety.

Changes: None.

Section 668.22(a) General

Definition of a Title IV Recipient

Comments: A few commenters asked us to clarify who is a ''recipient of Title IV grant or loan assistance'' for purposes of the requirements for the treatment of Title IV, HEA program funds when a student withdraws. Some of these commenters believed that a student should be counted as a Title IV, HEA program recipient only if the student receives a disbursement of Title IV, HEA program funds before he or she withdraws. One commenter felt that a student should also be considered a Title IV, HEA program recipient if the student is entitled to a late disbursement. One commenter maintained that a student who received only Federal Work-Study funds should not be considered a Title IV, HEA program recipient. A couple of the commenters contend that it is hard to identify students who withdraw if they have not received aid. One of these commenters asserted that most institutional processing systems identify only students who have received Title IV, HEA program assistance and alert the financial aid or bursar office when those students withdraw. One commenter asked whether the rules would apply to a student who withdrew if the student had applied for a Title IV, HEA loan, but the institution had not yet certified the loan.

Discussion: We believe that it is consistent to define a Title IV, HEA program recipient for purposes of this section as a student who has met the requirements of § 668.164(g)(2). When a student withdraws or makes certain other changes to his or her enrollment status, the student is no longer eligible for a regular disbursement of Title IV, HEA program funds. Section 668.164(g)(2) lists the conditions that must have been met prior to such a change in enrollment status in order for the institution to make a late disbursement. For example, for a student to receive a Direct loan, the institution must have created the electronic origination record for the loan; for the student to receive a FFEL Program loan, the institution must have certified the loan. The conditions listed in § 668.164(g)(2) are also used for purposes of determining when a post-withdrawal disbursement of Title IV, HEA funds may be disbursed. Therefore, we have defined in the regulations a Title IV grant or loan recipient for purposes of this section as a student who has met the requirements of § 668.164(g)(2). In keeping with section 484B(a)(1) of the HEA, which provides that the requirements of section 484B of the HEA are not applicable to recipients of Federal Work-Study funds, a student would not be considered a Title IV, HEA program recipient under this section if the only Title IV, HEA program assistance that the student had received or could have received, was Federal Work-Study funds. Therefore, a Title IV, HEA program recipient for purposes of this section is a student who has met the requirements of § 668.164(g)(2).

Changes: The definition of a ''recipient of Title IV grant or loan assistance'' has been added to § 668.22(l).

LEAP Program Funds

Comments: One commenter believed that it is unfair to require an institution to count the entire amount of Leveraging Education Assistance Partnership (LEAP) funds in the calculation of the amount of Title IV, HEA program assistance that a student has earned upon withdrawal, rather than just the Federal share of the grant. The commenter stated that their institution's State Student Aid Commission identifies their State grant program as containing LEAP funds. The commenter noted that the State Student Aid Commission expects the institution to return any unearned portion of the grant, based on the institution's refund policy, to the State. The commenter is concerned that if the institution complies with both the requirements for the treatment of Title IV, HEA program funds when a student withdraws and the State's return requirements, it will end up returning more than the original amount of the grant. One commenter supported the position that LEAP funds that are not identified as LEAP funds do not need to be included in the calculation of the treatment of Title IV, HEA program funds if a student withdraws.

Discussion: Section 484B of the HEA excludes only Federal Work-Study funds from the calculation of earned Title IV, HEA program funds when a student withdraws. Once a State agency identifies a grant as LEAP funds, the entire amount of the grant is considered a LEAP grant and is subject to the Federal regulations governing the LEAP program. Therefore, if a State agency specifically identifies a grant as LEAP funds, the entire amount of the grant must be included in the calculation of earned Title IV, HEA funds. This guidance is consistent with the guidance in Dear Colleague Letter GEN–89–38. We acknowledge that the interplay between the requirements of this section and State requirements for the handling of LEAP funds may cause some difficulties for institutions. We will work with the States to attempt to resolve these difficulties.

Changes: None.

Title IV Aid Disbursed

Comments: A few commenters objected to our assertion in the preamble to the proposed rule that a pattern or practice of inadvertent overpayments—where an institution disbursed Title IV, HEA program funds to a student who has withdrawn because the institution was unaware of the student's withdrawal—would be questioned in a program review. A few commenters contended that what we refer to as ''inadvertent overpayments'' are late disbursements and, therefore, are permissible. The commenters believed that it is inconsistent to allow an institution to count inadvertent overpayments as Title IV, HEA program aid disbursed, and then sanction an institution for making the overpayments.

One commenter felt that our assertion is inconsistent with preamble language that ''some aspects of the withdrawal process cannot occur until the institution is aware that the student has withdrawn.'' One commenter believed that an institution should not be sanctioned for the practice of disbursing funds to withdrawn students if the institution had no evidence to the contrary that the student was still enrolled at the time the funds were disbursed. The commenter believed that an institution has fulfilled its obligation to ensure that a student is eligible by looking at the institution's data to ensure that the student is an active, current, student who meets satisfactory academic progress and other eligibility requirements. One commenter asserted that institutions increasingly rely on computer processing of Title IV, HEA program funds in order to process those funds as expeditiously and efficiently as possible. The commenter noted that if a student withdraws from an institution without notification, there is no way to prevent such inadvertent overpayments unless the institution takes attendance for every class; an option that the commenter felt was unduly burdensome. One commenter questioned how many inadvertent overpayments would be considered a ''pattern or practice'' of making inadvertent overpayments.

Discussion: As we noted in the preamble to the proposed rule, we agreed to permit an institution to include inadvertent overpayments in the calculation of total aid disbursed only for the administrative ease of the

institution. Specifically, the inclusion of these inadvertent overpayments in total aid disbursed would prevent the burden of an institution having to return Title IV, HEA program funds, only to have to disburse them again if a post-withdrawal disbursement was due. As stated in the NPRM, if we were to sanction a practice of inadvertent overpayments we would be sanctioning violations of other Title IV, HEA program regulations that require that an institution may disburse Title IV, HEA program funds only if the student is eligible to receive those funds.

We note that these disbursement requirements are not new. As such, an institution would be expected to already have had in place a mechanism for making the necessary eligibility determinations prior to the disbursement of any Title IV, HEA program funds, such as a process by which withdrawals are reported immediately to those individuals at the institution who are responsible for making Title IV, HEA program disbursements. If an institution does not have the proper mechanisms in place, the institution must make the necessary changes to the way it currently disburses Title IV, HEA program funds to come into compliance.

We do not agree with the commenters who believe that these inadvertent overpayments are legitimate late disbursements. We note that these overpayments are not late disbursements either; late disbursements are made in accordance with specific regulatory requirements *after* the institution is aware that the student has withdrawn.

We do not believe that it is appropriate to define a set number or percentage of inadvertent overpayments that would constitute a pattern or practice of making inadvertent overpayments. The determination of a pattern or practice must be made in conjunction with an assessment of a specific institution's demonstrated willingness and ability to prevent inadvertent overpayments.

Changes: None.

Comments: A couple of commenters believed that institutions should be permitted to replace a withdrawn student's Title IV, HEA loan funds with Title IV, HEA grant funds that the student was otherwise eligible to receive before performing the calculation for the treatment of Title IV, HEA program funds when a student withdraws. The commenters felt that it is always in the best interest of the student and the Federal government to reduce student indebtedness, particularly for students who have not completed their education.

Discussion: We continue to believe that it is inappropriate for an institution to disburse Title IV, HEA program funds to a student who has withdrawn unless the institution has determined under these regulations that the student has earned more funds than were disbursed. Therefore, an institution may not alter the amounts of Title IV, HEA grant and loan funds that were disbursed prior to the institution's determination that the student withdrew.

Changes: None.

Post-Withdrawal Disbursements

Comments: Some commenters confused the requirements for late disbursements that are made to students who have withdrawn from an institution with the late disbursements requirements that regulate how and when late disbursements are made to students for other reasons, such as a change in enrollment status to less than half-time.

Discussion: We believe that this confusion may be alleviated if disbursements that are made to students who have withdrawn from an institution are referred to as ''post-withdrawal disbursements,'' rather than ''late disbursements.''

Changes: References to ''late disbursements'' have been changed to ''post-withdrawal disbursements'' where appropriate.

Comments: Several commenters did not believe that Title IV, HEA program funds should be disbursed directly to a student who has withdrawn. Some of these commenters did not believe that this was the intent of Congress. In particular, many of these commenters did not believe that it was ever appropriate to disburse Title IV, HEA program funds to a withdrawn student if the student owed any money to the institution.

Several of the commenters specifically questioned whether an institution must disburse a post-withdrawal disbursement check if a student no longer has any institutional charges. One commenter asserted that disbursements to withdrawn students will result in Title IV, HEA funds being used for noneducationally-related expenses. A few commenters believed that direct disbursements of loans to withdrawn students would imprudently increase a withdrawn student's indebtedness and chance of default. To mitigate this, and to reduce institutional burden, a few commenters recommended that an institution be permitted to determine when a post-withdrawal disbursement of Title IV, HEA program funds should be disbursed directly to a student.

A few commenters believed that the existing late disbursement regulations should be used instead of the proposed rules for post-withdrawal disbursements. One commenter suggested that earned Title IV, HEA program funds in excess of money owed to the institution should be used to reduce any Title IV, HEA program loan debt of the student. Another commenter alleged that the post-withdrawal disbursement requirements conflict with other statutory requirements that allow the institution to be the custodian of the Title IV, HEA program funds and control whether late disbursements are made and how they are used.

Discussion: We believe that the commenters' contention that it was not the intent of Congress to directly provide withdrawn students with earned Title IV, HEA program funds is unfounded. Section 484B(a)(4)(A) of the HEA requires that disbursements of earned funds be provided to a student if the student has received less grant or loan assistance than the amount he or she has earned. The statute does not require that the disbursement of earned aid can only be applied to unpaid charges at the institution. As stated in the preamble to the NPRM, the determination of the amount of Title IV, HEA program assistance that the student has earned has no relationship to a student's actual incurred educational costs. The amount of earned Title IV, HEA program funds is based on the amount of time that the student spent in attendance and is a determination of aid that is earned by the student, not money earned by the institution. Therefore, we believe that it would be in direct violation of the statute to permit an institution to decrease this amount.

We continue to believe that it is appropriate to be consistent with the cash management requirements for disbursing Title IV, HEA program funds, which do not permit an institution to credit a student's account with Title IV, HEA program funds other than for tuition, fees, and room and board (if the student contracts with the institution)—without the student's permission. If an institution does not have permission from the student (or parent for a PLUS loan) prior to the student's withdrawal and does not obtain that permission after the student's withdrawal, the undisbursed earned funds *must* be offered to the student and cannot be used by the institution to pay remaining institutional charges other than for tuition, fees, and room and board (if the student contracts with the institution).

Changes: None.

Comments: A few commenters felt that the proposed post-withdrawal disbursement procedures are too burdensome and costly for institutions to implement. One commenter noted that it would be impossible to process a post-withdrawal disbursement in a timely manner for a student when the institution cannot locate the student immediately. The commenter suggested that it would be less burdensome to permit an institution to credit a student's account with earned Title IV, HEA program funds for current charges for educationally-related activities other than tuition, fees, and room and board (if the student contracts with the institution) unless the student or parent specifically denied permission to the institution within a certain number of days. One commenter supported the proposed timeframes for notification, response to, and disbursement of post-withdrawal disbursements. Two commenters agreed that 90 days after the date of the institution's determination that the student withdrew was an appropriate amount of time for institutions to have to make any accepted post-withdrawal disbursements to a student (or parent for a PLUS loan). A couple of commenters felt that it was unreasonably burdensome to require institutions to notify a student or parent of the outcome of any post-withdrawal disbursement request if the student's or parent's authorization was not received at all, or was not received within the 14 day timeframe. One of the commenters thought that this second notification that simply restated that the student had lost the opportunity to accept a post-withdrawal disbursement would be confusing to a student who had never responded to the original notification. A couple of commenters applauded our determination that a single notification could be used for all of the notification requirements for post-withdrawal disbursements, except for the institution's notification to inform the student or parent electronically or in writing concerning the outcome of any post-withdrawal disbursement request.

Discussion: The statute requires that earned funds be provided to the student. We recognize that it may be difficult to locate a student who has left the institution. This was addressed in negotiated rulemaking and it was concluded that the requirements for making a post-withdrawal disbursement to a student provide that the institution must offer in writing to the student (or parent for PLUS loan funds) any amount of a post-withdrawal disbursement that is not credited to the student's account. If a response is not received from the student or parent, is not received within the permitted timeframe, or the student declines the funds, the institution would return any earned funds that the institution was holding to the Title IV, HEA programs. As stated previously in the *Analysis of Comments and Changes*, we continue to believe that it is appropriate to be consistent with the cash management requirements for disbursing Title IV, HEA program funds, which do not permit an institution to credit a student's account with Title IV, HEA program funds for current charges for educationally-related activities—other than tuition, fees, and room and board (if the student contracts with the institution)—without the student's permission.

We agree with the commenters who believe that it is sometimes unreasonably burdensome or redundant to require institutions to notify a student or parent of the outcome of any post-withdrawal disbursement request. Therefore, if an authorization from the student (or parent for a PLUS loan) is never received, or if the post-withdrawal disbursement is accepted, the institution does not need to notify the student of the outcome of the post-withdrawal disbursement request. Presumably, a student (or parent for PLUS loan funds) who has never responded will understand that the post-withdrawal disbursement will not be made. Further, a student (or parent for PLUS loan funds) who has accepted the funds will likely understand that the amount of the post-withdrawal disbursement that he or she accepts will be provided, and any unaccepted amount will be returned. However, in the case of a student (or parent for PLUS loan funds) whose acceptance was not received within the 14 day timeframe and the institution does not otherwise choose to make the post-withdrawal disbursement, the student (or parent for a PLUS loan) may assume incorrectly that his or her acceptance of a post-withdrawal disbursement has been received within the timeframe and that the post-withdrawal disbursement will be made. Therefore, if a student's (or parent's for PLUS loan funds) acceptance was not received within the 14 day timeframe and the institution does not otherwise choose to make the post-withdrawal disbursement, the institution must notify the student (or parent for PLUS loan funds) that the post-withdrawal disbursement will not be made and why.

Changes: Section 668.22(a)(4)(ii)(E) has been changed to reflect that an institution must notify a student (or parent for PLUS loan funds) if the student's (or parent's for PLUS loan funds) acceptance was received after the 14 day timeframe and the institution does not otherwise choose to make the post-withdrawal disbursement.

Comments: Several commenters questioned how an institution could verify the identity of the person claiming to be the student or parent if the student or parent calls the institution to accept earned Title IV, HEA program funds. Several commenters recommended that an institution be allowed to refuse to mail a check of earned Title IV, HEA program funds based on a phone call requesting that the check be sent to a particular address. A few commenters questioned whether the institution could insist that a student or parent come into the institution to pick up any post-withdrawal disbursements due.

Discussion: Obviously, we would not want an institution to disburse Title IV, HEA program funds to anyone other than the intended recipient. We do not regulate how an institution should ensure that Title IV, HEA program funds are disbursed to the proper individual. However, we do not believe that it would be reasonable to require a student who has withdrawn from an institution (or a parent of such a student, for PLUS loan funds) to pick up a post-withdrawal disbursement in person. Because the student is no longer attending the institution, it would not be unlikely that the student has moved out of the area and would not be able to return to the institution to pick up a post-withdrawal disbursement. Presumably, in the scenario presented by the commenters, the student or parent is calling in response to the notification the institution mailed to the student or parent about the funds available from a post-withdrawal disbursement. We believe that it is reasonable to assume that a check mailed to the same address will reach the proper party.

Changes: None.

Comments: A few commenters felt that post-withdrawal disbursements should be available to pay prior year charges. The commenters maintained that this would meet the intent of the negotiating committee to mirror the cash management rules as closely as possible.

Discussion: We agree that it is desirable to mirror the cash management regulations as closely as possible. Therefore, we agree that an institution should be allowed to credit a student's account for minor prior award year charges. Institutions should make every effort to explain to a student that all or a portion of his or her post-withdrawal disbursement has been used

to satisfy any charges from prior award years.

