

Federal Register

Monday
September 23, 1996

Part IV

Department of Education

34 CFR Part 668, et al.
Postsecondary Education: Student
Assistance, General Provisions; Proposed
Rule

DEPARTMENT OF EDUCATION

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

RIN 1840-AC37

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

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

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

DATES: Comments on the proposed regulations must be received on or before November 4, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to: John Kolotos, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026-3272. Comments may also be sent to easi_cmgt@ed.gov through the Internet.

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments to those sections be in the same order as the proposed regulations.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act of 1995 section of the preamble. A copy of those comments may also be sent to the Department representative named above.

FOR FURTHER INFORMATION CONTACT:

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:**Background**

The Secretary is proposing to amend the Student Assistance General Provisions regulations which apply to all of the title IV, HEA programs and the regulations for the Federal Pell Grant, Federal Perkins Loan, FWS, FSEOG, FFEL, and Direct Loan programs. The Secretary is proposing to amend these regulations to further the implementation of several major initiatives within the U.S. Department

of Education (Department). These initiatives include: (1) Project EASI; (2) the President's Regulatory Reform Initiative; and (3) improved program accountability to protect students and the Federal interest. In most instances the proposed changes support more than one of these initiatives.

Project EASI

Project EASI is an initiative of the Secretary to pursue a collaborative effort among a diverse group of government, business, and educational leaders to reengineer the postsecondary student aid delivery system to meet the needs of its primary customers, the students and their families. The reengineered delivery system will meet these needs by providing an integrated system to facilitate the ability of students and their families to plan for postsecondary education, choose among postsecondary educational programs and institutions, and finance their choices. This integrated system will be available for all users of the delivery system including not only students and their families but also institutions, State agencies, and others. Project EASI will also reduce delivery system costs to all participants, reduce burden including regulatory burden, reduce fraud and system vulnerability, and enhance management capabilities of the Department and other users of the system including institutions and States.

The following key elements will be part of a reengineered student aid delivery system:

- Each student will have his or her individual student account. The individual student account will contain all the student's data in the system, and all activity in the system concerning the student would be processed through his or her individual student account. Individual student accounts, thus, will be the basis for integrating the delivery system.
- A student will be able to provide current information to, and receive current information from, all system users through his or her individual account.
- The data in the individual student accounts will reflect standardized data definitions for all system users, and data reported using common reporting records.
- The delivery system will not be program-specific; it could be used to deliver funding under any student assistance program.
- To the extent practicable, the delivery system will use advanced technology to automate data processing and will be a paperless system.

- Strict security, such as encryption and controlled access to the data, will be designed as part of the system.

Additional information, including a more detailed description of Project EASI, can be found at <http://easi.ed.gov> on the Project EASI World Wide Web home page.

Regulatory Reform Initiative

These proposed regulations also include provisions to implement further the President's March 4, 1995 directive to every Federal agency to reduce regulatory and paperwork burden and to eliminate or revise those regulations that are outdated or otherwise in need of reform.

Improved Program Accountability

The Secretary is also proposing provisions in these regulations to improve program accountability. The Secretary believes that the financial aid community can build on recent improvements in program management to assure the best use of Federal funds provided under the title IV, HEA programs.

Major Changes Supporting Departmental Initiatives

In most instances the proposed regulations support more than one of the three Departmental initiatives, *i.e.*, Project EASI, regulatory reform, and improved accountability. The major proposed changes and the initiative or initiatives that each change supports include the following:

- The adoption of a uniform definition of payment period for all the title IV, HEA programs as proposed in § 668.4. (Project EASI, regulatory reform)
- The provision that an institution use electronic services that the Secretary provides on a substantially free basis as a new standard of administrative capability as proposed in § 668.16(o). (Project EASI, improved accountability)
 - The restructuring and clarification of the provisions under subpart K, Cash Management, of the Student Assistance General Provisions regulations. (regulatory reform)
 - The inclusion of a just-in-time payment method as proposed in § 668.162(c). (Project EASI, improved accountability)
 - The elimination of the requirement under § 682.207(b) of the current FFEL Program regulations that an institution maintain a separate bank account for FFEL Program funds as proposed in § 668.163(a). (regulatory reform)
 - The requirement that title IV, HEA program funds be disbursed on a payment period basis as proposed in

§ 668.164(c). (Project EASI, improved accountability)

- The consolidation of the individual title IV, HEA program requirements regarding late disbursements as proposed in § 668.164(h). (Project EASI, regulatory reform)
- The revised student notification requirements as proposed under § 668.165. (Project EASI, regulatory reform, improved accountability)
- The exemption from the current excess cash requirements for an institution that receives funds under the just-in-time payment method as provided in § 668.166(a)(2). (Project EASI, regulatory reform)
- The requirement that an institution disburse FFEL Program funds within a timeframe comparable to that permitted for disbursing funds under the other title IV, HEA programs as proposed in § 668.167(a). (Project EASI, improved accountability)
- The requirement that an institution return FFEL Program funds to a lender if the institution does not disburse those funds within specified timeframes as proposed in § 668.167(b). (Project EASI, improved accountability)
- The procedures under which the Secretary would monitor more carefully an institution's administration of the FFEL Programs as proposed under § 668.167(d) and (e). (improved accountability)

Conforming Changes

The Secretary intends to publish these proposed regulations as final regulations on or before December 1, 1996. At that time the Secretary will also amend the appropriate sections of each of the title IV, HEA program regulations to eliminate any conflicting requirements between the final regulations and current program regulations and to otherwise harmonize the requirements in the final regulations with other title IV, HEA program requirements. As an example of the necessary conforming changes, the Secretary includes in these proposed regulations conforming amendments to the campus-based, FFEL, Direct Loan, and Federal Pell Grant programs that would result from adopting a uniform definition of the term "payment period" for all the title IV, HEA programs.

Summary of Proposed Changes

Student Assistance General Provisions

The Student Assistance General Provisions regulations, 34 CFR part 668, implement requirements that are common to the title IV, HEA programs.