Changes: Section 668.22(a)(4)(i)(A) has been amended to permit an institution to credit a student's account to pay minor prior year charges in accordance with § 668.164(d)(2)(ii).

Comments: One commenter maintained that the requirement that an institution must offer a post-withdrawal disbursement to a student within 30 days of the date that the institution determines that the student withdrew is inconsistent with regulations that require an institution to disburse loans within three business days of the institution's receipt of the funds.

Discussion: Because an institution must disburse Title IV, HEA program funds as soon as possible, but no later than three business days after receipt of the funds, we believe that in most cases, an institution will not possess undisbursed funds for a student as of the date that the institution determines that the student withdrew. An institution should not request Title IV, HEA program funds for a post-withdrawal disbursement unless and until it has determined: (1) That a post-withdrawal disbursement is due, (2) the amount of the post-withdrawal disbursement, and (3) that the post-withdrawal disbursement can be disbursed within three business days of receipt.

Changes: None.

Section 668.22(b) Withdrawal Date for a Student Who Withdraws From an Institution That Is Required To Take Attendance

General Withdrawal Issues

Comments: A few commenters asserted that the provisions in the NPRM for determining a student's withdrawal date favor institutions that do not take attendance. In particular, a couple of commenters noted that, because of the difference in requirements for determining withdrawal dates for institutions that do not take attendance, in some circumstances, two students who cease attendance on the same day, one at an institution that is required to take attendance and one at an institution that is not required to take attendance, may have different withdrawal dates. The commenters noted that this would result in the students earning different amounts of Title IV, HEA program aid. The commenters believed that the NPRM will encourage institutions that do take attendance to stop taking it, which the commenters felt would be harmful to students. One commenter thought that it was particularly unfair for students who withdraw without notification from institutions that are not required to take attendance to earn 50 percent of their Title IV, HEA program aid.

Discussion: The provisions that the commenters referred to are those that are prescribed by the statute. Extending the provisions in the statute that apply to institutions that are not required to take attendance to institutions that are required to take attendance would not be permitted under the law.

Changes: None.

Comments: Some commenters questioned how an institution would determine a student's withdrawal date if the student withdrew from some, but not all of his or her classes.

Discussion: The provisions of section 484B of the HEA and these implementing regulations apply to a student who began attending an institution and withdrew from all classes at the institution. They do not apply to a student who withdraws from some classes but continues to be enrolled in other classes, or a to student who leaves an institution prior to the student's first day of class.

Changes: None.

Required To Take Attendance

Comments: Several commenters asked for clarification of the definition of an institution that is required to take attendance for purposes of this section. A few commenters supported the position in the NPRM that an institution that opts to take attendance would not be considered an institution that is required to take attendance for Title IV, HEA program purposes. One commenter believed that all institutions that are required to take attendance, whether required by an outside entity or not, should be considered institutions that are required to take attendance for Title IV, HEA purposes.

A few commenters asked if an institution must use attendance records to determine a student's withdrawal date if the institution is not required to take attendance, but some faculty members do take attendance. One commenter asked if an institution would be considered an institution that is required to take attendance if the institution's State licensing agency or accrediting agency provided institutions with the option of taking attendance and the institution opts to take attendance. One commenter wanted to know if an institution would be considered to be required to take attendance by an outside entity if the institution's State licensing agency does not directly require an institution to take attendance, but requires the institution to track students, so in effect, the institution has to take attendance. For example, the commenter noted that some institutions are required to follow the State agency's refund policy regulations which require the institution to refund tuition and fees based on the student's last date of class attendance. The commenter also provided the example of an institution's State licensing agency regulations that require the institution to drop a student if the student misses more than a certain number of days or hours in a term.

Two commenters believed that an institution's State licensing agency and accrediting agency should be considered the only outside entities that can require the institution to take attendance for purposes of the treatment of Title IV, HEA program funds when a student withdraws. Some commenters asked what requirements would apply for determining a student's withdrawal date if an institution is required to take attendance by an outside entity, such as the Department of Veterans Affairs, that requires the institution to take attendance for recipients of the entity's assistance only.

Discussion: We believe that only an institution that is required to take attendance by an outside entity should be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date. Therefore, an institution that elects to take attendance, including an institution that voluntarily complies with an optional attendance requirement of an outside entity, would not be considered an institution that is required to take attendance. However, we believe that if any requirements of an outside entity result in an institution having to take attendance, the institution would be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date. So, in the two examples provided by the commenter (one where the state agency requires the institution to refund tuition and fees based on the student's last date of class attendance and the other where state agency regulations require the institution to drop a student if the student misses more than a certain number of days or hours in a term) the institution would be considered an institution that is required to take attendance for purposes of determining a student's withdrawal date.

We do not agree that State licensing agencies and accrediting agencies should be considered the only outside entities that can require the institution to take attendance for purposes of the treatment of Title IV, HEA program funds when a student withdraws. We

believe that if an institution has attendance records as the result of the requirements of any outside entity, those attendance records must be used to determine a student's withdrawal date. We also believe that if an institution is required to take attendance for only some students by an outside entity, the institution must use those attendance records for only those students to determine the student's withdrawal date (the last date of academic attendance). The institution would not be required to take attendance for any of its other students, or to use attendance records to determine any of its other students' withdrawal dates, unless the institution is required to take attendance for those students by another outside entity. For example, 10 students at Peabody University receive assistance from the Veterans Administration (VA). The VA requires the institution to take attendance for the recipients of the VA education benefits. Peabody University is not required by any other outside entity to take attendance for any of its other students. Seven of the 10 students who receive VA benefits are also Title IV, HEA program recipients. If any of those seven students withdraw from the institution, the institution must use the VA required attendance records for those students. For all other Title IV, HEA program recipients at Peabody University that withdraw, the institution must determine the withdrawal date in accordance with the requirements for students who withdraw from an institution that is not required to take attendance (§ 668.22(c)). We believe that requiring an institution to use its attendance records to determine the withdrawal date of a student for which another outside entity requires that attendance be taken is consistent with our view that the goal in defining a student's withdrawal date is to identify the date that most accurately reflects the point when the student ceased academic attendance, and should be based on the best information available.

Changes: We have changed § 668.22(b)(3) to clarify that if an institution is required by an outside entity to take attendance for only some of its students, the institution must use those attendance records for those students to determine the withdrawal date.

Comments: Several of the commenters asked what an institution's official attendance record would be. The commenters noted that an institution may have a master attendance record in addition to the roll books kept by the instructors. Several commenters asked how an institution would determine a student's withdrawal date if one of the student's instructors took attendance, but the others did not. A couple of commenters wanted to know how to determine a student's withdrawal date if faculty members' attendance records differed.

Discussion: If an institution is required to take attendance, it is up to institution to ensure that accurate attendance records are kept for purposes of identifying a student's last date of academic attendance. An institution must also determine which attendance records most accurately support its determination of a student's withdrawal date and support its use of one date over another if the institution has conflicting information.

Changes: None.

Comments: One commenter agreed that the withdrawal date for a student who withdraws from an institution that is required to take attendance should be the last date of academic attendance. A couple of commenters believed that an institution should have the discretion to use a student's last date of academic attendance as the *basis* for determining the students withdrawal date, rather than as the *actual* withdrawal date.

One commenter asserted that Title IV, HEA program assistance earned is not a reflection of time in academic attendance but, rather, is a reflection of institutional costs. As such, the commenter believed that the student's withdrawal date should reflect that the costs are incurred by the student after the student's last date of academic attendance. The commenter stated that using as a student's withdrawal date a point beyond the student's last date of attendance would be consistent with some institutional policies. The commenter contended that Congress did not intend that a student's withdrawal date at an institution that is required to take attendance be limited to the last date of academic attendance.

One commenter believed that an institution that is required to take attendance should be allowed to use as a student's withdrawal date the student's last date of attendance at an academically-related activity as documented by the institution. The commenter believed that it would be unfair to allow institutions that are not required to take attendance to count a student's subsequent academic activity, while not extending this option to institutions that are required to take attendance.

A couple of commenters also maintained that the provision for institutions that are not required to take attendance that provides that the withdrawal date for a student that withdrew without notification is the midpoint of the payment period or period of enrollment, should be extended to institutions that are required to take attendance. One commenter noted that this extension may be necessary if an institution that is required to take attendance has a student who takes a portion of their program at an institution that is not required to take attendance under a consortium agreement. The commenter believed that if the student withdrew from the non-attendance taking institution without providing notification, the student's withdrawal date should be the midpoint of the payment period or period of enrollment.

Discussion: Section 484B(c)(1)(B) of the HEA provides that institutions that are required to take attendance must determine a student's withdrawal date from its attendance records. We believe that the interpretation of the statute that is most in line with our goal of determining the date that most accurately reflects the point when a student ceased academic attendance defines a student's withdrawal date as the last date of academic attendance, as determined by the institution from its attendance records. We note that if a student continues to reside at the institution and consume goods and services past this point, the institution is not precluded from charging the student for these expenses. We believe that the statute makes clear that an institution that is required to take attendance and, therefore, has an established mechanism for tracking a student's attendance, must use that mechanism to determine the point when the student ceased academic attendance. We believe that a student's last date of academic attendance, as determined by the institution from its attendance records, accurately reflects the point when a student ceased academic attendance. The option of using a last date of attendance at an academically-related activity as documented by the institution has been extended to institutions that do not take attendance in order to permit the institutions to meet more precisely the goal of identifying as accurately as possible the point when the student ceased academic attendance.

The statute does not permit an institution that is required to take attendance to use the midpoint of the payment period or period of enrollment as the withdrawal date for a student that withdrew without notification. In the case of a student who is attending both an institution that is required to take attendance and an institution that is not

required to take attendance through a consortium agreement, in accordance with § 600.9 of the Institutional Eligibility regulations and § 690.9 of the Federal Pell Grant Program regulations, the institutions must specify as part of the consortium agreement which institution will handle the administration of Title IV, HEA program funds, which would include the determination of Title IV, HEA program funds earned by students upon withdrawal. The designated institution must take on all aspects of the administration of Title IV, HEA program funds.

Changes: None.

Comments: A few commenters believed that institutions that take attendance for only a short period of time should be considered institutions that are required to take attendance for Title IV, HEA purposes. Some of these commenters believed that if other agencies can require attendance for specific periods for their purposes, so can the Department. A few commenters supported the position taken in the NPRM that an institution that is required to take attendance for a portion of the payment period or period of enrollment should not be considered an institution that is required to take attendance for Title IV, HEA purposes. One of these commenters contended that attendance records that are kept for census purposes would not be appropriate for determining a student's withdrawal date for Title IV, HEA purposes.

Discussion: Although we believe that in some instances, the use of attendance records for an institution that is required to take attendance for a portion of the payment period or period of enrollment may meet our goal of using the best date available, we understand that in other instances, these records may not be appropriate for determining a student's withdrawal date.

Changes: None.

Comments: Some commenters believe that it would be unfair to use the student's last date of academic attendance as the withdrawal date for a student that does not return from an approved leave of absence.

Discussion: This issue is discussed under the *Analysis of Comments and Changes* for § 668.22(c).

Changes: None.

Section 668.22(c) Withdrawal Date for a Student Who Withdraws From an Institution That Is Not Required To Take Attendance

Official Notification

Comments: Several commenters asked for clarification of the meaning of ''intent to withdraw.'' The commenters wanted to know if a student who is only discussing and exploring the option of withdrawing would be considered a student who is providing the institution with his or her intent to withdraw. A couple of commenters suggested that only written submissions from the student specifying that the student intended to withdraw should be accepted. One of the commenters felt that oral notifications should not be allowed because they are subject to disagreement over what was said and when it was said. The commenter also believed that oral notifications are subject to abuse because an individual other than the student could phone the institution and withdraw the student.

Several commenters wanted to know if a student would be considered to have provided official notification to the institution of the student's intent to withdraw if a student runs into an employee of the designated office for official notification of intent to withdraw out in the community and mentions that they might not be returning to school.

A few commenters did not believe that the date that a student notifies the institution of his or her intent to withdraw is an accurate withdrawal date for a student who never actually withdraws, for a student who does not withdraw until a future date, or for a student who ceased attendance prior to the notification. One commenter suggested that an institution be permitted to use the earlier of the last date of class attendance as certified by the student, or the date the student officially submits paperwork to begin the withdrawal process.

One commenter supported the position taken in the NPRM that an institution may designate the office or offices that a student must notify in order for the notification to count as official notification.

Discussion: Intent to withdraw, as provided for in section 484B(c)(1)(A) of the HEA, means that the student indicates that he or she has either ceased to attend the institution and does not plan to resume academic attendance, or believes at the time he or she provides notification that he or she will cease to attend the institution. A student who contacts an institution and only requests information on aspects of the withdrawal process, such as the potential consequences of withdrawal, would not be considered a student who is indicating that he or she plans to withdraw. However, if the student indicates that he or she is requesting the information because he or she plans to cease attendance, the student would be considered to have provided official notification of his or her intent to withdraw.

At negotiated rulemaking, it was discussed and understood that notification of intent to withdraw that a student provided orally would be sufficient. We believe that a student's oral notification to an institution is a legitimate means of communicating to the institution his or her intent to withdraw. We believe that requiring all students to provide a written notice of intent to withdraw would unfairly limit and possibly delay notifications of withdrawal. The responsibility for documenting oral notifications is the institution's; however, the institution may request, but not require, that the student confirm his or her oral notification in writing.

Official notification of intent to withdraw is notice that a student provides to an office designated by the institution. If a student provides notification to an employee of that office while that person is acting in his or her official capacity, the student has provided official notification. If the student provides notification to an employee of that office while that person is not acting in his or her official capacity, we would expect the employee to inform the student of the appropriate means for providing official notification of his or her intent to withdraw.

The statute provides that the withdrawal date for a student who withdraws by providing notification to an institution that is not required to take attendance is the date that the student began the institution's withdrawal process or otherwise provided official notification of his or her intent to withdraw. Although stated in the NPRM, we believe that it is important to emphasize that an institution that is not required to take attendance may always use a last date of attendance at an academically-related activity as a student's withdrawal date. Therefore, if a student begins the institution's withdrawal process or notifies the institution of his or her intent to withdraw and continues to attend the institution before actually withdrawing, the attendance subsequent to the student's notification may be taken into account by the documentation of a last date of attendance at an academically-related activity. Likewise, an institution could use an earlier last documented date of attendance at an academically-related activity if this date is a more accurate reflection of the student's withdrawal date than the date that the student begins the institution's withdrawal process or notifies the institution of his or her intent to

withdraw. We would also like to emphasize that the requirements of these regulations for the treatment of Title IV, HEA program funds when a student withdraws do not apply to a student who does not actually cease attendance at the institution.

Section 484B(c) of the HEA makes clear that the determination of a student's withdrawal date is the responsibility of the institution. Therefore, the institution, not the student, must document a student's attendance at an academically-related activity in order to be able to use the date of that attendance as the student's withdrawal date. A student's certification of attendance that is not supported by documentation by the institution would not be acceptable documentation of the student's last date of attendance at an academically-related activity.

Changes: We have changed § 668.22(c)(1)(ii) to make clear that a student has provided official notification to the institution of his or her intent to withdraw if the student indicates an intent in writing or orally.

Resolving Instances Where a Student Triggers Two Dates

Comments: One commenter believed that it is unnecessary to define the withdrawal date for a student that both begins the institution's withdrawal process and also provides official notification to the institution of his or her intent to withdraw, as the earlier of these two dates, because a student cannot otherwise provide official notification to the institution without having already begun the institution's withdrawal process.

Discussion: The commenter's assertion that a student cannot otherwise provide official notification to the institution without having already begun the institution's withdrawal process is incorrect. The example given in the preamble to the NPRM illustrates one scenario where a student may otherwise provide official notification to the institution prior to beginning the institution's withdrawal process. In that example, a student calls the institution's designated office and states his or her intent to withdraw on November 1. On December 1, the student begins the institution's withdrawal process by submitting a withdrawal form.

Changes: None.

Withdrawals Without Notification

Comments: One commenter believed that use of the midpoint as the withdrawal date for a student who does not begin the institution's withdrawal process or otherwise provide official notification to the institution of his or her intent to withdraw penalizes students who provide notification of withdrawal. The commenter asserted that this provision provides students with an incentive to leave without notification, which will only add to the institution's administrative burden. The commenter believed that the withdrawal date for an unofficial withdrawal should be the student's last date of attendance or the date of the last homework assignment submitted by the student.