Subpart A—General

Section 668.4 Payment Period

For the purpose of simplifying the administration of the title IV, HEA programs, the Secretary is proposing to simplify the definition of the term "payment period" and apply that definition to all title IV, HEA programs except the FWS Program. Based upon the simplified common definition, the Secretary is proposing in § 668.164 that all title IV, HEA program funds, other than FWS Program funds, be disbursed to students on a payment period basis. (For the purpose of this discussion, "disburse" includes the delivery of loan proceeds to students under the FFEL Programs.) This change, in effect, conforms the regulations to the actual disbursement practices of most institutions.

The Secretary is proposing to base the simplified definition of the term "payment period" on the Federal Pell Grant Program definition currently in 34 CFR 690.3 of the Federal Pell Grant Program regulations with modifications.

A. Programs Using Credit Hours With Terms

If a student is enrolled in an eligible program that uses academic terms and measures progress in credit hours, the payment period is the academic term. For example, if a program uses semesters, the semester will be the payment period; if it uses quarters, the quarter will be the payment period.

B. Programs Using Credit Hours Without Terms and Clock-Hour Programs

The Secretary is modifying the Federal Pell Grant Program definition by proposing one definition for students enrolled in (1) eligible programs that measure progress in credit hours but do not use academic terms; and (2) eligible programs that measure progress in clock hours regardless of whether they use academic terms. That definition will be the one currently in effect for programs offered without terms. Under the current Federal Pell Grant Program definition, there is a separate definition for clock-hour programs that are offered in terms, and the Secretary is proposing to eliminate that definition.

Programs that are less than an academic year

For an eligible program using credit hours without terms or clock hours that is less than a full academic year, the first payment period will be the period of time needed to complete the first half of that program as measured in clock or credit hours, and the second payment period will be the period of time needed

to complete the remainder of the program. For example, if a program is 800 clock hours, the first payment period would be the period of time needed for the student to complete 400 clock hours. The second payment period would begin when the student has completed 400 clock hours.

Programs Equal to an Academic Year or a Multiple of an Academic Year

For an eligible program using credit hours without terms or clock hours that is a full academic year or a multiple of a full academic year, for each academic year, the first payment period will be the period of time needed to complete the first half of the academic year as measured in clock or credit hours, and the second payment period will be the period of time needed to complete the remainder of that academic year. Thus, if the eligible program was 900 clock hours, and so was its definition of an academic year for the hours component, the second payment period would begin when the student completed 450 clock hours.

Programs Greater Than an Academic Year and Remainder is One Half or Less of an Academic Year

For an eligible program using credit hours without terms or clock hours that is more than a complete academic year but has a remainder that is less than another complete academic year, if the remaining portion of the program is one-half of an academic year or less, the payment period, after the last complete academic year, will be the remaining portion of the program. For example, if a program is 1,200 clock hours and its definition of an academic year for the hours component was 900 clock hours, the program would consist of three payment periods. The first two payment periods would each be 450 clock hours and would cover the first academic year of 900 clock hours. The third payment period will be the remaining portion of the program, 300 clock hours, and would begin when the student completed clock hour 900.

Programs Greater Than an Academic Year and Remainder is Less Than an Academic Year but Greater Than One Half an Academic Year

If the remaining portion of an eligible program using credit hours without terms or clock hours is less than a complete academic year but more than one-half an academic year, there would be two payment periods for the remaining portion of the program. The first payment period would be the period of time it would take a student to complete half of the clock or credit

hours in the remaining portion of the program while the second payment period would be the period of time needed to complete the program. For example, if a program is 1,500 clock hours and its definition of an academic year for the hours component is 900 clock hours, the program would consist of four payment periods. The first two payment periods would each be 450 clock hours and would cover the first academic year of 900 clock hours. The remaining portion of the program would consist of 600 clock hours (1500–900=600), and each payment period in the remaining portion would consist of 300 clock hours (clock hours 901 to 1,200 and 1,201 to 1,500). The second payment period of the second academic year would not begin until the student completed 300 clock hours of the remaining portion of the program. In contrast, under the current Federal Pell Grant Program definition, the first payment period of the second academic year would be 450 clock hours, half the academic year, (clock hours 901 to 1,350), and the second payment period would be the period needed to complete the program, 150 clock hours (clock hours 1,351 to 1,500).

The Secretary is proposing this approach because the Secretary believes that it is important that institutions be allowed to make all Title IV, HEA program disbursements at the same time and because this approach accommodates the current disbursement rules of the FFEL and Direct Loan programs. Currently, under the FFEL and Direct Loan programs the second disbursement for the remaining portion of a program in the example of a 1500 clock-hour program is at clock hour 1,201 while under the Federal Pell Grant Program it is at clock hour 1,351. Under the proposed approach, all second disbursements will be made earlier than under the current Federal Pell Grant Program approach. However, as a consequence, because Federal Pell Grant Program awards are calculated on a payment period basis, this proposal means that the student's Federal Pell Grant award will be reduced for the third payment period of the program and increased for the fourth payment period of the program to reflect that both payment periods in the second academic year of the program will consist of 300 clock hours instead of 450 and 150 clock hours.

The Secretary considered continuing to use the current Federal Pell Grant Program approach for all the title IV, HEA programs. Thus, for the FFEL and Direct Loan programs the second disbursement of the loan would be made at clock hour 1351 instead of at

clock hour 1201 even though the two disbursements would be equal unlike the prorated amounts for the Federal Pell Grant Program. The Secretary requests specific comments on whether he should adopt the approach in these proposed regulations or the current Federal Pell Grant Program approach. A more detailed discussion of the disbursement rules is set forth in the discussion of proposed § 668.164.

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

Section 668.16 Standards of Administrative Capability Electronic Services

In order to be considered administratively capable to participate in the title IV, HEA programs, the Secretary proposes that an institution participate in the electronic services that the Secretary provides at no substantial charge to the institution. The Secretary proposes to identify these electronic services in a notice published in the Federal Register. The Secretary would consider an institution that fails to participate in these electronic services not to have the administrative capability to administer the title IV, HEA programs, and, thus, that institution's participation in the title IV, HEA programs may be subject to sanctions such as fines, limitations, and termination.