One commenter contended that an institution cannot determine until the end of the term that a student has really dropped out because the student would always have the right to return. A couple of commenters maintained that there is no reliable way to determine that a student has dropped out of the institution. For example, one commenter noted that all failing grades for a student would not necessarily mean that the student stopped attending. The commenter questioned how a program reviewer would identify students that have dropped out of the institution. Another commenter believed that other institutions often conclude that some students have completed a semester even though the students may have transferred to another institution. The commenter believed that the add-drop periods established by the institution could be used to more fairly interpret when students withdrew.

Discussion: Section 484B(c)(1)(iii) of the HEA provides that the withdrawal date for a student who does not begin the institution's withdrawal process or otherwise provide official notification to the institution of his or her intent to withdraw is the midpoint of the period for which assistance was disbursed. However, these regulations provide that an institution may always use an earlier or later last date of attendance at an academically-related activity as the student's withdrawal date.

It is the responsibility of the institution to develop a mechanism for determining whether a student who is a recipient of Title IV, HEA grant or loan funds has ceased attendance without notification during a payment period or period of enrollment. The requirement that an institution identify students that have dropped out of the institution during a payment period or period of enrollment is not new. Under the Title IV, HEA refund requirements an institution has been required to identify drop outs. Among other things, a reviewer may look to see if an institution has a mechanism in place for identifying and resolving instances where attendance through the end of the period could not be confirmed for a student. These regulations provide institutions with flexibility to establish their own add-drop periods and institutional refund policies. The basis for measuring the amount the student earns is the student's attendance, and the law requires that the funds be earned on a pro-rata basis through the 60 percent point of the payment period or period of enrollment.

Changes: None.

Student Does Not Return From an Approved Leave of Absence

Comments: A few commenters believed that, for a student who does not return from an approved leave of absence, the institution should be able to use the scheduled return date as the student's withdrawal date, rather than the date that the student began the leave of absence (for a student who withdraws from an institution that is not required to take attendance) or the last date of academic attendance as determined by the institution from its attendance records (for a student who withdraws from an institution that is required to take attendance). One commenter felt that the withdrawal date should be the date of the institution's determination of the student's withdrawal. One commenter contended that the law states that the student's withdrawal date is the date that the student withdrew; therefore, for a student who notifies the institution that he or she will not be returning to the institution, the date of the student's notification should be the withdrawal date.

A few commenters were concerned that the withdrawal date for a student who does not return at the expiration of an approved leave of absence as proposed in the NPRM would penalize students and institutions if the student was a Title IV, HEA program loan recipient. The commenters noted that if a student had been granted the full 180 days for an approved leave of absence, the student will have exhausted all of his or her grace period and will be required to begin repayment of the loan immediately, which would increase the likelihood that the student would default.

A couple of commenters contended that the proposed withdrawal date will not provide institutions with enough time to comply with the requirements for the treatment of Title IV, HEA program funds when a student withdraws within the required timeframes. One commenter noted that when a student does not return from an approved leave of absence, the institution would like the opportunity

to work with the student to properly prepare them for repayment.

Discussion: We do not agree with the commenters' suggested alternative withdrawal dates for a student who does not return from an approved leave of absence because we continue to believe that the date that best reflects the point when the student ceased academic attendance for this student is the date that the student began the leave of absence (for a student who withdraws from an institution that is not required to take attendance) or the last date of academic attendance as determined by the institution from its attendance records (for a student who withdraws from an institution that is required to take attendance).

Section 484B(a)(2)(B) of the HEA states that the withdrawal date for a student who does not return to the institution at the expiration of an approved leave of absence is the withdrawal date as determined in accordance with section 484B(c). However, section 484B(c) does not specifically address the circumstance of a student who does not return to the institution at the expiration of an approved leave of absence. Therefore, as noted in the NPRM, we have promulgated the withdrawal date that we believe best meets our goal to accurately reflects the point when the student ceased attendance by treating the start of the leave of absence as a withdrawal date documented by the institution.

We acknowledge that this withdrawal date will result in the exhaustion of some or all of a student's grace period for Title IV, HEA program loan recipients. We believe this is an appropriate result because the student was not in academic attendance for that period. However, we note that a student who has exhausted his or her grace period and is unable to begin repayment of a loan may apply for a deferment or forbearance of payment. Taking into account the concerns of the commenters, we believe that a student must be informed of the possible consequences of withdrawal on a loan grace period before he or she is granted an approved leave of absence. Therefore, we have changed these regulations to require an institution to provide information to a loan recipient prior to the granting of a leave of absence about the possible effects that the student's failure to return from the leave of absence may have on the student's loan repayment terms. These issues related to a student's Title IV, HEA program loan repayment status when the student does not return from an approved leave of absence are discussed in more detail in the *Analysis of Comments and Changes* for § 668.22(d).

We note that the timeframes and requirements for the handling of post-withdrawal disbursements, maintaining documentation of a student's withdrawal, and returning Title IV, HEA program funds for which the institution is responsible all begin as of the date of the institution's determination that the student withdrew, not as of the student's withdrawal date. Therefore, the withdrawal date for a student should have no effect on an institution's ability to meet these requirements and deadlines.

Changes: Section 668.22(d)(1) has been changed to provide that a leave of absence is not an approved leave of absence for purposes of the Title IV, HEA programs unless the institution explains at or prior to granting the leave of absence the effects that the student's failure to return from an approved leave of absence may have on the student loan repayment terms, including the exhaustion of some or all of the student's grace period.

Unapproved Leave of Absence

Comments: One commenter contended that there would never be any unapproved leaves of absence because a leave of absence would not be allowed unless it is approved by the institution. One commenter believed that a withdrawal that results because a student is granted an unapproved leave of absence should be treated as a withdrawal without official notification so that the student's withdrawal date would be the midpoint of the payment period or period of enrollment.

Discussion: We would like to make clear that an institution may grant a student for academic reasons a leave of absence that does not meet the conditions of these regulations for an ''approved'' leave of absence. However, this ''unapproved'' leave of absence must be treated as a withdrawal for Title IV, HEA purposes. We do not agree that a student who is granted an unapproved leave of absence should be treated as an unofficial withdrawal. An unofficial withdrawal is one where the institution has not received notice from the student that the student has ceased or will cease attending the institution. If an institution has granted a student an unapproved leave of absence, the institution would be aware of when the student will cease attendance. In keeping with our stated goal of identifying the date that most accurately reflects the point when the student ceased academic attendance, we have defined the withdrawal date for a student who takes an unapproved leave of absence at an institution that is not required to take attendance as the date that the institution determines that the student began the leave of absence. The withdrawal date at an institution that is required to take attendance is the last date of academic attendance as determined by the institution from its attendance records. We have also added a conforming change to define the date of the institution's determination that the student withdrew for a student who is granted an unapproved leave of absence as the first day of the student's leave of absence.

Changes: We have amended §§ 668.22(b)(1) and (c)(1)(vi) to specify the withdrawal date for a student who takes an unapproved leave of absence at an institution that is required to take attendance and at an institution that is not required to take attendance, respectively. We have added § 668.22(l)(3)(v) to define the date of the institution's determination that the student withdrew for a student who takes an unapproved leave of absence.

Rescission of Intent To Withdraw

Comments: A few commenters did not agree that the withdrawal date for a student who withdraws from an institution after rescinding an intent to withdraw should be the date that the student first provided notification to the institution or began the withdrawal process, unless the institution chooses to document a last date of attendance at an academically-related activity. A couple of commenters believed that an intent to withdraw that is rescinded is completely cancelled and cannot be referred to again. The commenters maintain that the appropriate withdrawal date would be the date that the student subsequently notifies the institution and actually withdraws. One commenter was unhappy about our insinuation that an institution may abuse this area. The commenter felt that the institution is being held responsible for the student's actions. A couple of the commenters contended that the original date of the student's notification was not an accurate withdrawal date because it does not take into account the additional charges that the student has incurred for the additional period of attendance. One commenter asserted that it would be difficult to get a written statement from the student that indicated that he or she will remain in attendance. One commenter believed that the proposed requirements for handling rescissions of withdrawal notices are too complicated and penalize the student for deciding to remain enrolled.

Discussion: We continue to believe that the appropriate withdrawal date for a student who does not complete the payment period or period of enrollment after rescinding his or her first notification of withdrawal is the date when the student first began the institution's withdrawal process or otherwise provided official notification to the institution. The Department is responsible for identifying and responding to areas of potential abuse to the Title IV, HEA programs in the development of regulations. The potential abuses that we identified in the NPRM were not addressed by the alternative withdrawal dates suggested by the commenters. We do not believe that this requirement is onerous because an institution may always use the last date of attendance at an academically-related activity to take into account attendance by the student subsequent to the student's first notification of withdrawal. For example, Dave notifies his institution of his intent to withdraw on January 5. On January 6, Dave notifies the institution that he has changed his mind and has decided to continue to attend the institution, and provides the required written statement to that effect. On February 15, Dave notifies the institution that he is withdrawing, and actually does. The institution has a record of an exam that Dave took on February 9. The institution may use February 9 as Dave's withdrawal date. If the institution could not or did not choose to document a last date of attendance at an academically-related activity for Dave (in this case, the record of the exam), his withdrawal date would be January 5, the date of Dave's original notification of his intent to withdraw, not February 15.

We do not believe that it will be unduly burdensome for an institution to obtain a statement from the student that he or she intends to remain in academic attendance for the remainder of the payment period or period of enrollment. Presumably, the institution is aware that the student has changed his or her mind about withdrawing because the student has contacted the institution to inform the institution that he or she has changed his or her mind and are not withdrawing. The institution may inform the student of the certification requirement at that time.

Changes: None.

Last Date of Attendance at an Academically-Related Activity

Comments: One commenter contended that the law makes no mention of a last date of attendance or academically-related activities, so the regulations should only use the language of the law which states that a later date documented by the institution may be used for a student who withdraws without notification to the institution. The commenter did not agree that the concept of using the last date of attendance at an academically-related activity is a longstanding one for the Title IV, HEA programs because it has never been included in previous laws and was only introduced in the regulations about eight years ago. One commenter requested clarification of the documentation required to verify a student's attendance at an academically-related activity. One commenter contended that using the last date of attendance at an academically-related activity is not a realistic option because it is difficult for an institution to track attendance.

Discussion: As stated in the preamble to the NPRM, the statute does not specifically allow an institution to use as a withdrawal date a student's last date of attendance at an academically-related activity, except in the case of a student who withdraws without providing notification (in which case the institution may use a date that is later than the midpoint of the period). However, we continue to believe that we have the discretion under the statute to promulgate regulations that permit an institution that is not required to take attendance to document a date other than the specified withdrawal dates if that date more accurately reflects the point when the student ceased academic attendance.

We note that the use of a last date of attendance at an academically-related activity has been a part of the guidance for the definition of a student's Title IV, HEA program withdrawal date for over eight years. We believe that this qualifies as longstanding Title IV, HEA program policy. Just as there is a wide variety in the types of educational programs offered by institutions, there appears to be a lot of variation in ways that institutions have been able to identify a last date of attendance at an academically-related activity. We believe that the guidance provided in the preamble to the NPRM is sufficient for an institution to determine how the institution should properly document a student's last date of attendance at an academically-related activity without being overly prescriptive. This flexibility permits institutions to control the process used to verify the student's attendance in these activities. We will continue to provide guidance in this area through Department publications to address specific concerns that are not addressed by this guidance.

Changes: None.

Acceptable Documentation

Comments: One commenter supported the position in the NPRM that acceptable documentation for a student's withdrawal date should not be specified in the regulations.

Discussion: None.

Changes: None.

Section 668.22(d) Approved Leaves of Absence

Comments: A few commenters supported the position in the NPRM that an institution would be allowed to grant more than one leave of absence to a student. In response to the Secretary's specific request for comment, commenters suggested the following additional categories of unforeseen circumstances that the commenters believe warrant the granting of more than one approved leave of absence: jury duty; incarceration; unexpected loss of child care; the need to care for children during the children's school breaks; changes in work schedules (for example, a part-time employee is required to work full-time for a few weeks); protection in cases of domestic abuse where a student has been forced to go into hiding; dependent care outside the parameters of the Family and Medical Leave Act of 1993 (FMLA) (no specifics provided); financial reasons; death or illness of a family member; student suffers injury or major illness; snow days; travel.

A few commenters believed that a list of circumstances could not address every unforeseen circumstance that should warrant an approved leave of absence. A couple of these commenters believed that institutions should have the discretion to grant an approved leave of absence, as long as the institution maintained the appropriate documentation. One commenter suggested limiting the number of leaves of absence to two, rather than defining all unforeseen circumstances. One commenter thought that unforeseen circumstances should be defined, but only two leaves of no more than 60 days each should be permitted for these reasons. One commenter felt that one leave of absence in a 12-month period is sufficient.

Discussion: We continue to believe that more than one leave of absence should only be granted for limited, well-documented circumstances due to unforeseen circumstances. As stated in the NPRM, we believe this interpretation is supported by the language of the statute, which refers to a student who takes ''a'' leave of absence from an institution. This interpretation also recognizes the fact

that it is often not in the best interest of a student to have multiple interruptions in their education.

We believe that jury duty, like military duty, is a circumstance that would warrant multiple leaves of absence. We believe that some of the circumstances suggested by the commenters, such as illness of a family member or an injury or major illness of the student, are adequately covered by the FMLA. We do not believe that the additional circumstances suggested by the commenters would warrant multiple leaves of absence, either because they are not unforeseen, are difficult to document, or are likely to be adequately addressed by one leave of absence. However, we recognize that some of these circumstances, as well as other circumstances that have not been identified by either the Department or the commenters, may force a student who would otherwise continue their education to withdraw. We believe that the institution is in the best position to determine if one additional leave of absence is necessary for unforeseen circumstances that are not specifically mentioned in the regulations. However, in keeping with our intention to limit interruptions to a student's education, we believe that this leave of absence should be limited to 30 days and can only be granted if a student has already been granted an approved leave of absence at the institution's discretion. Therefore, consistent with the NPRM, the regulations would not specify the circumstances that would warrant one leave of absence; rather, the institution would determine if the student's reason for requesting a single leave of absence is appropriate. An institution may grant subsequent leaves of absence if:

- The student's circumstances meet one of the following conditions for multiple leaves of absence: military reasons, circumstances covered by the FMLA, or jury duty, or
- For one additional leave of absence not to exceed 30 days, the institution determines that the additional leave of absence is necessary. This type of leave of absence would have to be subsequent to the granting of the single leave of absence that is granted at the institution's discretion.

In accordance with the statute, the total number of days of all leaves of absence cannot exceed 180 days in any 12-month period.

Changes: Section 668.22(d)(2) is amended to provide that for one additional leave of absence not to exceed 30 days, the institution may determine that the additional leave of absence is necessary due to unforeseen circumstances. This type of leave of absence would have to be subsequent to the granting of the single leave of absence. Section 668.22(d)(2) is amended to provide that jury duty is another circumstance, in addition to military reasons or circumstances covered by the FMLA, for which an institution may grant a student subsequent leaves of absence.

Comments: One commenter asked if leaves of absence granted for ''military reasons'' includes the National Guard.

Discussion: We believe that leaves of absence that are granted for military reasons include training and service requirements of the National Guard.

Changes: None.

Comments: One commenter noted that some of the circumstances covered by the Family and Medical Leave Act of 1993 (FMLA) are covered for a 12-month period. The commenter asked us to clarify the interplay of the 12-month period for FMLA with the 180 days restriction of leaves of absence.

Discussion: Two of the circumstances that are covered under the FMLA, birth and care of a child, and adoption or foster care placement, are covered for up to 12 months for purposes of the FMLA. For purposes of the Title IV, HEA programs, this means that a student may be granted an approved leave of absence for these circumstances, as long as (1) the entire leave of absence will occur sometime during this 12 month period of time, and (2) the total number of days of all leaves of absence for the student does not exceed 180 days in the 12-month period that began on the first day of the student's first leave of absence. For example, a student has a child who is born on February 1, 2000. The student has never taken an approved leave of absence before. The student may be granted an approved leave of absence for the birth of and/or care of the child for up to 180 days during the period of February 1, 2000 through February 1, 2001, 12 months from the birth of the child. If the student requests a subsequent leave of absence to care for the child that would begin on January 1, 2001, the leave of absence could be no longer than 31 days, because the circumstance that triggered the leave of absence would no longer be covered under the FMLA after February 1, 2001.

Changes: None.

Comments: One commenter believed that it was unreasonable to require that a student be permitted to complete the coursework begun before the leave of absence. Since a leave of absence can be up to 180 days, the commenter noted that this period of time exceeded the limits most institutions permit before having a grade of ''incomplete'' turn into a failing grade. The commenter suggested that it would be more consistent with existing academic requirements for the term 'coursework' to be changed to 'course of study or major'. One commenter suggested that the requirement to exclude periods of excused absences from the calendar days used in the return calculation does not work because any leave of absence that extended beyond the end of the payment period or period of enrollment would automatically qualify the student to earn 100 percent of the Title IV, HEA program funds.

Discussion: Approved leaves of absence are viewed as interruptions in a student's academic attendance. Therefore, when a student returns from a leave of absence, the student should be continuing the academic program where it left off. Approved leaves of absence must conform to the institution's policy, and institutions are expected to play an active role in evaluating whether a requested leave of absence should be granted and how it can be structured to permit a student to complete the payment period or period of enrollment. Although a leave of absence may extend for up to 180 days, we anticipate that most requests will be for shorter periods that will conform to an institution's requirements for completing courses within specified time limits. Furthermore, the scenario provided by the commenter is one where a student has not ceased to perform academically if the student is completing the course work through independent study rather than by taking classes at the institution. Therefore, this would not be considered a leave of absence for Title IV, HEA program purposes. When a student returns from an approved leave of absence the payment period or period of enrollment used for a return calculation would be adjusted to reflect the new ending date. In order to prevent a situation where a student is able to earn funds simply by taking a leave of absence, those days must be excluded from the return calculation.

Changes: None.

Comments: One commenter believed that retroactive requests for leaves of absence should be permitted because students often do not know that they will need a leave of absence until they have been absent from the institution for a few days.

Discussion: We continue to believe that it is reasonable to expect an institution to collect a written request for an approved leave of absence from the student prior to the leave of absence, unless the student is unable to provide the written request prior to the leave of

absence due to unforeseen circumstances. In such cases, the institution must document the reason for its decision to grant the leave of absence prior to receiving a written request and collect the written request from the student at a later date.

Changes: None.

In-School Status for Title IV Loans

Comments: Several commenters believed that a student should be considered to have in-school status for Title IV, HEA loan purposes during an approved leave of absence. The commenters argued that considering a student to have in-school status for Title IV, HEA loan purposes is consistent with the assertion that a student on an approved leave of absence is still considered to be enrolled at the institution. The commenters contended that the inconsistency of placing a student in an out-of-school status for loan purposes, while the student is still considered enrolled in the institution, would be too confusing and burdensome to students and their families, institutions, lenders, and guaranty agencies. Some commenters noted that leaves of absence are granted to encourage a student to continue his or her education. The commenters believed that guaranteeing that a student will not exhaust any or all of their grace period will be an added incentive to return and avoid immediate repayment. One commenter noted that most loan servicing systems generate letters to a borrower beginning in the first month of the borrower's grace period. The commenter contended that these notices will confuse students who are considered to be in enrollment for other Title IV, HEA purposes.

Discussion: We agree with the commenters' arguments that the inconsistency of treating a student on an approved leave of absence as a withdrawn student for purposes of terminating a student's in-school status would not be in the best interest of the student and would possibly create undue burden for institutions, lenders and guaranty agencies. We agree that a student who is granted an approved leave of absence should be considered to remain in an in-school status for Title IV, HEA loan repayment purposes. However, as discussed previously, if a student does not return from an approved leave of absence, the student's withdrawal date, and the beginning of the student's grace period, is the date that the student began the leave of absence (for a student who withdraws from an institution that is not required to take attendance) or the last date of academic attendance as determined by the institution from its attendance records (for a student who withdraws from an institution that is required to take attendance). Therefore, an institution must report to the loan holder the student's change in enrollment status as of the withdrawal date.

Changes: Section 668.22(d)(1) has been changed to reflect that if a Title IV, HEA program loan borrower has been granted an approved leave of absence, the borrower is considered to be enrolled in the institution for purposes of reporting the student's in-school status for Title IV, HEA program loans.

Scheduled Breaks

Comments: A few commenters supported the position that a student would not have to be granted an approved leave of absence for periods of nonattendance for a scheduled break. The commenters assumed that this position would apply to summer sessions when the student is not scheduled to be in attendance.

Discussion: The commenters are correct that an approved leave of absence would not be necessary for a summer session for which the student was not scheduled to be in attendance. However, if a scheduled break falls within a payment period or period of enrollment and the student does not return at the end of the scheduled break, the withdrawal date would reflect that the scheduled break was a period of non-attendance.

Changes: None.

§ 668.22(e) Calculation of the Amount of Title IV Assistance Earned by the Student

Use of Payment Period or Period of Enrollment

Comments: A few commenters suggested that institutions that use period of enrollment for the calculation should be allowed to use aid awarded rather than the aid that was disbursed or could have been disbursed as of the date of the student's withdrawal. The commenters said that the use of aid awarded was provided for in the law, and that the option of using period of enrollment is made void unless an institution is allowed to use the aid awarded in the calculation. The commenters explained that the proposed requirement to only use the amount of aid disbursed or that could have been disbursed at the time of the student's withdrawal is unfair because students who withdraw during the first payment period will not have been enrolled long enough for the institution to have disbursed all aid awarded for the period of enrollment. The commenters believe that institutions will be acting against the interests of their students by using the period of enrollment in the calculation rather than the payment period because less aid could be considered in the calculation.

Discussion: Although the commenters point out that the law refers to aid awarded when describing the institution's option to use either payment period or period of enrollment in the calculation, that reference simply describes the relevant period to use in the calculation. The law gives institutions the option to use either the payment period or period of enrollment ''for which assistance was awarded'' in the calculation, but specifies that the percentage of assistance earned is applied to the assistance that ''was disbursed (and that could have been disbursed). . . as of the day the student withdrew''.

Changes: None.

Comments: A small number of commenters pointed out that the requirement for an institution to consistently use either the payment period or period of enrollment measure poses a problem in some circumstances, particularly for students that are transferring to the institution or are re-entering to complete their program. Some of those commenters said that they read the law to allow institutions to choose on a student-by-student basis to address differences in student circumstances. The commenters noted that many institutions would decide to use the payment period as a basis for doing most return calculations, because that calculation would be better for most students. The commenters said that the choice in the law to use payment period or period of enrollment was supposed to give them flexibility to use a calculation that matched the way they charged for their programs.

Discussion: Institutions must choose between using payment period or period of enrollment on a program by program basis. This requirement promotes consistency in administration of the programs and makes it simpler for schools to explain the return of funds provision to students. Students enrolling in a program at an institution will also be subject to the same period of measure for return of unearned aid calculations throughout their attendance. We therefore reject the suggestion that institutions should be able to choose the appropriate period for this calculation on a student by student basis for the students that regularly enroll in their programs. Some different treatment is being permitted for

students that transfer into an institution or re-enter, and this is discussed below.

Changes: None.

Comments: A few commenters said that the proposed regulation is confusing because it does not distinguish between financial aid awarded (which is subject to the student meeting certain criteria to receive any amount awarded) and financial aid that the student was eligible to receive. The commenters illustrated this by explaining that a first time borrower must attend 30 days before being awarded the financial aid for the first loan disbursement. The student must then continue attending into the second payment period in order to receive the second disbursement of the loan proceeds. The commenters recommended revising the regulation to provide that the amount to be returned may never exceed the difference of the amount disbursed and the amount earned.

Discussion: The calculation in the NPRM determines whether more aid was actually disbursed than the student earned. If so, the unearned portion must be returned. The proposed language has already been written to clarify that the only amount that needs to be returned is the amount of aid that was actually disbursed that exceeded the amount of earned aid. We believe that the proposed language accurately describes the steps needed to perform the calculation, and believe that this language better describes the processes that institutions will use when performing these calculations.

Changes: None.

Comments: A few commenters asked how to determine tuition and fee costs to be paid in a payment period or period of enrollment when the program is longer than those periods. These commenters pointed out that some institutions charge for equipment and supplies up front, even though that equipment may be used throughout a program that could last for two years or perhaps longer. Other questions dealt with whether such charges could be pro-rated, and asked how registration fees or book charges would be handled in the calculation. The commenters suggested that deference should be given to the recommendations made by the schools and their students who are affected by this provision. Some of these commenters said that the Department has a longstanding policy to include up-front charges in the first period of enrollment so that there would be no tuition and fee costs for subsequent periods.

Discussion: An institution would be permitted to pro-rate the total program charges for the program to correspond to the payment period if the institution has elected to use payment period rather than period of enrollment for the return calculations. If the institution retained a higher amount of charges to the student for the payment period for any reason, including allocating costs for equipment and supplies to the front of the program, the funds retained by the institution are attributed to that payment period because they are a better measure of the institutional charges paid by the student for that period.

Changes: None.

Comments: A few commenters raised concerns about the statutory requirements of the return calculation. For example, one commenter argued that forcing institutions to return unearned Title IV, HEA program funds through 60 percent of the period could cause the institutions to delay disbursing funds to their students until after this point. Those schools pointed out that students that withdraw after the beginning of a payment period cannot be replaced, and the cost to the institution of providing that program does not decrease. Another commenter pointed out that his state required a shorter refund policy that the commenter believed was fairer than the return calculation. Other commenters complained about the additional costs institutions would face from adding additional staff and returning larger amounts of unearned funds. Other commenters objected to having students earn funds on a pro-rata basis because it does not correspond to the costs incurred by the student for attending the institution, and complained that the statutory formula does not round the percentages earned in 10 percent portions like the prior version of the law did.

Discussion: The commenters address components of the return calculation that are statutory and cannot be changed by regulation.

Changes: None.

Re-Entry and Transfer Students

Comments: Some institutions pointed out that it was impossible for an institution to use a consistent number of hours in a payment period for students that transferred into the institution or re-entered it, because the first payment period for those students will be whatever portion of a payment period remains to be completed before the student can begin a subsequent full payment period. A few commenters pointed out that the Title IV, HEA program funds at issue during this partial payment period are, in effect, discounted twice, once at entry, due to the Federal Pell Grant proration requirements, and once at the time of withdrawal for the return calculation. Other schools also complained that this problem was further complicated because institutions are not allowed to use aid awarded in the calculation. Another commenter noted that the benefit of using payment periods for the regularly enrolled students would be negated if the institution used payment periods for the transfer and re-entry students as well. The commenter believed that it may be fairer for those students to have their period of enrollment used in a return calculation.

Discussion: We acknowledge that students transferring to an institution or re-entering a nonstandard term or non-term based program are more likely to have a short, non-standard payment period that would have to be completed before their schedules could fit into the standard payment periods at the institution. Both these groups of students are distinct from students who have attended a program from the beginning of the payment period or period of enrollment, and it may be appropriate for an institution to choose to use either a payment period or period of enrollment basis for a return calculation for one of these groups of students, even if a different period is used for the students who have been in attendance from the beginning of the payment period or period of enrollment in that program.

Changes: Section 668.22(e)(5)(ii) has been modified to permit an institution to make a separate selection of payment period or period of enrollment for return of unearned aid calculations for students that transfer to the institution and for those who reenter the institution for students who attend a nonterm-based or a nonstandard term-based educational program.

Comments: A small number of commenters pointed out that the return calculation does not provide for treatment of aid that was awarded but not disbursed, including situations where the institution elects to do multiple disbursements. The commenters suggested that the multiple disbursements should not be treated as funds that would be applied to institutional charges, but that institutional charges should be applied against the amount the student and the institution must repay. Another commenter said that the return calculation does not adequately address how undisbursed funds should be treated because of the many different scenarios that can occur at a college where a student withdraws before

receiving all funds that have been disbursed to him.

Discussion: As discussed above, the law determines the amount of funds earned by the student in the return calculation by applying the percentage the student completed of the payment period or period of enrollment to the funds that were disbursed, or could have been disbursed, as of the day the student withdrew. Students that have not received aid that could have been disbursed to them at the time they withdrew are entitled to receive any additional sum earned that is greater than the amount already disbursed to them. This snapshot approach to considering whether additional aid may be awarded will provide a consistent set of procedures that will prevent post-withdrawal disbursements of unearned aid. Even though multiple disbursements may have been scheduled for a student at the time he or she withdrew, the return calculation will limit those disbursements to actual amounts earned. A student receiving a post-withdrawal disbursement will have earned all aid that had been disbursed, and the subsequent disbursement will only be for the additional amount earned. A student receiving a post-withdrawal disbursement will therefore never have any unearned funds that would be the responsibility of the student in the return calculation, as might be the case if all of the student's disbursements were made at the beginning of the period. This rule will prevent institutions from making post-withdrawal disbursements of aid that could be manipulated to alter the grant/loan mix of funds used in the return calculation. We believe it is consistent with the law to base the return calculation on the actual aid that had been disbursed at the time the student withdrew.

Changes: None.

§ 668.22(f) Percentage of Payment Period or Period of Enrollment Completed

Credit Hour Programs

Comments: Several commenters questioned how holidays and weekends should be treated in the calculation of days completed, particularly when combined with a short break. One commenter suggested that the calendar days used in the calculation should be defined as school days, and exclude weekends and holidays from the calculation. The commenter argued that this treatment would provide consistency among terms and would comport with the current method of determining repayments. Other commenters agreed that including weekends and short breaks complicates the calculation and does not accurately reflect the actual course completion. Conversely, other commenters pointed out that students are often studying during weekends and during short breaks, and they argued that all calendar days should count in the return calculation. Another commenter preferred basing the calculation on weeks completed, and suggested that some rounding of calendar days completed be permitted in order to simplify the calculation.

A few commenters argued that the proposed exclusion of 5 day breaks was too short if the weekend days would be considered a part of that period. The commenter noted that every break of 3 days or more occurring prior to or after a weekend would create a period that would be excluded from the return calculation, and recommended that the number of days of closure be increased to more accurately reflect the expenses incurred by the institution during short-term closure. One commenter pointed out that most colleges have a one week Spring break in the Spring term, but only one-day or two-day holidays in the Fall even though the number of teaching days are the same. The commenter believed that this disparity in breaks would require students withdrawing in the Spring to have to return more funds than students that withdraw at a comparable point in the Fall payment period.

Discussion: The law generally requires the use of calendar days in the return calculation. The proposed rule would exclude breaks of five or more consecutive days in order to provide for more equitable treatment to students that withdraw near each end of a scheduled break. In those instances, the student that withdrew after the break would not be given credit for earning an additional week of funds during the scheduled break, but would instead earn only an additional day or two more funds than a student that withdrew right before the start of the break. We intend for institutions to exclude all days between the last scheduled day of classes before a scheduled break and the first day that classes resume. For example, where classes end on a Friday and do not resume until Monday following a one-week break, both weekends would be excluded from the return calculation. If classes were taught on either weekend for the programs that were subject to the scheduled break, those days would be counted.

Changes: None. Comments: One commenter pointed out that the proposed regulation does not fully address non-term credit hour programs and nontraditional program formats, especially those non-term credit hour programs that consist of consecutive courses where students may be scheduled to attend one or two days a week or every other weekend. In those instances, five or more days would routinely occur between class meetings, and the commenter asked if those days would be treated as scheduled breaks. Another comment suggested that we should continue to work with the financial aid community to identify the best way to measure the period used in the return calculation for these non-traditional programs.

Discussion: We note that the proposed rule excludes scheduled breaks of at least five consecutive days. For a program that regularly met each weekend for its entirety, the days between classes would not be excluded because they were not part of any regularly scheduled break. If classes were not held on at least one of the scheduled days during a weekend, the period from the last scheduled day of class before the scheduled break until the next scheduled day of class after the break would be excluded from the return calculation. We believe that this result is consistent with the application of this rule to traditional institutions, since a program that usually offered classes on Saturday and Sunday would be taking a break from half of a week's classes if it did not meet on one of those days.