The use of electronic services by institutions is essential to achieving the Project EASI goal of an integrated student aid delivery system for students and institutions. The Secretary believes that using electronic services is essential to reducing burden on students and institutions, simplifying program administration, and improving program accountability.

The Secretary believes that the savings and benefits that would result from improved business processes made possible by using electronic services would more than offset any necessary initial investments by both the Department and institutions. To achieve these savings and benefits, it is essential that electronic processes replace paper processes at both the Department and institutions, wherever possible. As is currently the case for institutions already using electronic services provided by the Secretary, an institution would be able to use software provided by the Secretary or software developed by the institution, or its vendor, in accordance with specifications provided by the Secretary. The Secretary also believes that most institutions already have the necessary equipment to use these services, and those institutions

that do not have the equipment would be making an investment that would improve institutional services at minimal cost. The Secretary recognizes that using the electronic services provided by the Department would potentially change many aspects of the business process at institutions and welcomes specific comment on any and all aspects of institutions moving into an electronic business process.

Under the proposed rule, the Secretary would determine the electronic services in which an institution must participate for a processing year. If this determination adds or otherwise revises the electronic services in which an institution must participate to be considered administratively capable, the Secretary would notify institutions of that determination in the Federal Register. The Secretary would provide timely notice to institutions in order for them to make adequate preparations to use these services. Under this process the Secretary would continue to provide the software, or provide the specifications for software to be developed by an institution or its vendor, for an institution to use these electronic services.

The Secretary expects to determine the services that an institution would use for the 1997-98 award year based, in part, on the funds available to provide those services to institutions at substantially no cost. Currently, the Secretary is considering, for the 1997-98 award year, requiring institutions to participate in the Title IV Wide Area Network by which student data is transmitted between the Department and institutions, electronic Institutional Student Information Reports (ISIRs), the National Student Loan Data System, and the Student Financial Assistance Bulletin Board System. The Secretary believes that using these basic services provides institutions with the experiences necessary to begin developing an expertise in using the electronic services that the Department provides. This expertise is essential to the implementation of additional electronic services that the Secretary expects to use in administering the title IV, HEA programs, such as the World Wide Web or Internet-based communications. To assist institutions in acquiring this expertise, the Secretary will be offering basic training on using the Department's electronic services. Training sessions are scheduled for October through December 1996, and additional training sessions may be offered if demand warrants offering them.

More detailed, readily available information on the Department's electronic services may be found in the Action Letters on the delivery system that the Department provides all institutions each award year.

Subpart K—Cash Management

Section 668.161 Scope and Purpose

The Secretary proposes to clarify that for purposes of subpart K, the term "parent" means a parent borrower under the PLUS programs, and the term "disburse" has the same meaning as "deliver" loan proceeds under the FFEL Program regulations.

Section 668.162 Requesting Funds

The Secretary proposes to redesignate § 668.163 of the current regulations as § 668.162 and to remove § 668.162 of the current regulations. The Secretary believes that some of the terms defined under § 668.162 of current regulations should be more fully explained in the provisions of the proposed regulations where those terms are used. Accordingly, the Secretary proposes to move to proposed § 668.164 the concepts of "disburse" and "issue checks," relocate under proposed § 668.161 the qualifying definition of "day," and eliminate the remaining definitions.

In proposed § 668.162(a) the Secretary emphasizes that the Secretary has the sole discretion to determine the method under which title IV, HEA program funds are provided to an institution.

Under proposed § 668.162(b), the Secretary clarifies that the Secretary does not automatically accept a request for funds from an institution under the advance payment method. For example, the Secretary may reject a request for funds if the amount of the request exceeds the amount of funds the institution is authorized to draw down under a title IV, HEA program.

The Secretary proposes under § 668.162(c) the requirements for a "just-in-time" payment method. Under the just-in-time payment method, for each student that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student. As part of those records, the institution would report the date and amount of the disbursements that it will make to that student or that student's parent. The timeframe would establish the earliest date on which the Secretary would accept student records to ensure that the Secretary can provide title IV, HEA

program funds to the institution by the date reported by the institution for that disbursement. The just-in-time payment method, thus, provides for reporting information that is no different than current student-level data that an institution is reporting; however, it does require an institution to report that information earlier.

For each record the Secretary accepts for a student or parent, the Secretary would provide by EFT the corresponding disbursement amount to the institution on or before the date reported by the institution for that disbursement. When the institution receives the funds for each record accepted by the Secretary, the institution would disburse those funds based on its determination at the time the institution transmitted that record to the Secretary that the student is eligible for that disbursement. However, if a student is subsequently not eligible for the funds that an institution disburses to the student, the institution must report the adjustment in the funds for which the student is eligible as is currently required.

As an example of a just-in-time payment, an institution determines that it expects to credit a student's account with program funds September 4. For this example, the Secretary establishes a timeframe of 8 days as the time necessary for the Secretary to process a student's record and to provide to the institution the disbursement amount for the student no later than the disbursement date. Therefore, on August 27, the institution determines that the student is eligible and transmits electronically the student's record with the payment information and expected disbursement date. The Secretary processes and accepts the student's record, and, not later than September 4, the Secretary provides by EFT the corresponding disbursement amount for the student.

The Secretary notes that an institution may make a disbursement to a student or parent before submitting a record of that disbursement to the Secretary. If the Secretary accepts that record, the Secretary would provide by EFT the corresponding disbursement amount to the institution shortly after receiving that record from the institution.

The institution would be required to report any adjustment to a previously accepted record within the timeframe established by the Secretary in a notice published in the Federal Register. The Secretary expects to require institutions to report adjustments within 30 days of the date that an institution becomes aware of a change. This timeframe is similar to the 30-day timeframes

currently required under the Federal Pell Grant and Direct Loan programs.