Changes: None.

Clock Hour Programs

Comments: One commenter said that the proposed regulations for clock hour institutions were too complex. A few commenters argued that the return calculations for clock hour institutions should use scheduled clock hours to determine the amount of aid earned rather than considering the actual clock hours completed in the program, because this is more consistent with the requirement to use calendar days as the measure of aid earned at credit hour institutions. Other commenters argued that the law was intended to create similarity between rules for credit hour and clock hour institutions by permitting the use of scheduled hours. These commenters pointed out that credit hour students can attend the first day of classes and not again until the 30th day and receive aid for that 30-day enrollment if they withdraw. Furthermore, if the student unofficially withdrew, he would receive aid through the midpoint of the payment period.

A small number of commenters also argued that the proposed regulations did

not correctly interpret the law concerning when scheduled clock hours are used instead of completed clock hours. These commenters believe the law permits the Secretary to establish a threshold of minimum hours such as 10 percent of the payment period that, when completed, would entitle a student to be paid for scheduled hours from that point on whenever he or she withdraws.

Other commenters recommended a number lower than 70 be used for the percentage of completed hours that would allow a student to be paid for scheduled hours, or argued that it was punitive to limit some students to being paid for completed hours if they only completed 69 percent of the hours they were scheduled to take when a student completing 70 percent would get the bonus of being paid for all scheduled hours. A few commenters also suggested that the 70 percent number be changed to 66 percent in order to correspond with our satisfactory academic progress measures that require a student to complete a program in no more than 150 percent of the scheduled time, so that a student could be paid for up to 150 percent of the actual hours completed at the time of withdrawal.

Discussion: The law provides clear authority for the Secretary to establish the percentage of attendance a student must achieve in order to be paid for scheduled hours rather than completed hours. Under the new regulation, that measure will be based upon the student's success at completing at least 70 percent of the hours scheduled to be completed at the time he or she withdrew. The 70 percent requirement is a bright line, and students that meet the attendance threshold will be paid for scheduled hours, while students with lower attendance rates will not. The 70 percent attendance requirement was reached after numerous meetings with a work group that were held during the negotiated rulemaking process. We reject the suggestion that the number be lowered in order to mirror our satisfactory academic progress provisions, which serve the very different purpose of providing students that remain enrolled beyond the scheduled length of their program with additional time to complete their studies.

Changes: None.

Comments: A few commenters objected to the proposed requirement that a student in a clock hour program actually complete 60 percent of the program before earning 100 percent of the funds. The commenters argued that the 60 percent measure identified in the law should be based on the student's scheduled hours if the student were entitled to be paid for scheduled hours, as discussed above. The commenters said that there is no specific statutory basis for imposing this restriction, and they asserted that it discriminates against clock hour students because no comparable restrictions are imposed on students enrolled in credit hour programs. One commenter pointed out that some states approve clock hour programs that permit students to attend with accelerated schedules, so that a student would withdraw with more completed hours than scheduled. The commenter sought either clarification or a change in language to provide that a student could be paid for completed hours if they exceeded the amount of scheduled hours.

Discussion: The law permits a student to earn 100 percent of the funds when completing 60 percent of a program, and we view the actual completion of that amount of the program as a substantive requirement. We refuse to dilute this measure by treating a student that completes 42 percent (70 percent of 60 percent) of a program as having earned 100 percent of his or her Title IV, HEA program aid. We note that the student completing 42 percent of the program in this example will still get the substantial benefit of having earned aid for 60 percent of the scheduled hours because the student met the 70 percent attendance requirement when he withdrew. We note that the language in the regulation permits the institution to use either the hours completed or the scheduled hours (subject to the 70 percent attendance requirement) in the calculation, so that a student completing more hours than were scheduled to be completed at the time he or she withdrew could be paid for the completed hours.

Changes: None.

Excused Absences

Comments: Many commenters suggested that excused absences should be treated as completed hours, because we currently permit clock hour institutions to count up to 10 percent of the missed hours in the program as completed hours. The commenters noted that this was also consistent with higher education community practice.

A few commenters further suggested that the 10 percent limit on excused absences should be raised to 15 percent or whatever standard was permitted in state regulations. Some commenters also suggested that excused absences should include jury duty, military service, court appearances, sickness, medical reasons and family emergencies since these are all circumstances beyond the student's control.

One commenter claimed that not counting excused absences as completed hours would create potential problems for transfer students and re-entry students because the state would recognize hours for excused absences as completed even though the Department would not. Other commenters said it was not fair to exclude excused absences from being treated as completed hours because credit hour institutions are allowed to count weekends and holidays in the return calculation.

One commenter supported the proposed regulation because the 70 percent completion measure used to permit students to be paid for scheduled hours rather than completed hours would already include these absences.

Discussion: Excused absences will not count as completed hours in the return calculation. For students that withdraw from their programs, the absences will be classified as scheduled hours that were not completed. In order to be paid for those hours, the student must satisfy the 70 percent attendance measure. We believe that the allowance of up to 30 percent of the scheduled hours to be missed is sufficient to cover most of the situations for unexpected absences that were posed by the commenters. We also note that some of the suggestions for reasons to recognize excused absences would appear to come within the criteria an institution could use to give a student a leave of absence. For students that do not withdraw from their programs, the existing policy in the cash management regulations, § 668.164(b)(3), of not requiring clock hours to be completed for excused absences of up to 10 percent of the program will be retained.

Changes: None.

Rounding

Comments: Some commenters pointed out that there was no mention of rounding the numbers used in the return calculation, and they requested guidance.

Discussion: The return calculation should use the following rounding procedures. Use three decimal places for most steps in the calculation, rounding the third decimal place up one if the fourth decimal place is 5 or above. For example, .4486 would be rounded to .449, or 44.9 percent. There is one exception to this general rule. Monetary amounts may be reported in dollars and cents using normal rounding rules to round to the nearest penny. Final repayment amounts that the institution and student are each responsible to

return may be rounded to the nearest dollar.

Changes: None.

Section 668.22(g) Return of Unearned Aid, Responsibility of the Institution

Comments: A few commenters believed that it was unduly financially burdensome to hold an institution responsible for repaying Title IV, HEA program funds that were disbursed directly to the student. The commenters contended that the assumption of the proposed rules that an institution has retained Title IV, HEA program funds to cover institutional charges before disbursing any Title IV, HEA program funds to the student is incorrect.

A few commenters argued that it would be unfair to include institutional charges that are paid by other sources of aid that are restricted to institutional charges—such as State funding programs, State grant programs or veteran's grants—in the amount of institutional charges that is used for purposes of determining the portion of unearned Title IV, HEA program funds that the institution must return. One commenter noted that in the case of restricted funding, when a student withdraws, the institution will have to refund a portion of the aid to the other source. The commenter believed that it would be financially burdensome for the institution to have to also return funds for the same institutional charges to the Title IV, HEA programs. A few of the commenters contended that if the amount of restricted aid was removed from the amount of institutional charges, the student would be able to repay the same amount under the more beneficial repayment terms of a Title IV, HEA program loan.

A few commenters contended that an institution would have to take undesirable actions to mitigate their financial loss. A few of these commenters maintained that an institution will have to pass on the bill to the student for the amount of Title IV, HEA program funds that the institution had to return in excess of the Title IV, HEA program funds that were actually received by the institution. A few commenters maintained that an institution will have to change its refund policy so that the institution will earn more institutional charges when a student withdraws. A few commenters asserted that institutions will have to delay some loan disbursements to avoid having to repay Title IV, HEA program funds they never received. One commenter, a state community college trustees association, believed that requiring institutions to return Title IV, HEA program funds that were given to the student will force the community colleges in the commenters State to discourage thousands of students from enrolling if they believe that the student may not complete the term. The commenter believed that state community college enrollment could be reduced by more than 10 percent.

A few commenters contended that institutions with low or no institutional charges, such as many community colleges, should be exempt from the requirement that the institution return Title IV, HEA program funds that it has not received because of the enormous negative effects that this provision would have on these institutions and their students.

A couple of the commenters believed that there should be an exemption for institutions like those in the California community college system, when institutional charges are paid or waived by a State program. The commenters asserted that because Title IV, HEA program funds are never used to pay the fees for these students, it would be unfair to require the institution to return Title IV, HEA program funds that were never received by the institution to cover these fees. The commenter noted that any funds returned by the institution will come at the expense of other programs or services to students.

A few of the commenters maintained that students at low- or no-cost institutions will be the hardest hit by this provision. The commenters noted that the students who enroll at these institutions have the greatest chance of owing a large overpayment because the amount of Title IV, HEA program funds that the institution will be responsible for returning—which is capped at the lesser of the total unearned amount of aid or the student's institutional charges multiplied by the percentage of unearned Title IV, HEA program assistance—will be quite small.

Discussion: We do not agree with the suggestion that these regulations should take into consideration whether other sources of aid were actually used to pay a student's institutional charges when allocating repayment responsibilities between the institution and the student. The proposed regulation implements the statutory framework that divides responsibility for repaying unearned Title IV, HEA program funds between the institution and the student under a new system that no longer controls the actual charges assessed by the institution. In the statute, the allocation of repayment responsibilities looks first to the institution to repay unearned Title IV, HEA program funds because the Title IV, HEA program funds are provided under the presumption embodied in the current regulations that they are used to pay institutional charges ahead of all other sources of aid. The regulations do not provide for institutions to adjust this allocation by taking into consideration other sources of aid that might be used to pay institutional charges for a student. We believe that it would be administratively burdensome to try and take into consideration when other sources of aid would be deemed to have paid some portion of institutional costs for a student, particularly given the variations in timing and conditions that may be associated with those sources of aid.

The commenters noted that institutions will have to change their institutional refund policies to adjust to the new provisions. The new provisions of section 484B of the HEA for the return of unearned Title IV, HEA program funds have freed institutions to make such changes. The law requires institutions to disclose and explain their refund policies to students, and this should include some discussion of how the institution might adjust a student's charges to take into account repayments that the institution was required to make under these provisions. As noted by some commenters, institutions may also consider changing the disbursement schedules for students in order to have the disbursements better match the rate at which the student is earning the funds.

In response to the predictions by some commenters that some community colleges may discourage enrollments by students that are less likely to complete the term, we note that many options are available to institutions to screen their applicants and actively work with them to keep them enrolled. An institution should only admit students who have an intention of completing the program in which they enroll. Institutions should inform students of their responsibilities under these rules to repay unearned funds if they withdraw.

The law does not permit exemptions of any institutions that are participating in the Title IV, HEA grant or loan programs from the requirements of section 484B, as implemented by these final regulations. We note that institutions may instead waive the institutional charges for their students rather than paying them state scholarships, provided that the waiver of those fees is taken into consideration when calculating the student's cost of attendance. This would result in no institutional responsibility for repayment of unearned Title IV, HEA program funds because there would be no institutional charges. As pointed out

by the commenters, the students receiving the largest grant payments for living expenses are the students most likely to have a large grant overpayment if they withdraw from the program. These students are also, therefore, the ones that will derive the largest benefit from having 50 percent of their grant overpayment eliminated under the return calculation. In addition, we have developed repayment terms for overpayments of Title IV, HEA grants that we believe will mitigate some of the possible negative effects of these requirements on students. Institutions that are particularly concerned about the impact of these provisions on their students may wish to consider alternative disbursement schedules or at least making additional disclosures to students at the time the grant funds are disbursed to them.

Changes: None.

Comments: Commenters asked for clarification of, and suggested a few changes to, the guidance in effect on the definition of institutional charges. One commenter encouraged us to continue to include the financial aid community in any revision efforts. One commenter suggested that institutions be permitted to define institutional charges based on the regulatory language proposed in the NPRM.

Discussion: As stated in the preamble to the NPRM, we will revisit the current guidance of the January 7, 1999 policy bulletin on the definition of institutional charges to determine if revisions would be appropriate given the changes to section 484B of the HEA. We will take into account the comments received in response to the NPRM as part of a larger effort to include the financial aid community in the evaluation of the current guidance. Until further guidance is issued, the guidance of the January 7, 1999 policy bulletin remains in effect.

Changes: None.

Comments: A few commenters believed that ''institutional charges incurred by the student'' should be the institutional charges for which the student is held responsible by the institution at the time the student withdrew. The commenters maintain that this definition will take into account revisions to a student's institutional charges based on changes in the student's enrollment status or in the number of classes in which the student is enrolled. One commenter explained that some institutions will assess housing charges throughout the payment period, and that the institutions do not withhold Title IV, HEA program funds to pay those costs. The commenter suggested that, in this situation, the institution's repayment responsibilities should only consider the initial charges that were assessed to the student because the subsequent housing charges were paid by the student throughout the payment period. A student that withdrew could, therefore, cause the institution to repay institutional charges that had never actually been collected from the student.

One commenter asked which amounts of Title IV, HEA program funds would be used in the calculation of earned aid, the original amounts or the net amounts after an institution adjusts the student's aid because of an enrollment change. One commenter believed that aid received to pay for tuition, fees, and books, should be considered fully earned by the institution on the day that the institution no longer considers students eligible for refunds. One commenter questioned whether Federal Work-Study funds that are credited to a student's account for institutional charges would be included in determining the amount of Title IV, HEA program assistance retained for institutional charges. One commenter questioned whether Title IV, HEA program aid retained by the institution as of the withdrawal date must be considered in determining the amount of Title IV, HEA program assistance retained for institutional charges for a non-term program where the institution chooses to calculate the treatment of Title IV, HEA program funds when a student withdraws using the payment period basis, but institutional charges are for a longer period, or only the Title IV, HEA program aid that is retained by the institution to cover the charges the institution imposed under its refund policy as of the student's withdrawal date.

Discussion: We do not agree that the return calculation should be based upon the student's enrollment status at the time of withdrawal, or reduced to reflect whatever adjusted institutional charges were assessed by the institution after the student withdrew. The allocation of repayment responsibilities is based upon the institutional charges that were initially assessed. Unless the institution had processed a change in enrollment status for a student prior to his or her withdrawal and made any attendant changes in the amount of institutional charges at that point, the institution would be required to use in the return calculation the charges that were initially assessed to the student. While we understand that the actual charging practices at some institutions may not conform to the standard practice of assessing all charges to the student for the payment period, we believe that it would not be feasible to create exceptions because of the potential for abuse. Since the Title IV, HEA program funds are provided to the student for the entire payment period or the period of enrollment, it follows that repaying the unearned institutional charges assessed throughout that period should be deemed to be the responsibility of the institution.

Since the basis for earning Title IV, HEA program funds is the time that the student was in attendance at the institution, the time periods covered by the institution's refund policy are not taken into consideration. For that reason, there is no separate measure used to determine when a student has earned specific amounts of funds for particular charges. The institution's refund policy will govern what charges a student may owe after withdrawing, but that policy will not affect the amount of aid the student has earned under the return calculation. An institution's refund policy is also not taken into consideration for establishing the repayment obligations of the institution and the student. Furthermore, we note that the institution's refund policy is not required to take into consideration the formula in the return calculation when establishing whether the student owes any funds to the institution.

The return calculation does not take into consideration the individual requirements of an institution's refund policy. The repayment responsibilities for the Title IV, HEA program aid is allocated between the institution and the student based upon the total institutional charges that were initially assessed to the student.

Because Federal Work-Study funds are not included in the calculation of earned Title IV, HEA program funds when a student withdraws, Federal Work-Study funds that are credited to a student's account would not be included as Title IV, HEA program assistance retained for institutional charges.

Section 668.22(h) Return of Unearned Aid, Responsibility of the Student

General

Comments: Several commenters were concerned about the financial burden and the consequences of that burden that the proposed rules would place on students and institutions. The commenters contended that the proposed rules will result in the availability of less Title IV, HEA funds for a withdrawn student than under former provisions of section 484B of the

HEA. As a result, the commenters maintained that in many cases, students will owe both the institution (for unpaid institutional charges under the institution's refund policy) and the Title IV, HEA programs (for the return of unearned Title IV, HEA program funds).