The Secretary believes that the just-in-time payment method is essential to realizing the benefits of the Project EASI goal of an integrated delivery system. The just-in-time payment method would provide the payment information on or very near the actual time of disbursement. The payment information forms the core of the individual student account that is the basis for the Project EASI integrated delivery system. Using the just-in-time payment method, would enable the delivery system to provide the necessary current information to students and other participants while reducing burden related to the reconciliation of payment data. In addition, because the Secretary would be providing funds based on current student-level data, the Secretary's ability to monitor the integrity of the programs would be substantially enhanced. The Secretary expects the advantages of the just-in-time payment method for students, institutions, and the Department to increase as further reengineering of the delivery system is accomplished, additional technological improvements are implemented, and skills in using these improvements increase.

The Secretary expects to provide Direct Loan Program funds to institutions that participate in the Direct Loan Program under School Origination Option 1 and Standard Origination using a just-in-time payment method beginning in the 1997-98 award year. The Secretary is also considering providing Federal Pell Grant Program funds using a just-in-time payment method in the 1998-99 award year. The Secretary specifically requests comments on this plan.

Section 668.163 Maintaining and Accounting for Funds

The Secretary proposes to redesignate § 668.164 of the current regulations as § 668.163.

The Secretary proposes under § 668.163(c)(3)(iii) that an institution not have to maintain in an interest-bearing or investment account title IV, HEA program funds that the institution receives from the Secretary under a just-in-time payment method. The Secretary believes that, because a just-in-time payment method would ensure the expeditious accounting and disbursement of program funds, little or no interest would be earned on funds provided to the institution under that payment method; therefore, there would be no harm to the Federal fiscal interest as a result. However, the Secretary wishes to make clear that, regardless of

whether an institution receives funds under the just-in-time payment method, an institution that chooses to maintain Federal Pell Grant, Direct Loan, FSEOG and FWS program funds in interest-bearing or investment accounts must remit to the Secretary any earnings on those funds that exceed \$250.

Also, the Secretary proposes to eliminate the provision now in § 668.164(c)(1)(ii) under which an institution that drew down \$3 million or more in title IV, HEA program funds in the prior year does not have to continue to maintain those funds in an interest-bearing or investment account if the institution earned \$250 or less on those program funds in that year. The Secretary believes that an institution must demonstrate that it will not earn \$250 in the current year in order to qualify for the remaining exemption to the interest-bearing account requirement under this section. However, an institution can qualify for this exemption by indicating that it did not earn \$250 in interest in the prior award year and by demonstrating that it will disburse the funds it receives in the current award year in the same manner as it disbursed funds in the prior award year.

Finally, the Secretary proposes to eliminate the requirement currently under § 668.164(a) and 34 CFR 682.207(b) that an institution must maintain a separate bank account for FFEL Program funds the institution receives from a lender by electronic funds transfer. The Secretary believes this requirement is no longer needed, provided that an institution maintains and accounts for those funds in the same manner required for other funds the institution receives under the title IV, HEA programs. Accordingly, the Secretary proposes to restructure the requirements under this section to make clear that for FFEL Program funds, an institution would be required to comply with the bank account notification requirements under § 668.163(a), and the accounting and financial record requirements under § 668.163(d). However, the Secretary may require a separate account for FFEL Program funds and for any other title IV, HEA program funds as provided under § 668.163(b).

Aside from these proposed provisions, the proposed revisions to § 668.163 are merely intended to clarify current rules.

Section 668.164 Disbursing Funds

The Secretary proposes to redesignate § 668.165 of the current regulations as § 668.164.

The Secretary proposes to amend this section by restructuring and clarifying the current provisions, moving into this section the definition of the term "disburse" (currently in § 668.162) and expanding the scope of that definition, adding a requirement that an institution disburse all program funds on a payment-period basis, and consolidating in this section the late disbursement requirements that are currently in the individual program regulations.

Under proposed § 668.164(a), the Secretary provides that an institution makes a disbursement of title IV, HEA program funds on the date the institution credits a student's account at the institution, or pays the student or parent directly, with (1) Funds received from the Secretary or a lender or (2) institutional funds used in advance of receiving title IV, HEA program funds.

The Secretary did not previously include in these rules the provision that an institution may use its own funds to make program disbursements but now proposes to include this provision to clarify that a disbursement occurs when an institution makes the benefits of title IV, HEA funds constructively available to students. Accordingly, the Secretary does not consider that a disbursement is made if, solely for the purpose of preparing a bill for a student, an institution must credit the student's account at the institution by making a general ledger entry.

The Secretary is proposing that all title IV, HEA program funds be disbursed by payment period. As a practical matter, this process should differ little from the practice of most institutions. However, there will be some minor changes. Under the current regulations, institutions that use quarters as academic terms can disburse FFEL or Direct Loan Program loans to students in two disbursements: half the loan at the beginning of the first quarter, and the other half at the beginning of the second quarter. Under the proposed change, such institutions will have to make three equal disbursements, one for each quarter. Thus, the disbursement schedule for the loan programs will match the schedule for the Federal Pell Grant and campus-based programs.

Under the existing disbursement rules applicable to the FFEL, Direct Loan, and campus-based programs, an institution that measures progress in clock hours or credit hours without terms has to make at least two disbursements during an award year or loan period, with the second disbursement coming after the student completes half the award year or loan period. However, institutions could determine that a student reached half an award year or loan period when

half the number of days in that year or period have elapsed even though the student did not actually complete half the clock hours or credit hours in the award year or loan period at that time. The proposed change will require a student to actually complete the number of clock or credit hours in that payment period before a second disbursement can be made. This change makes the disbursement rules more consistent with the purpose of multiple disbursements.

The following example illustrates this change. A student enrolls in a 900 clock-hour program that is scheduled to begin on September 1, 1996 and end on April 30, 1997. The student receives grants under the Federal Pell Grant and FSEOG programs and a loan under the Direct Subsidized Loan Program. The student may receive a second disbursement under each program only when the student actually completes 450 clock hours; the student may not receive a second disbursement on January 1, 1997, the calendar midpoint, unless he or she has completed 450 clock hours by that date.

In connection with determining whether a student completes the number of clock hours in a payment period, the Secretary notes that an institution using clock hours may use "excused absences" only under limited circumstances. For this purpose, "an excused absence" is one that a student does not have to make up. In order to count excused absences when determining whether a student has completed a payment period, an institution using clock hours must have a formal written policy allowing excused absences. Moreover, the maximum number of hours of excused absences that it may use for that purpose is 10 percent of the clock hours in that payment period, or a lower number if required by its State licensing or accrediting agency. Except where an accrediting agency or State licensing agency sets a more rigorous standard, the Secretary believes that excused absences of more than 10 percent of the clock hours in a payment period would impair the educational attainment of a student and, thus, would not make the best use of Federal funds. For example, if a payment period is 450 clock hours, unless the institution's State licensing or accrediting agency requires a lower number, 45 is the maximum number of hours of excused absences that may be included in determining whether the student completed that payment period.

The Secretary is proposing to amend the loan disbursement rules to take into account the statutory requirement that institutions must make at least two

disbursements for a loan period even if the loan period is only one payment period. Accordingly, the Secretary is proposing to amend 34 CFR 685.301(b) of the Direct Loan Program regulations and 34 CFR 682.603 and 604 of the FFEL Program regulations to provide different disbursement rules for loan periods that are one payment period or less and loan periods that are more than one payment period. For the former type loan period, an institution will be required to make two disbursements during the loan period. For loan periods that are more than one payment period, the institution must disburse loan proceeds at least once each payment period and each disbursement must be substantially equal.

Finally, the Secretary notes that an institution can make a second or subsequent disbursement of loan proceeds to a student if the institution makes the first loan disbursement to that student on or after the point in time when it is allowed to make the subsequent disbursement. For example, a student attends an institution that uses quarters and applies for a loan during the winter term. The student's loan period includes the preceding fall quarter as well as the winter and spring quarters. In such a case, the institution can make one disbursement in the winter that includes loan proceeds for both the fall and winter terms. It then can make the final disbursement at the beginning of the spring quarter.

Under proposed § 668.164 paragraphs (c), (d), and (e), the Secretary clarifies the current requirements under which an institution disburses title IV, HEA program funds to a student or parent directly, the charges for which an institution may credit a student's account at the institution, and the provisions regarding credit balances.

Section 668.164(e) clarifies that the earliest an institution may disburse title IV, HEA program funds is the later of 10 days before the first day of classes of the payment period or the date the student completed the previous payment period for which he or she received title IV, HEA program funds. However, a second or subsequent disbursement of FFEL or Direct Loan funds may not be made until the later of the date the student completed the previous payment period or the calendar midpoint of the loan period.

The Secretary proposes to consolidate under § 668.164(g) the requirements regarding late disbursements that are currently in the individual program regulations (see 34 CFR 674.16(g), 676.16(e), 682.604(e), 685.303(d), and 690.75(b)). The current regulations allow an institution to make a

disbursement to a student after the student becomes ineligible because he or she ceases to be enrolled at the institution or, for purposes of the Direct Loan and FFEL programs, ceases to be enrolled at least half-time. In addition, the regulations require that an institution obtain, or the student submit, documentation establishing the student's eligibility before the student became ineligible. If an institution obtains the required documentation, the institution may make a late disbursement.

Under all the title IV, HEA programs, a late disbursement may be made only if those program funds are used to pay for documented educational costs that were incurred before the student became ineligible. This qualification does not mean that the institution must obtain specific and detailed expenditure documentation from the student. The institution may develop a policy that it applies to such cases; for example, all expenses for books and supplies may be considered to have been incurred by a student who withdraws after the first two weeks of a term. That policy may also provide that a student incurs costs related to meals and housing and transportation prorated to the point in time when he or she leaves school.

The proposed late disbursement rules simplify and make uniform the regulations by eliminating redundant provisions in the program regulations but otherwise differ from the current regulations in only one substantive way. The Secretary proposes that if an institution chooses to make a late disbursement, it must make that disbursement no later than 90 days after the student becomes ineligible. The Secretary believes that 90 days is a reasonable amount of time for an institution to correct any problems that delayed that disbursement from being made while the student was eligible.

Section 668.165 Notices and Authorizations

As part of the restructuring of this subpart, the Secretary proposes to incorporate in this section the student notification requirements currently under § 668.165(a)(1) and the student authorization requirements and related provisions currently under § 668.165 paragraphs (a)(2), (b)(3)(iv), (b)(4), (d), and (e).

Under proposed § 668.165(a)(1), the Secretary would revise in two ways the existing requirement that an institution notify a student or, in the case of a PLUS loan, the student's parent, of the amount of funds that the student or parent can expect to receive and how and when those funds will be paid.

First, an institution must provide the notice only to the student but must include in that notice any PLUS funds that the student's parent will receive. Second, the notice must indicate for any loans under the Direct Loan or FFEL Programs whether those loans are subsidized or unsubsidized.

The Secretary proposes under § 668.165(a)(2) to revise the requirement that an institution notify expeditiously a student or parent borrower that the institution has credited the student's account with Direct Loan, FFEL, or Federal Perkins Loan program funds. Under the proposed revision, as part of that notice an institution would also notify the student or parent of the right to cancel that loan or loan disbursement and the date by which that cancellation request must be made. The Secretary would allow an institution to provide that notice in writing or electronically. The Secretary proposes that an institution would be required to provide the notice (1) No earlier than 10 days before and no later than 10 days after the institution credits the student's account at the institution with Direct Loan or Federal Perkins Loan Program funds, or with FFEL Program funds the institution receives from a lender via EFT or master check, or (2) no earlier than 10 days before and no later than 10 days after the institution disburses those funds by initiating an electronic funds transfer to the student's or parent's bank account if the institution subsequently withdraws funds from that bank account to pay for tuition and fees and other authorized charges. If, within 14 days after the date the institution sends that notice, the institution receives a request from the student or parent to cancel the loan or loan disbursement, the institution would have to comply with that request and return any loan funds in accordance with applicable program requirements. If the institution receives a cancellation request after this 14-day period, the institution may honor that request. In addition, the institution would need to inform the student or parent of the outcome of the request.