The commenters noted that many of these students will have limited funds to make these payments and will have to choose whether to pay the institution or the Title IV, HEA programs. The commenters contended that, either way, a student will not be able to re-enroll in the institution or attend another institution, either because the student chooses to pay the institution rather than the Title IV, HEA programs and defaults on their Title IV, HEA program loans thereby losing eligibility for additional Title IV, HEA program funds, or because the student chooses to pay the Title IV, HEA programs rather than the institution, thereby being denied the opportunity to re-enroll or obtain transcripts to attend another institution. A couple of commenters believed that because students would not be able to re-enroll and complete their education, the institution will lose its relationship with employers in the community because the institution will not be able to provide employers with qualified candidates.

A few commenters suggested that institutions be permitted to change the way that they disburse Title IV, HEA program funds so that the institution can lessen or eliminate the occurrence of grant or loan repayment for a student. For example, one commenter suggested that, to decrease the chance of a student owing a repayment of Title IV, HEA program funds, an institution should be permitted to disburse Title IV, HEA program funds as the aid is earned in accordance with the schedule for determining the amount of aid a student has earned upon withdrawal. One commenter suggested that an institution be permitted to establish disbursement dates based on withdrawal patterns at the institution.

One commenter argued that the return calculation will encourage students to borrow to avoid possible grant overpayments if they withdraw, and another commenter said that the return of unearned Title IV, HEA program funds under the proposed rules did not provide for equitable treatment for students receiving Title IV, HEA program funding compared to students that did not receive such funding. The commenters also reasoned that, because students will have less Title IV, HEA program funds to cover the institutional charges that the students will owe the institution under the institution's refund policy, the institution will be forced to increase costs for all students. One commenter believed that an institution should be allowed to pay the amount the student is responsible for returning to the Title IV, HEA programs and then be allowed to bill the student. A couple of the commenters believed that an institution could not resolve a debt owed by a student that is difficult or impossible to collect by writing-off the debt because the institution would be considered fiscally irresponsible under the 90/10 rules and other regulations if they did not pursue payment.

Many of the commenters believed that many, if not all, of the negative effects delineated here could be mitigated by requiring a student to return 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed to the student.

Discussion: The commenters are correct that these new statutory provisions may result in more aid being returned to the Title IV, HEA programs. The difference will be primarily due to the absence of rounding in 10 percent segments as done under the prior pro-rata refund provisions, and to the use of the same refund formula for successive payment periods rather than switching to a different schedule that permits institutions to earn Title IV, HEA program funds faster. It will be incumbent upon institutions to work closely with their students to ensure that they understand their responsibilities for earning the aid being provided for the payment period or period of enrollment.

Other steps can also be taken to minimize the potential hardships to students that withdraw. We note that institutions already have some flexibility in holding back some portion of disbursements of Title IV, HEA program funds if they work with the student to set up a budget. For example, an institution may disburse Federal Pell Grant program funds at such times and in such installments as it determines will best meet the student's needs. We believe that this flexibility permits an institution to tailor Title IV, HEA program disbursements to meet the circumstances of the institution's student body. Institutions will also be able to work with a student that owes a grant repayment in order to preserve the student's eligibility for additional Title IV, HEA program funds, or the student may also enter into a repayment agreement with the Department. These flexibilities provide institutions and students with opportunities to either avoid substantial repayment obligations or to minimize the impact of the repayment burden when a student withdraws.

We question the statement that students may minimize their exposure to grant overpayments by increasing their borrowing. In some instances, such borrowing could actually increase the amount of a grant overpayment if the institution is responsible for returning funds toward the student's Title IV, HEA loan, leaving the student with the entire Title IV, HEA grant repayment. Situations where a grant overpayment is required are also instances where a direct benefit was conferred upon the student because half of the repayment amount is forgiven. Under these scenarios, it is not clear how there is any disfavorable treatment of a Title IV, HEA program funds recipient when compared to a student that does not receive Title IV, HEA program funds. We also note that the impact of these new rules will vary among institutions based upon the relative numbers of students that withdraw and the points at which those withdrawals occur, as well as the relative ability of their students to repay the institutions for amounts owed under the institution's refund policies. Institutions will, over time, adjust to these new rules by changing their policies, by working more closely with their students that are considering withdrawing, and by adjusting their charges.

As requested by a commenter, we note that an institution may repay a Title IV, HEA program grant overpayment on a student's behalf and collect the debt from the student. The student will no longer be considered to owe an overpayment and will be eligible for Title IV, HEA program funds provided that all other eligibility requirements are met. An institution that repaid a grant overpayment and then forgave the student's debt to the institution would not be considered fiscally irresponsible under the 90/10 rule or other regulations. The 90/10 rule, which requires that an institution may derive no more than 90 percent of its revenues from the Title IV, HEA programs, does not require an institution to pursue payment of debts. However, if an institution does not collect a student debt for institutional charges, the institution may not include the amount of the debt as non-federal revenue in its 90/10 calculations.

The commenters' belief that the negative effects could be mitigated by requiring a student to return 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed is discussed in detail in the *Analysis of Comments and Changes*

for the ''Grant Overpayments'' portion of § 668.22(h).

Changes: None.

Grant Overpayments

Comments: Several commenters believed that Title IV, HEA grant overpayment amounts should be minimized as much as possible. To this end, many of these commenters supported the non-federal negotiators' interpretation of the law that the statute should be read to relieve the student of 50 percent of the amount of grant funds that were originally disbursed or that could have been disbursed to the student, rather than the Secretary's interpretation of the statute that would provide that a student does not have to repay 50 percent of the student's grant repayment amount. A few commenters believe that 50 percent of a student's Pell Grant funds should be protected up-front and not included at all in the calculation of earned aid.

The commenters opposed the Secretary's position for the following reasons:

- Grant recipients, who are the students who are least able to repay an overpayment, will lose eligibility for future Title IV, HEA program aid if they do not repay the grant. A loss of Title IV, HEA program eligibility will prevent these students from re-enrolling in a postsecondary institution because they will not have the financial resources to do so. This will deny education to the people who need it most.
- Disadvantaged students will be discouraged from enrolling. They will not want to risk assuming an overpayment if they are forced to withdraw for reasons beyond their control.
- Grant recipients will be prevented from transferring to another postsecondary institution that may better meet their needs.
- Defaults will increase. Students will be forced to take out Title IV, HEA program loans to avoid possible Title IV, HEA grant overpayments if they withdraw. Many of the students will not have the resources to repay the loans and will default. The same will be true for students who owe both a grant overpayment and a loan debt and do not have the resources to satisfy both. A student may also owe the institution under the institution's refund policy, further limiting the student's ability to repay a loan.
- Up-front costs are not sufficiently acknowledged.
- The proposed rules are punitive to students who withdraw from an institution, regardless of the reason. The implication that Title IV, HEA grant recipients are trying to take advantage of the Title IV, HEA programs is unfounded. Our position is not in line with stated goal for negotiated rulemaking which is, ''to develop policies that promote opportunity with responsibility.''
- Our position undercuts the intent of the Pell Grant program, which is to give financially disadvantaged students the opportunity to succeed. The Pell Grant Program is an incentive program, an access program and a second chance program.
- Students at low-cost institutions would be the hardest hit because most of a student's Title IV, HEA grant funds are given directly to student.
- Every Title IV, HEA grant recipient who withdraws should not have a grant overpayment, as our position would require. Although a Title IV, HEA grant recipient who withdraws should not be considered to have completely earned the funds, the amount of the student's overpayment should be minimized as much as possible.
- Society will be impacted negatively. There will be a greater need for social programs for the students who are not able to continue their education because of a loss of Title IV, HEA program eligibility. The number of educated citizens to fill technical jobs will decrease.

A few commenters specifically argued that the statute can be read to support the nonfederal negotiators' interpretation. Some maintained that the statutory language is ambiguous. One commenter asserted that the phrase ''that is the responsibility of the student to repay'' refers to the grant programs to which repayments must be attributed, and it does not limit the 50 percent discount to 50 percent of the student's grant repayment amount. A few commenters noted that other similar aid recipients, such as scholarship recipients, are not asked to return any aid funds upon withdrawal. Some of these commenters asserted that monthly social security payments are not repaid if a recipient does not live out the entire month for which the payment has been received. The commenters noted that other entitlement aid sources recognize that the aid generally only funds a small portion of the expenses for which they are intended. A few commenters noted that the requirements for students to maintain satisfactory academic progress has safeguards to prevent students from abusing Title IV, HEA program funds through frequent withdrawals, because students not maintaining satisfactory academic progress will lose eligibility for Title IV, HEA program funds. A few commenters asked how to treat a situation where a grant repayment is owed and the student has a credit balance on his or her account, including whether a student would get the full benefit of a 50 percent reduction in the repayment amount in those circumstances.

Some commenters requested changes to the existing repayment terms for students who owe a grant overpayment to ensure that students who cannot repay remain eligible for additional Title IV, HEA program funds. The commenters made the following points:

- It is inequitable to allow a student to repay loan funds under the terms of a promissory note, but insist on repayment of a grant overpayment under more immediate and punitive terms.
- We should provide terms that are similar to loan repayment terms, such as a grace period, periods of deferment and forbearance, and the ability to repay over a longer period of time.
- The institutional collection effort would be too burdensome and costly to an institution. An institution should not have to collect Title IV, HEA program overpayments for us.
- We should consider community service as an alternative to repayment of an overpayment.

Several commenters requested clarification of the applicable requirements for repaying a Title IV, HEA grant overpayment. Specifically, the commenters wanted to know how long a student will lose eligibility if he or she owes an overpayment. One commenter urged us to not overregulate the repayment process and let institutions work with students to provide satisfactory repayment arrangements.

Discussion: We continue to believe that 50 percent of the student's grant repayment amount provides the level of relief to the student that the statute intended, while it requires a student to return a portion of the unearned grant assistance. As stated in the preamble to the NPRM, we believe that the conference report language for the 1998 Amendments supports this interpretation.

We note that the difference in position between the commenters and the Secretary for purposes of the proposed rules is limited to the question of how much grant overpayment should be forgiven, with the Secretary proposing to forgive half of the grant repayment amount rather than half of the total grant amount the student received. The suggestions from commenters arguing against holding students accountable for making any grant repayments are not permitted under the law. To the extent that the law could be read to support either position, we believe that we have adopted the better reading. We also note that the proposal to discount by half the amount of any grant repayment is simpler to explain to students and consistent with the principle that the repayment is a shared responsibility.

The commenters suggestion to reduce grant overpayments by half of the total grant amounts would instead create a fixed amount of grant funds that the student was never required to earn, regardless of when the student withdrew. For example, a student who

was disbursed or could have been disbursed $2,000 in Title IV, HEA grant funds would be given $1,000 of the grant funds in addition to whatever amounts were earned regardless of whether he or she withdrew after 5 days of attendance or 25 days.

In response to the observation from commenters that other sources of aid are not subject to repayment requirements, such as scholarships or monthly social security benefits, the statutory basis for this grant repayment requirement distinguishes it from those programs.

We note that the requirements for students to maintain satisfactory academic progress further the goals of the Title IV, HEA programs by establishing maximum timeframes for students to complete their program, but these requirements do not replace the proposed repayment structure that is designed to allow students to earn over time the aid provided for a payment period or period of enrollment.

When a student owes a grant overpayment and there are funds available on the student's account as a credit balance, the institution would be expected to use those funds to apply toward repaying the student's grant overpayment. The actual amount of the grant repayment would still be determined under the return calculation by applying the 50 percent discount to the amount of unearned grant funds. Any funds left as a credit balance after satisfying the grant repayment would be handled in accordance with Subpart K-Cash Management of the Student Assistance General Provisions regulations.

We agree with the commenters who suggest that we revise the existing repayment terms for students who owe a grant overpayment to ensure that students who cannot repay have the opportunity to continue their eligibility for Title IV, HEA program funds. Under changes that are included in these final regulations, a student who owes an overpayment as a result of withdrawal will retain his or her eligibility for Title IV, HEA program funds for 45 days from the earlier of the date the institution sends a notification to the student of the overpayment, or the date the institution was required to notify the student of the overpayment. During those 45 days, the student will have the opportunity to take action that can continue his or her eligibility for Title IV, HEA program funds. A student may do this in one of three ways: (1) the student may repay the overpayment in full to the institution, (2) the student may sign a repayment agreement with the institution, or (3) the student may sign a repayment agreement with the Department. If a student does not take one of these three actions during the 45 day period, the student becomes ineligible for Title IV, HEA program funds on the 46th day from the earlier of the date that the institution sends a notification to the student of the overpayment, or the date the institution was required to notify the student of the overpayment. The student will remain ineligible until the student enters into a repayment agreement with the Department that re-establishes the student's eligibility.

We are sensitive to the concerns of some commenters that collection on behalf of the Department may be unduly burdensome and costly to the institution. We note that an institution is never required to enter into a repayment agreement with a student, and may refer an overpayment to the Department at any time after the student has had the opportunity to pay off the overpayment in full to the institution or sign an agreement with the Department. Because we are concerned with an institution's ability to continue to track a student to obtain payment, these final regulations provide that an institution's repayment arrangement must provide for repayment of the entire overpayment within two years of the date of the institution's determination that the student withdrew. Any amount of the overpayment that remains at the end of the two years must be referred to the Department. Other times that an institution *must* refer an overpayment to the Department are: (1) If the student did not satisfy any of the required actions for extending his or her eligibility during the 45 day period; and (2) if at any time a student does not meet the requirements of his or her repayment agreement with the institution.

A student who wishes to sign a repayment agreement with the Department will do so by contacting the Department directly. We acknowledge that an institution may not know if a student chooses to sign a repayment agreement with the Department within the 45 days. Therefore, if a student does not repay the overpayment in full to the institution or sign a repayment agreement with the institution within the 45 days, when the institution refers the overpayment to the Department, it must report the overpayment to the National Student Loan Data System (NSLDS) as a referred overpayment (an institution can refer to Dear Colleague Letter GEN–98–14 for more information on reporting overpayment information to NSLDS). We will check to see if the student signed an agreement with the Department and report the final status of the overpayment to NSLDS.

A repayment agreement with the Department will include terms that permit the student to repay the overpayment while maintaining his or her eligibility for Title IV, HEA program funds. We will seek to develop terms that will include a grace period and are sensitive to a student's financial situation. We encourage institutions that choose to enter repayment agreements with students to do the same.

We would like to stress that any overpayment resulting from a student's withdrawal remains an overpayment until the overpayment is repaid in full. We will provide further guidance on the repayment of overpayments through appropriate Department publications.

Changes: Section 668.22(h)(4) has been revised to provide repayment terms for students who owe a grant overpayment to ensure that students who cannot repay have the opportunity to continue their eligibility for Title IV, HEA program funds.

Section 668.22(j) Timeframe for the Return of Title IV, HEA Program Funds

Comments: A few commenters support the 30-day timeframe for an institution to return all Title IV, HEA program funds for which it is responsible. In particular, the commenters felt that it is reasonable to expect that FFEL Program funds be returned at the same time as all other Title IV, HEA program funds. The commenters believed that this should not be significantly burdensome to institutions because most FFEL Program funds are delivered electronically. A couple of commenters contended that an institution should be allowed 45 days, rather than 30 days to return all Title IV, HEA program funds for which it is responsible. The commenters asserted that 30 days is not enough time for an institution to adjust a student's account and perform all of the administrative functions necessary to process funds. A few commenters believed that 30 days is not a sufficient amount of time to determine if a student has unofficially withdrawn from the institutions. The commenter felt that more time was needed to permit the institution to contact professors and students.

Discussion: We agree with the commenters who believe that it is not unduly burdensome for an institution to return Title IV, HEA program funds, including FFEL Program funds, within 30 days of the date of the institution's determination that the student withdrew because these funds are often delivered electronically. This 30 day

period should also be enough time for the institution to contact professors and students, as needed, to meet these responsibilities.

Changes: None.

Section 668.22(k) Consumer Information

Comments: A few commenters felt that the requirements for determining a student's earned Title IV, HEA program aid upon withdrawal would be too difficult for a student or potential student to understand, especially since the student is likely to be subject to an institutional refund policy as well. Two commenters believe that it will be difficult to communicate to a student the actual amount of Title IV, HEA program assistance that they will receive because it will vary depending on if and when a student withdraws. One commenter asked if information on determining a student's earned Title IV, HEA program aid upon withdrawal would be in *The Student Guide*, our publication for students that provides general information on Title IV, HEA program assistance. One commenter felt that the requirements for determining a student's earned Title IV, HEA program aid upon withdrawal will be more easily explained to students than the current Title IV, HEA refund requirements.