The Secretary wishes to make clear that an institution would not have to provide the proposed notice affording a student or, in the case of a PLUS loan, the student's parent, the opportunity to refuse the loan if the institution disburses that loan directly to the student or parent by issuing a check or releasing a check provided by a lender under the FFEL Programs. For loan funds disbursed in this manner, students or parents already have the opportunity to refuse the funds at the time those loan funds are being disbursed simply by not endorsing the

check or returning the check to the institution or to the lender. However, for loan funds provided to an institution by the Secretary, or by a lender via EFT or master check, a student or parent does not have a similar opportunity to refuse the loans funds if the institution chooses to disburse those loan funds by crediting the student's account.

In making this proposal, the Secretary believes that a student or parent should have the opportunity to refuse loan funds at the time those funds are being disbursed, regardless of the manner in which loan funds are provided to an institution, and regardless of the way the institution chooses to disburse those funds. A student or parent does not have this opportunity to refuse loan funds under an arrangement where the institution disburses loan funds by initiating an EFT to the student's or parent's bank account and subsequently withdraws funds from that account to pay for tuition and fees or other authorized charges. The disbursement of loan funds under this arrangement is analogous to the disbursement of loan funds made by crediting the student's account at the institution. Therefore, an institution would be required to provide the proposed notice to a student or parent if the institution disburses any title IV, HEA program loan funds under this type of arrangement.

Moreover, the Secretary notes that a student or parent does not give up his or her right to refuse a loan disbursement at the time that loan disbursement is made simply because the student or parent authorized a lender to provide loan funds to an institution via EFT or authorized the institution to disburse via EFT those loan funds to the student's or parent's bank account. These authorizations merely enable the lender or the institution to provide loan funds via an EFT method.

The Secretary proposes to consolidate under § 668.165(b) the student and parent authorizations now in § 668.165(d). Under the current rules, if an institution obtains the appropriate authorization, the institution may use a student's or parent's title IV, HEA program funds to pay for educational costs incurred by the student (*i.e.*, costs other than tuition and fees and room and board), hold title IV, HEA program funds in excess of educational costs, and transfer those funds electronically to the student's or parent's bank account. The Secretary does not propose to change any of these activities. Rather, the Secretary proposes to simplify the process of obtaining an authorization, and to codify current policy regarding

the use of title IV, HEA program funds under these authorizations.

First, the Secretary proposes to eliminate the requirement currently in § 668.165(d)(3) under which an institution must notify annually a student or parent of the provisions contained in an authorization previously provided to the institution. Under proposed § 668.165(b)(3), a student or parent may authorize the institution to perform any of the described activities for the entire period during which the student is enrolled at the institution. The Secretary believes that annual notifications are not necessary since a student or parent may modify or cancel a previously granted authorization at any time.

Second, with regard to modifying an authorization, the Secretary clarifies that the modification takes effect on the date the institution receives a request from a student or parent changing the current authorization.

Third, with regard to canceling an authorization allowing the institution to use a student's or parent's title IV, HEA program funds to pay for incurred educational costs, the Secretary clarifies that the cancellation is not retroactive; the institution may use title IV, HEA program funds to pay for previously authorized charges that were incurred by the student before the institution received a request from the student or parent canceling that authorization.

Finally, with regard to an authorization allowing the institution to hold title IV, HEA program funds, the Secretary clarifies that an institution must pay any remaining balance of those funds to a student by the end of the loan period for which those funds were intended or by the end of the last payment period in the award year for which those funds were awarded.

Section 668.166 Excess Cash

In § 668.166(a)(2), the Secretary proposes to exempt from the requirements under this section institutions that receive title IV, HEA program funds from the Secretary under the just-in-time payment method. The Secretary wishes to make clear that this exemption would apply only to the title IV, HEA program funds that an institution receives under the just-in-time payment method. As discussed previously under proposed § 668.162, an institution that participates under this funding method would provide to the Secretary student-level payment information on or very near the actual date of disbursement, substantially increasing the Secretary's ability to monitor the institution's use of title IV, HEA program funds. Moreover, unlike

the manner in which some institutions determine their immediate cash needs under the advance payment method, an institution under the just-in-time payment method would be required to make an eligibility determination for each student before receiving title IV, HEA program funds for that student. Accordingly, the Secretary is more assured that the institution will not have excess cash. To the extent that such an institution has excess cash, the Secretary believes that it would be a nominal amount caused by minor award adjustments. For these reasons and the provision that the Secretary would provide new funds only after deducting any adjustments reported by the institution, the Secretary believes that excess cash would not be a problem for institutions participating under the just-in-time payment method.

Section 668.167 FFEL Program Funds

The Secretary proposes to relocate under proposed § 668.167 the loan certification provision now in § 668.163(b), amend that provision, and propose new requirements regarding FFEL Program funds for institutions that are placed on the reimbursement payment method.

Under § 668.167(a), the Secretary proposes to modify the current requirement that an institution may not request loan funds that a lender will provide by EFT or master check earlier than 13 days before the first day of a student's loan period by referencing the student's payment period instead of the loan period. The Secretary proposes this modification to correct the omission in the current rules that the 13-day requirement should apply not only to the first loan disbursement, but to all subsequent loan disbursements. Thus, in certifying a loan application, an institution could not request a lender to provide loan funds earlier than 13 days before each payment period. In addition, the Secretary clarifies that for first-time, first-year borrowers, an institution could not request loan funds earlier than 27 days after the first day of classes of the borrower's first payment period.

In § 668.167(b), the Secretary proposes new timeframes under which an institution would return FFEL Program funds to a lender. Currently, an institution has 45 days from the date it receives FFEL Program funds not only to disburse those funds to eligible students, but also to pay those students any loan proceeds that remain in their accounts after those proceeds are disbursed (see 34 CFR 682.604(c)). This rule was established at a time when lenders provided most FFEL Program

funds by a check payable to the borrower or copayable to the borrower and the institution and the Secretary believed that 45 days was a reasonable amount of time for an institution to obtain a borrower's endorsement on the loan check and to otherwise process that loan check.