Discussion: We do not agree that the requirements for determining the treatment of Title IV, HEA program funds when a student withdraws will be too difficult for a student to understand. We note that a general write-up on the treatment of a student's Title IV, HEA program funds when he or she withdraws is contained in *The Student Guide* for the 2000–2001 award year.

Changes: None.

Section 682.207 Due Diligence in Disbursing a Loan

Comments: One commenter believed that the social security number of a parent borrower should be added to the information that a lender must provide to an institution when the lender disburses a loan directly to a borrower for attendance at a foreign institution, if the loan disbursed is a PLUS loan. The commenter felt that a parent's social security number is necessary for recordkeeping and access purposes. The commenter noted that if the institution must return funds to the lender or correspond with lender regarding an inquiry about the PLUS loan, the institution will need the parent's social security number to ensure proper identification and/or application of the funds.

Discussion: We agree that a parent's social security number is information that an institution must have for proper recordkeeping and identification of PLUS loan funds.

Changes: Section 682.207(b)(1)(v)(E)(2) has been amended to require that a lender must provide the social security number of a parent borrower that was provided on the PLUS loan application to an institution when the lender disburses a loan directly to a borrower for attendance at a foreign institution, if the loan disbursed is a PLUS loan.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

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

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

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

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (34 FR 43037–43038).

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond 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 Consolidation Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 LEAP; 84.268 William D. Ford Federal Direct Loan Programs; and 84.272 National Early Intervention Scholarship and Partnership Program.)

List of Subjects in 34 CFR Parts 668 and 682

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

Dated: October 25, 1999.

Richard W. Riley,

Secretary of Education.

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

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

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

2. Section 668.8 is amended by revising paragraph (f)(2) to read as follows:

§ 668.8 Eligible program.

* * * * *

(f) * * *

(2) Subtract from the number of students determined under paragraph (f)(1) of this section, the number of regular students who, during that award year, withdrew from, dropped out of, or were expelled from the program and were entitled to and actually received, in a timely manner a refund of 100 percent of their tuition and fees.

* * * * *

3. Section 668.14 is amended by revising paragraph (b)(25)(ii) to read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(25) * * *

(ii) Returns of title IV, HEA program funds that the institution or its servicer may be required to make; and

* * * * *

4. Section 668.16 is amended by revising paragraphs (h)(3) and (l)(2) to read as follows:

§ 668.16 Standards of administrative capability.

* * * * *

(h) * * *

(3) The rights and responsibilities of the student with respect to enrollment at the institution and receipt of financial aid. This information includes the institution's refund policy, the requirements for the treatment of title IV, HEA program funds when a student withdraws under § 668.22, its standards of satisfactory progress, and other conditions that may alter the student's aid package;

* * * * *

(l) * * *

(2) Were entitled to and actually received in a timely manner, a refund of 100 percent of their tuition and fees;

* * * * *

5. Section 668.22 is revised to read as follows:

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

(a) *General.* (1) When a recipient of title IV grant or loan assistance withdraws from an institution during a payment period or period of enrollment in which the recipient began attendance, the institution must determine the amount of title IV grant or loan assistance (not including Federal Work-Study or the non-Federal share of FSEOG awards if an institution meets its FSEOG matching share by the individual recipient method or the aggregate method) that the student earned as of the student's withdrawal date in accordance with paragraph (e) of this section.

(2) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is less than the amount of title IV grant or loan assistance that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew—

(i) The difference between these amounts must be returned to the title IV programs in accordance with paragraphs (g) and (h) of this section in the order specified in paragraph (i) of this section; and

(ii) No additional disbursements may be made to the student for the payment period or period of enrollment.

(3) If the total amount of title IV grant or loan assistance, or both, that the student earned as calculated under paragraph (e)(1) of this section is greater than the total amount of title IV grant or loan assistance, or both, that was disbursed to the student or on behalf of the student in the case of a PLUS loan, as of the date of the institution's determination that the student withdrew, the difference between these amounts must be treated as a post-withdrawal disbursement in accordance with paragraph (a)(4) of this section and § 668.164(g)(2).

(4)(i)(A) If outstanding charges exist on the student's account, the institution may credit the student's account in accordance with § 668.164(d)(1), (d)(2), and (d)(3) with all or a portion of the post-withdrawal disbursement described in paragraph (a)(3) of this section, up to the amount of the outstanding charges.

(B) If Direct Loan, FFEL, or Federal Perkins Loan Program funds are used to credit the student's account, the institution must notify the student, or parent in the case of a PLUS loan, and provide an opportunity for the borrower to cancel all or a portion of the loan, in accordance with § 668.165(a)(2), (a)(3), (a)(4), and (a)(5).

(ii)(A) The institution must offer any amount of a post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section to the student, or the parent in the case of a PLUS loan, within 30 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section, by providing a written notification to the student, or parent in the case of PLUS loan funds. The written notification must—

(*1*) Identify the type and amount of the title IV funds that make up the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section;

(*2*) Explain that the student or parent may accept or decline some or all of the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section; and

(*3*) Advise the student or parent that no post-withdrawal disbursement will be made to the student or parent if the student or parent does not respond within 14 days of the date that the institution sent the notification, unless the institution chooses to make a post-withdrawal disbursement in accordance with paragraph (a)(4)(ii)(D) of this section.

(B) If the student or parent submits a timely response that instructs the institution to make all or a portion of the post-withdrawal disbursement, the institution must disburse the funds in the manner specified by the student or parent within 90 days of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(C) If the student or parent does not respond to the institution's notice, no portion of the post-withdrawal disbursement that is not credited to the student's account in accordance with paragraph (a)(4)(i) of this section may be disbursed.

(D) If a student or parent submits a late response to the institution's notice, the institution may make the post-withdrawal disbursement as instructed by the student or parent or decline to do so.

(E) If a student or parent submits a late response to the institution and the institution does not choose to make the post-withdrawal disbursement in accordance with paragraph (a)(4)(ii)(D) of this section, the institution must inform the student or parent electronically or in writing concerning the outcome of the post-withdrawal disbursement request.

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

(b) *Withdrawal date for a student who withdraws from an institution that is required to take attendance.* (1) For purposes of this section, for a student who ceases attendance at an institution that is required to take attendance, including a student who does not return from an approved leave of absence, as defined in paragraph (d) of this section, or a student who takes a leave of absence that does not meet the

requirements of paragraph (d) of this section, the student's withdrawal date is the last date of academic attendance as determined by the institution from its attendance records.

(2) An institution must document a student's withdrawal date determined in accordance with paragraph (b)(1) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(3)(i) An institution is ''required to take attendance'' if the institution is required to take attendance for some or all of its students by an entity outside of the institution (such as the institution's accrediting agency or state agency).

(ii) If an outside entity requires an institution to take attendance for only some students, the institution must use its attendance records to determine a withdrawal date in accordance with paragraph (b)(1) of this section for those students.

(c) *Withdrawal date for a student who withdraws from an institution that is not required to take attendance.* (1) For purposes of this section, for a student who ceases attendance at an institution that is not required to take attendance, the student's withdrawal date is—

(i) The date, as determined by the institution, that the student began the withdrawal process prescribed by the institution;

(ii) The date, as determined by the institution, that the student otherwise provided official notification to the institution, in writing or orally, of his or her intent to withdraw;

(iii) If the student ceases attendance without providing official notification to the institution of his or her withdrawal in accordance with paragraph (c)(1)(i) or (c)(1)(ii) of this section, the mid-point of the payment period (or period of enrollment, if applicable);

(iv) If the institution determines that a student did not begin the institution's withdrawal process or otherwise provide official notification (including notice from an individual acting on the student's behalf) to the institution of his or her intent to withdraw because of illness, accident, grievous personal loss, or other such circumstances beyond the student's control, the date that the institution determines is related to that circumstance;

(v) If a student does not return from an approved leave of absence as defined in paragraph (d) of this section, the date that the institution determines the student began the leave of absence; or

(vi) If a student takes a leave of absence that does not meet the requirements of paragraph (d) of this section, the date that the student began the leave of absence.

(2)(i)(A) An institution may allow a student to rescind his or her official notification to withdraw under paragraph (c)(1)(i) or (ii) of this section by filing a written statement that he or she is continuing to participate in academically-related activities and intends to complete the payment period or period of enrollment.

(B) If the student subsequently ceases to attend the institution prior to the end of the payment period or period of enrollment, the student's rescission is negated and the withdrawal date is the student's original date under paragraph (c)(1)(i) or (ii) of this section, unless a later date is determined under paragraph (c)(3) of this section.

(ii) If a student both begins the withdrawal process prescribed by the institution and otherwise provides official notification of his or her intent to withdraw in accordance with paragraphs (c)(1)(i) and (c)(1)(ii) of this section respectively, the student's withdrawal date is the earlier date unless a later date is determined under paragraph (c)(3) of this section.

(3)(i) Notwithstanding paragraphs (c)(1) and (2) of this section, an institution that is not required to take attendance may use as the student's withdrawal date a student's last date of attendance at an academically-related activity provided that the institution documents that the activity is academically related and documents the student's attendance at the activity.

(ii) An ''academically-related activity'' includes, but is not limited to, an exam, a tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment or attending a study group that is assigned by the institution.

(4) An institution must document a student's withdrawal date determined in accordance with paragraphs (c)(1), (2), and (3) of this section and maintain the documentation as of the date of the institution's determination that the student withdrew, as defined in paragraph (l)(3) of this section.

(5)(i) ''Official notification to the institution'' is a notice of intent to withdraw that a student provides to an office designated by the institution.

(ii) An institution must designate one or more offices at the institution that a student may readily contact to provide official notification of withdrawal.

(d) *Approved leave of absence.* (1) For purposes of this section (and, for a title IV, HEA program loan borrower, for purposes of terminating the student's in-school status), an institution does not have to treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if—

(i) The institution has a formal policy regarding leaves of absence;

(ii) The student followed the institution's policy in requesting the leave of absence;

(iii) The institution determines that there is a reasonable expectation that the student will return to the school;

(iv) The institution approved the student's request in accordance with the institution's policy;

(v) The leave of absence does not involve additional charges by the institution;

(vi) It is the only leave of absence granted to the student in a 12-month period, except as provided for in paragraph (d)(2) of this section;

(vii) The leave of absence does not exceed 180 days in any 12-month period;

(viii) Upon the student's return from the leave of absence, the student is permitted to complete the coursework he or she began prior to the leave of absence; and

(ix) If the student is a title IV, HEA program loan recipient, the institution explains to the student, prior to granting the leave of absence, the effects that the student's failure to return from a leave of absence may have on the student's loan repayment terms, including the exhaustion of some or all of the student's grace period.

(2) Notwithstanding paragraph (d)(1)(vi) of this section, provided that the total number of days of all leaves of absence does not exceed 180 days in any 12-month period, an institution may treat—

(i) One leave of absence subsequent to a leave of absence that is granted in accordance with (d)(1)(vi) of this section as an approved leave of absence if the subsequent leave of absence does not exceed 30 days and the institution determines that the subsequent leave of absence is necessary due to unforeseen circumstances; and

(ii) Subsequent leaves of absence as approved leaves of absence if the institution documents that the leaves of absence are granted for jury duty, military reasons, or circumstances covered under the Family and Medical Leave Act of 1993.

(3) If a student does not resume attendance at the institution on or before the end of a leave of absence that meets the requirements of this section, the institution must treat the student as a withdrawal in accordance with the requirements of this section.

(4) For purposes of this paragraph—

(i) The number of days in a leave of absence are counted beginning with the first day of the student's initial leave of absence in a 12-month period.

(ii) A ''12-month period'' begins on the first day of the student's initial leave of absence.

(iii) An institution's leave of absence policy is a ''formal policy'' if the policy—

(A) Is in writing and publicized to students; and

(B) Requires students to provide a written, signed, and dated request for a leave of absence prior to the leave of absence. However, if unforeseen circumstances prevent a student from providing a prior written request, the institution may grant the student's request for a leave of absence, if the institution documents its decision and collects the written request at a later date.

(e) *Calculation of the amount of title IV assistance earned by the student.*

(1) *General.* The amount of title IV grant or loan assistance that is earned by the student is calculated by—

(i) Determining the percentage of title IV grant or loan assistance that has been earned by the student, as described in paragraph (e)(2) of this section; and

(ii) Applying this percentage to the total amount of title IV grant or loan assistance that was disbursed (and that could have been disbursed, as defined in paragraph (l)(1) of this section) to the student, or on the student's behalf, for the payment period or period of enrollment as of the student's withdrawal date.

(2) *Percentage earned.* The percentage of title IV grant or loan assistance that has been earned by the student is—

(i) Equal to the percentage of the payment period or period of enrollment that the student completed (as determined in accordance with paragraph (f) of this section) as of the student's withdrawal date, if this date occurs on or before completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours; or

(B) Clock hours scheduled to be completed for the payment period or period of enrollment for a program that is measured in clock hours; or

(ii) 100 percent, if the student's withdrawal date occurs after completion of 60 percent of the—

(A) Payment period or period of enrollment for a program that is measured in credit hours; or

(B) Clock hours scheduled to be completed for the payment period or period of enrollment for a program measured in clock hours.

(3) *Percentage unearned.* The percentage of title IV grant or loan assistance that has not been earned by the student is calculated by determining the complement of the percentage of title IV grant or loan assistance earned by the student as described in paragraph (e)(2) of this section.

(4) *Total amount of unearned title IV assistance to be returned.* The unearned amount of title IV assistance to be returned is calculated by subtracting the amount of title IV assistance earned by the student as calculated under paragraph (e)(1) of this section from the amount of title IV aid that was disbursed to the student as of the date of the institution's determination that the student withdrew.

(5) *Use of payment period or period of enrollment.* (i) The treatment of title IV grant or loan funds if a student withdraws must be determined on a payment period basis for a student who attended a standard term-based (semester, trimester, or quarter) educational program.

(ii)(A) The treatment of title IV grant or loan funds if a student withdraws may be determined on either a payment period basis or a period of enrollment basis for a student who attended a non-term based educational program or a nonstandard term-based educational program.

(B) An institution must consistently use either a payment period or period of enrollment for all purposes of this section for each of the following categories of students who withdraw from the same non-term based or nonstandard term-based educational program:

(*1*) Students who have attended an educational program at the institution from the beginning of the payment period or period of enrollment.

(*2*) Students who re-enter the institution during a payment period or period of enrollment.

(*3*) Students who transfer into the institution during a payment period or period of enrollment.

(f) *Percentage of payment period or period of enrollment completed.* (1) For purposes of paragraph (e)(2)(i) of this section, the percentage of the payment period or period of enrollment completed is determined—

(i) In the case of a program that is measured in credit hours, by dividing the total number of calendar days in the payment period or period of enrollment into the number of calendar days completed in that period as of the student's withdrawal date; and

(ii) In the case of a program that is measured in clock hours, by dividing the total number of clock hours in the payment period or period of enrollment into the number of clock hours—

(A) Completed by the student in that period as of the student's withdrawal date; or

(B) Scheduled to be completed as of the student's withdrawal date, if the clock hours completed in the period are not less than 70 percent of the hours that were scheduled to be completed by the student as of the student's withdrawal date.

(2)(i) The total number of calendar days in a payment period or period of enrollment includes all days within the period, except that scheduled breaks of at least five consecutive days are excluded from the total number of calendar days in a payment period or period of enrollment and the number of calendar days completed in that period.

(ii) The total number of calendar days in a payment period or period of enrollment does not include days in which the student was on an approved leave of absence.

(g) *Return of unearned aid, responsibility of the institution.* (1) The institution must return, in the order specified in paragraph (i) of this section, the lesser of—

(i) The total amount of unearned title IV assistance to be returned as calculated under paragraph (e)(4) of this section; or

(ii) An amount equal to the total institutional charges incurred by the student for the payment period or period of enrollment multiplied by the percentage of title IV grant or loan assistance that has not been earned by the student, as described in paragraph (e)(3) of this section.

(2) For purposes of this section, ''institutional charges'' are tuition, fees, room and board (if the student contracts with the institution for the room and board) and other educationally-related expenses assessed by the institution.

(3) If, for a non-term program an institution chooses to calculate the treatment of title IV assistance on a payment period basis, but the institution charges for a period that is longer than the payment period, ''total institutional charges incurred by the student for the payment period'' is the greater of—

(i) The prorated amount of institutional charges for the longer period; or

(ii) The amount of title IV assistance retained for institutional charges as of the student's withdrawal date.

(h) *Return of unearned aid, responsibility of the student.* (1) After the institution has allocated the unearned funds for which it is responsible in accordance with

paragraph (g) of this section, the student must return assistance for which the student is responsible in the order specified in paragraph (i) of this section.

(2) The amount of assistance that the student is responsible for returning is calculated by subtracting the amount of unearned aid that the institution is required to return under paragraph (g) of this section from the total amount of unearned title IV assistance to be returned under paragraph (e)(4) of this section.

(3) The student (or parent in the case of funds due to a PLUS Loan) must return or repay, as appropriate, the amount determined under paragraph (h)(1) of this section to—

(i) Any title IV loan program in accordance with the terms of the loan; and

(ii) Any title IV grant program as an overpayment of the grant; however, a student is not required to return 50 percent of the grant assistance that is the responsibility of the student to repay under this section.

(4)(i) A student who owes an overpayment under this section remains eligible for title IV, HEA program funds through and beyond the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment if, during those 45 days the student—

(A) Repays the overpayment in full to the institution;

(B) Enters into a repayment agreement with the institution in accordance with repayment arrangements satisfactory to the institution; or

(C) Signs a repayment agreement with the Secretary, which will include terms that permit a student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds.

(ii) Within 30 days of the date of the institution's determination that the student withdrew, an institution must send a notice to any student who owes a title IV, HEA grant overpayment as a result of the student's withdrawal from the institution in order to recover the overpayment in accordance with paragraph (h)(4)(i) of this section.

(iii) If an institution chooses to enter into a repayment agreement in accordance with paragraph (h)(4)(i)(B) of this section with a student who owes an overpayment of title IV, HEA grant funds, it must—

(A) Provide the student with terms that permit the student to repay the overpayment while maintaining his or her eligibility for title IV, HEA program funds; and

(B) Require repayment of the full amount of the overpayment within two years of the date of the institution's determination that the student withdrew.

(iv) An institution must refer to the Secretary, in accordance with procedures required by the Secretary, an overpayment of title IV, HEA grant funds owed by a student as a result of the student's withdrawal from the institution if—

(A) The student does not repay the overpayment in full to the institution, or enter a repayment agreement with the institution or the Secretary in accordance with paragraph (h)(4)(i) of this section within the earlier of 45 days from the date the institution sends a notification to the student of the overpayment, or 45 days from the date the institution was required to notify the student of the overpayment;

(B) At any time the student fails to meet the terms of the repayment agreement with the institution entered into in accordance with paragraph (h)(4)(i)(B) of this section; or

(C) The student chooses to enter into a repayment agreement with the Secretary.

(v) A student who owes an overpayment is ineligible for title IV, HEA program funds—

(A) If the student does not meet the requirements in paragraph (h)(4)(i) of this section, on the day following the 45-day period in that paragraph; or

(B) As of the date the student fails to meet the terms of the repayment agreement with the institution or the Secretary entered into in accordance with paragraph (h)(4)(i) of this section.

(vi) A student who is ineligible under paragaraph (h)(4)(v) of this section regains eligibility if the student and the Secretary enter into a repayment agreement.

(i) *Order of return of title IV funds.* (1) *Loans.* Unearned funds returned by the institution or the student, as appropriate, in accordance with paragraph (g) or (h) of this section respectively, must be credited to outstanding balances on title IV loans made to the student or on behalf of the student for the payment period or period of enrollment for which a return of funds is required. Those funds must be credited to outstanding balances for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Unsubsidized Federal Stafford loans.

(ii) Subsidized Federal Stafford loans.

(iii) Unsubsidized Federal Direct Stafford loans.

(iv) Subsidized Federal Direct Stafford loans.

(v) Federal Perkins loans.

(vi) Federal PLUS loans received on behalf of the student.

(vii) Federal Direct PLUS received on behalf of the student.

(2) *Remaining funds.* If unearned funds remain to be returned after repayment of all outstanding loan amounts, the remaining excess must be credited to any amount awarded for the payment period or period of enrollment for which a return of funds is required in the following order:

(i) Federal Pell Grants.

(ii) Federal SEOG Program aid.

(iii) Other grant or loan assistance authorized by title IV of the HEA.

(j) *Timeframe for the return of title IV funds.* (1) An institution must return the amount of title IV funds for which it is responsible under paragraph (g) of this section as soon as possible but no later than 30 days after the date of the institution's determination that the student withdrew as defined in paragraph (l)(3) of this section.

(2) An institution must determine the withdrawal date for a student who withdraws without providing notification to the institution no later than 30 days after the end of the earlier of the—

(i) Payment period or period of enrollment, as appropriate, in accordance with paragraph (e)(5) of this section;

(ii) Academic year in which the student withdrew; or

(iii) Educational program from which the student withdrew.

(k) *Consumer information.* An institution must provide students with information about the requirements of this section in accordance with § 668.43.

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

(1) Title IV grant or loan funds that ''could have been disbursed'' are determined in accordance with the late disbursement provisions in § 668.164(g).

(2) A ''period of enrollment'' is the academic period established by the institution for which institutional charges are generally assessed (i.e. length of the student's program or academic year).

(3) The ''date of the institution's determination that the student withdrew'' is—

(i) For a student who provides notification to the institution of his or her withdrawal, the student's withdrawal date as determined under paragraph (c) of this section or the date of notification of withdrawal, whichever is later;

(ii) For a student who did not provide notification of his of her withdrawal to

the institution, the date that the institution becomes aware that the student ceased attendance;

(iii) For a student who does not return from an approved leave of absence, the earlier of the date of the end of the leave of absence or the date the student notifies the institution that he or she will not be returning to the institution; or

(iv) For a student whose rescission is negated under paragraph (c)(2)(i)(B) of this section, the date the institution becomes aware that the student did not, or will not, complete the payment period or period of enrollment.

(v) For a student who takes a leave of absence that is not approved in accordance with paragraph (d) of this section, the date that the student begins the leave of absence.

(4) A ''recipient of title IV grant or loan assistance'' is a student for whom the requirements of § 668.164(g)(2) have been met.

(Approved by the Office of Management and Budget under control number 1845–0022)

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

6. Section 668.24 is amended by revising paragraph (c)(1)(iv)(C) and (c)(1)(iv)(D) to read as follows:

§ 668.24 Record retention and examinations.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(C) The amount, date, and basis of the institution's calculation of any refunds or overpayments due to or on behalf of the student, or the treatment of title IV, HEA program funds when a student withdraws; and

(D) The payment of any overpayment or the return of any title IV, HEA program funds to the title IV, HEA program fund, a lender, or the Secretary, as appropriate;

* * * * *

7. Section 668.25 is amended by revising paragraph (c)(4)(ii) to read as follows:

§ 668.25 Contracts between an institution and a third-party servicer.

* * * * *

(c) * * *

(4) * * *

(ii) Calculate and return any unearned title IV, HEA program funds to the title IV, HEA program accounts and the student's lender, as appropriate, in accordance with the provisions of §§ 668.21 and 668.22, and applicable program regulations; and

* * * * *

8. Section 668.26 is amended by revising paragraph (b)(7) to read as follows:

§ 668.26 End of an institution's participation in the title IV, HEA programs.

* * * * *

(b) * * *

(7) Continue to comply with the requirements of § 668.22 for the treatment of title IV, HEA program funds when a student withdraws.

* * * * *

9. Section 668.83 is amended by revising paragraph (c)(2)(ii)(C) to read as follows:

§ 668.83 Emergency action.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(C) The institution, or servicer, as applicable, lacks the administrative or financial ability to make all required payments under § 668.22; and

* * * * *

10. Section 668.92 is amended by revising paragraph (b)(2) to read as follows:

§ 668.92 Fines.

* * * * *

(b) * * *

(2) Required refunds, including the treatment of title IV, HEA program funds when a student withdraws under § 668.22.

* * * * *

11. Section 668.95 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 668.95 Reimbursements, refunds, and offsets.

* * * * *

(b) * * *

(2) * * *

(i) Refunds or returns of title IV, HEA program funds required under program regulations when a student withdraws.

* * * * *

12. Section 668.164 is amended by revising paragraph (g)(1) to read as follows:

§ 668.164 Disbursing funds.

* * * * *

(g) * * *

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

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

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

(ii) Notwithstanding paragraph (g)(1)(i) of this section, a student who withdraws from an institution during a payment period or period of enrollment can receive additional disbursements of title IV, HEA program funds in accordance with the requirements of § 668.22 only.

* * * * *

13. Section 668.171 is amended by revising paragraph (b)(4)(i) to read as follows:

§ 668.171 General.

* * * * *

(b) * * *

(4) * * *

(i) Refunds that it is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under § 668.22 and the payment of post-withdrawal disbursements under § 668.22; and

* * * * *

14. Section 668.173 is amended by revising paragraphs (a) introductory text, (b) introductory text, (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 668.173 Refund reserve standards.

(a) *General.* The Secretary considers that an institution has sufficient cash reserves (as required under § 668.171(b)(2)) to make refunds that it is required to make under its refund policy, including the return of title IV, HEA program funds for which it is responsible under § 668.22 and the payment of post-withdrawal disbursements under § 668.22 if the institution—

* * * * *

(b) *Timely refunds.* An institution demonstrates that it makes required refunds, including payments required under § 668.22, if the auditor or auditors who conducted the institution's compliance audits for the institution's two most recently completed fiscal years, or the Secretary or a State or guaranty agency that conducted a review of the institution covering those fiscal years—

(1) * * *

(i) The institution made late refunds to 5 percent or more of the students in that sample. For purposes of determining the percentage of late refunds under this paragraph, the auditor or reviewer must include in the sample only those title IV, HEA program recipients who received or should have

received a refund or for whom a repayment of unearned title IV, HEA program funds was made or should have been made under § 668.22; or

(ii) The institution made only one late refund or repayment of unearned title IV, HEA program funds for a student in that sample; and

* * * * *

Appendix A to Part 668 [Removed]

15. Remove and reserve appendix A to part 668.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

17. Section 682.207 is amended as follows by:

A. Adding a new paragraph (b)(1)(v)(E).

B. Revising the OMB control number following the section.

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(E) If a lender disburses a loan directly to the borrower for attendance at an eligible foreign school, as provided in paragraph (b)(1)(v)(D)(*1*) of this section, the lender must, at the time of disbursement, notify the school of—

(*1*) The name and social security number of the student;

(*2*) The name and social security number of the parent borrower, if the loan disbursed is a PLUS loan;

(*3*) The type of loan;

(*4*) The amount of the disbursement, including the amount of any fees assessed the borrower;

(*5*) The date of the disbursement; and

(*6*) The name, address, telephone and fax number or electronic address of the lender, servicer, or guaranty agency to which any inquiries should be addressed.

* * * * *

(Approved by the Office of Management and Budget under control number 1845–0022)

18. Section 682.209 is amended by revising paragraph (i) to read as follows:

§ 682.209 Repayment of a loan.

* * * * *

(i) *Treatment by a lender of borrowers' title IV, HEA program funds received from schools if the borrower withdraws.* (1) A lender shall treat a refund or a return of title IV, HEA program funds under § 668.22 when a student withdraws received by the lender from a school as a credit against the principal amount owed by the borrower on the borrower's loan.

(2)(i) If a lender receives a refund or a return of title IV, HEA program funds under § 668.22 when a student withdraws from a school on a loan that is no longer held by that lender, or that has been discharged by another lender by refinancing under § 682.209(f) or by a Consolidation loan, the lender must transmit the amount of the payment, within 30 days of its receipt, to the lender to whom it assigned the loan, or to the lender that discharged the prior loan, with an explanation of the source of the payment.

(ii) Upon receipt of a refund or a return of title IV, HEA program funds transmitted under paragraph (i)(2)(i) of this section, the holder of the loan promptly must provide written notice to the borrower that the holder has received the return of title IV, HEA program funds.

* * * * *

19. Section 682.604 is amended by revising paragraph (c)(4) to read as follows:

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

* * * * *

(c) * * *

(4) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 668.22(d).

* * * * *

20. Section 682.605 is amended by revising paragraphs (a) and (b) to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) Except in the case of a student who does not return for the next scheduled term following a summer break, which includes any summer term or terms in which classes are offered but students are not generally required to attend, a school must follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal. In the case of a student who does not return from a summer break, the school must follow the procedures in § 668.22(b) or (c), as applicable, except that the school shall determine the student's withdrawal date no later than 30 days after the first day of the next scheduled term.

(b) The school must use the withdrawal date determined under § 668.22(b) or (c), as applicable for the purpose of reporting to the lender the date that the student has withdrawn from the school.

* * * * *

21. Section 682.607 is amended to read as follows:

§ 682.607 Payment of a refund or a return of title IV, HEA program funds to a lender upon a student's withdrawal.

(a) *General.* By applying for a FFEL loan, a borrower authorizes the school to pay directly to the lender that portion of a refund or return of title IV, HEA program funds from the school that is allocable to the loan upon the borrower's withdrawal. A school—

(1) Must pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a FFEL loan to—

(i) The original lender; or

(ii) A subsequent holder, if the loan has been transferred and the school knows the new holder's identity; and

(2) Must provide simultaneous written notice to the borrower if the school makes a payment of a refund or a return of title IV, HEA program funds to a lender on behalf of that student.

(b) *Allocation of a refund or returned title IV, HEA program funds.* In determining the portion of a refund or the return of title IV, HEA program funds upon a student's withdrawal for an academic period that is allocable to a FFEL loan received by the borrower for that academic period, the school must follow the procedures established in part 668 for allocating a refund or return of title IV, HEA program funds.

(c) *Timely payment.* A school must pay a refund or a return of title IV, HEA program funds that is due in accordance with the timeframe in § 668.22(j).

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1082, 1094)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

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

23. Section 685.211 is amended by revising paragraph (c) to read as follows:

§ 685.211 Miscellaneous repayment provisions.

* * * * *

(c) Refunds and returns of title IV, HEA program funds from schools. The Secretary applies any refund or return of title IV, HEA program funds that the Secretary receives from a school under § 668.22 against the borrower's outstanding principal and notifies the borrower of the refund or return.

* * * * *

24. Section 685.215 is amended by revising paragraph (k) to read as follows:

§ 685.215 Consolidation.

* * * * *

(k) Refunds and returns of title IV, HEA program funds received from schools. If a lender receives a refund or return of title IV, HEA program funds from a school on a loan that has been consolidated into a Direct Consolidation Loan, the lender shall transmit the refund or return and an explanation of the source of the refund or return to the Secretary within 30 days of receipt.

* * * * *

25. Section 685.305 is amended to read as follows:

§ 685.305 Determining the date of a student's withdrawal.

(a) Except as provided in paragraph (b) of this section, a school shall follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal.

(b) For a student who does not return for the next scheduled term following a summer break, which includes any summer term(s) in which classes are offered but students are not generally required to attend, a school shall follow the procedures in § 668.22(b) or (c), as applicable, for determining the student's date of withdrawal except that the school must determine the student's date of withdrawal no later than 30 days after the start of the next scheduled term.

(c) The school shall use the date determined under paragraph (a) or (b) of this section for the purpose of reporting to the Secretary the student's date of withdrawal and for determining when a refund or return of title IV, HEA program funds must be paid under § 685.306.

(Authority: 20 U.S.C. 1087 *et seq.*)

26. Section 685.306 is amended to read as follows:

§ 685.306 Payment of a refund or return of title IV, HEA program funds to the Secretary.

(a) *General.* By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that of a refund or return of title IV, HEA program funds from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund or return of title IV, HEA program funds to the Secretary on behalf of that student.

(b) *Determination, allocation, and payment of a refund or return of title IV, HEA program funds.* In determining the portion of a student's refund or return of title IV, HEA program funds that is allocable to a Direct Loan, the school shall follow the procedures established in 34 CFR 668.22 for allocating and paying a refund or return of title IV, HEA program funds that is due.

(Authority: 20 U.S.C. 1087a *et seq.*)

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