Under the proposed timeframes, an institution would return to a lender any loan funds that the institution does not disburse to eligible students within 3 business days after the institution receives the funds, if those funds are provided by the lender via EFT or master check. If a lender provides loan funds by a check payable to the borrower or copayable to the borrower and the institution, and the institution does not disburse the funds within 30 days after the date it receives the funds, the institution would need to return these funds to the lender immediately.

The Secretary proposes these timeframes for several reasons. First, the Secretary believes there is no reason why an institution that receives loan funds from a lender via EFT or master check should hold those funds for up to 45 days and derive any benefits from holding the funds when the costs of the funds are either subsidized by taxpayers or paid by student and parent borrowers. Moreover, since EFT and master check loan funds are immediately negotiable by the institution (unlike checks, which require the endorsement of the borrower), the Secretary believes that these loan funds can and should be disbursed within 3 business days, just like any other title IV, HEA program funds. For loan funds an institution continues to receive from a lender by check, the Secretary notes that, in total, the proposed 30-day requirement to disburse those funds, together with the 14-day requirement to pay any credit balance of those funds, provides essentially the same time (44 days) as the current 45-day rule. The Secretary believes that 30 days is more than enough time for an institution to provide a student the loan proceeds, particularly when the borrower is in need of those funds to pay his or her educational costs.

Second, the Secretary wishes to eliminate the separate timeframes within which an institution must disburse FFEL Program funds and pay the student any remaining balance (credit balance) of those funds. As noted earlier, under the FFEL Program regulations an institution has 45 days to disburse and otherwise pay a student his or her loan funds. However, the cash management regulations require that once a loan disbursement is made, the

institution must pay any credit balance of those funds to the student within 14 days. Thus, an institution needs to monitor its FFEL Program disbursements and payments of credit balances to ensure that it makes those disbursements and payments within the earlier of these two different time frames. Under the proposed rule, an institution would follow the same disbursement and credit balance time frames for FFEL Program funds that it does for all other title IV, HEA program funds.

In making this proposal the Secretary realizes that there may be instances where an institution is unable to make a second or subsequent disbursement of FFEL Program funds within these timeframes because the student is very close to completing, but has not yet completed, the required number of clock or credit hours in a preceding payment period. For this reason, the Secretary proposes that an institution may delay returning loan funds to the lender if the institution determines that the student can complete the required hours within 10 days after the date that the institution would normally be required to return those funds. An institution may also delay returning funds to a lender for 30 days after the date the institution would normally be required to return those funds if the institution is placed on the reimbursement payment method under proposed § 668.167 (d) or (e).

The Secretary proposes under § 668.167(d) rules and procedures regarding the disbursement of FFEL Program funds and the certification of FFEL Program loan applications that are comparable to the rules and procedures currently in effect for institutions that are placed under the reimbursement payment method for the other title IV, HEA programs.

In proposed § 668.167(d), an institution that is placed on the reimbursement payment method may not disburse any FFEL Program funds to a borrower until the Secretary approves a request from the institution to make that disbursement to that borrower. The Secretary may also prohibit the institution from certifying a borrower's loan application until the Secretary approves a request from the institution to make that certification for that borrower.

In order for the Secretary to approve a disbursement or certification request for a borrower, the institution would be required to submit documentation to the Secretary, or an entity approved by the Secretary, that shows that the borrower is eligible to receive that disbursement or certification. The entity approved by

the Secretary may be a certified public accountant or financial aid consultant that an institution uses to review its disbursement or certification requests before those requests are forwarded to the Secretary. In addition, pending the Secretary's approval of a disbursement or certification request, the Secretary may take one or more of the following actions: (1) Prohibit the institution from endorsing a master check or obtaining a borrower's endorsement of any loan check, (2) require the institution to maintain loan funds that it receives from a lender via EFT in a separate bank account that contains no other funds, and (3) prohibit the institution from certifying a borrower's loan application.

The Secretary proposes that these rules and procedures apply to an institution that participates in the FFEL Programs for the same reasons that the Secretary places an institution on the reimbursement payment method for the other title IV, HEA programs—to protect students and the Federal interest in those instances where the Secretary determines there is a need to strictly monitor an institution's participation in those programs. Accordingly, where the Secretary determines there is a need to strictly monitor an institution's participation, but that institution participates only in the FFEL Programs, precluding the Secretary from placing the institution under the reimbursement payment method, the Secretary proposes under § 668.167(e) to apply the rules and procedures of paragraph (d) of this section to that institution.

The Secretary believes that the proposed approach is the least complicated and burdensome for all of the parties involved in administering the FFEL Programs. However, since this proposed approach is the first time that the Secretary would impose limitations on the disbursement of FFEL Program funds, or on the certification of FFEL Program loan applications, the Secretary invites comments on alternate approaches.

Campus-Based Programs, Federal Family Education Loan Programs, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program

Sections 674.2, 675.2, 676.2, 682.200, 685.102, and 690.2 Definitions

The Secretary proposes to amend §§ 674.2(a), 676.2(a), 682.200(a)(1), 685.102(a)(1), and 690.2(a) of the Federal Perkins Loan, FSEOG, FFEL, Direct Loan, and Federal Pell Grant program regulations, respectively, to add a cross-reference to the "payment period" definition in § 668.4 discussed

below. In the definitions of terms defined in subpart A of 34 CFR part 668, the Secretary proposes to include the uniform definition of a payment period in § 668.4 of these proposed regulations. The Secretary, therefore, proposes to delete the duplicative definition of a payment period in §§ 674.2(b), 676.2(b), and 690.3. The Secretary also proposes to delete the definition of a payment period in § 675.2(b) as it is not used in part 675.

Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program

Sections 682.207, 682.604, and 685.301 Disbursements

The Secretary is proposing to amend the disbursement rules of the FFEL and Direct Loan programs. The proposed change takes into account that section 428G of the HEA requires an institution to make at least two disbursements in a loan period even if the loan period consists of only one term, e.g., one semester. Accordingly, the Secretary is proposing to amend 34 CFR part 682.207(c), 682.603(a), and 682.604(c) of the FFEL Program regulations and 34 CFR part 685.301(b) of the Direct Loan Program regulations to provide different disbursement rules for loan periods that consist of one payment period and loan periods that include more than one payment period. For the former type loan period, an institution or lender is required to make two disbursements during the loan period. For loan periods that include more than one payment period, the institution or lender must disburse loan proceeds at least once in each payment period. Under each approach, each disbursement in a loan period must be substantially equal.

Executive Order 12866

1. Assessment of Costs and Benefits

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

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995*.

In assessing the potential costs and benefits—both quantitative and

qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

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

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

Summary of Potential Costs and Benefits

Potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following heading: *Initial Regulatory Flexibility Analysis*, and in the information stated previously under *Supplementary Information*.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the regulations (groupings and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading, for example, § 668.4 *Payment period*.) (4) Is the description of the regulations in the "Supplementary Information" section of the preamble helpful in understanding the regulations? How could this description be more helpful in making the regulations easier to understand? (5) What else could the Department do to make the regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W., (Room

5121, FB-10), Washington, D.C. 20202-2241.

3. Initial Regulatory Flexibility Analysis

The Secretary has determined that some small entities are likely to experience economic impacts from these proposed regulations, specifically with respect to the proposal to require institutions that participate in the FFEL Program and that are on the reimbursement payment method for the Federal Pell Grant, Federal Perkins Loan, FSEOG, or Direct Loan program, or for which the Secretary determines there is a need to strictly monitor FFEL funds, to submit documentation from existing sources to the Secretary or approved entity, that supports the certification of FFEL applications or supports intended disbursements of FFEL program funds to eligible borrowers. A more detailed explanation of these proposed changes in § 668.167 can be found elsewhere in this preamble under the heading *Summary of Proposed Changes*. In accordance with the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the economic impact on small entities has been performed. A summary of the IRFA appears below.

Description of the Objectives of, and Legal Basis for, the Proposed Rule

The Secretary proposes that these rules and procedures apply to an institution that participates in the FFEL Programs for the same reasons that the Secretary places an institution on the reimbursement payment method for the other title IV, HEA programs: to protect students and the Federal interest in the title IV, HEA programs in those instances where the Secretary determines there is a need to strictly monitor an institution's participation in those programs. These rules would also apply to those institutions that participate in only the FFEL Programs. The Secretary has a responsibility in managing the title IV, HEA programs to ensure that only eligible students, and parents in the case of PLUS funds, receive title IV, HEA program funds, and that they receive those funds in the amounts they are eligible for.

Definition and Identification of Small Entities

The Secretary has adopted the U.S. Small Business Administration (SBA) Size Standards for this analysis. The RFA directs that small entities are the sole focus of the Regulatory Flexibility Analysis. There are three types of small entities that are analyzed here. They are: for-profit entities with total revenue below \$5,000,000; nonprofit entities

with total revenue below \$5,000,000; and entities controlled by governmental entities with populations below 50,000. The total number of institutions (large and small) participating in the title IV, HEA programs during the 1995-96 award year was 6,576. As of July 31, 1996 there were 307 institutions on the reimbursement payment method: estimated at 257 for-profit entities, 36 nonprofit entities, and 14 governmental entities. Of the 307 institutions, 175 participate in the FFEL Programs and had loan activity during the 1995 fiscal year. The data regarding the number of institutions on the reimbursement payment method, the number of those institutions that participate in the FFEL Programs and the volume of loan funds was obtained through Department of Education databases, such as the National Student Loan Data System. Where exact data were not available to estimate the cost to small entities, data elements were chosen that would have overestimated rather than underestimated the cost. For example, information is not available on the proportion of these institutions that are small versus the number that are large. For this analysis, in order to prevent an underestimate, all 175 institutions were assumed to be small although 8 had a loan volume greater than \$5,000,000 under the FFEL Programs. The Secretary particularly invites comments on the definition of small entity and the estimate of the number of small entities that would be covered by the proposed rule.

The component of the proposed rule that could potentially cause a small entity to be adversely affected is the proposal to require institutions that participate in the FFEL Programs and that are on the reimbursement payment method for other title IV, HEA programs, or for which the Secretary determines there is a need to strictly monitor FFEL Program funds, to submit documentation from existing sources to the Secretary or an approved entity, that supports the certification of FFEL Program applications or supports intended disbursements of FFEL Program funds. The FFEL Program disbursements at an institution could be delayed for an estimated average of 18-20 days until approval for those certifications or disbursements was received by the institution, costing the institution interest expenses and paperwork expenses for the submission of supporting documentation.

Compliance Costs of Proposed Rule

Some small (and large) entities will experience economic impacts from this proposed rule. These entities are those

that would have to borrow funds in order to operate during the 18-20 days prior to receiving approval from the Secretary to certify loan applications, or to disburse FFEL Program funds. The economic impact on these entities are those costs associated with obtaining a short-term loan and those costs associated with unearned interest revenue (on institutional funds used in lieu of FFEL Program funds) that could have been earned through an interest-bearing or investment account during the 18-20 day delay. An estimate of the calculable costs of obtaining a short-term loan, and of the loss of interest revenue during the delay, was calculated for small entities.

More than 60 percent of the 175 institutions that could be affected by these proposed regulations had an FFEL Program loan volume of less than \$900,000 during the 1995 fiscal year. Therefore, for most institutions, based upon an interest rate equal to the prime rate plus 4 percent ($8.25\% + 4\% = 12.25\%$) for two short-term loans, one for each disbursement for a period of 30 days, the cost per institution would be an estimated \$9,062 in interest expenses. The potential loss of interest earnings that could have accrued for the delayed FFEL Program funds during that time is estimated at 3 percent equaling an estimated \$2,219. Less than 15 percent of the 175 institutions identified had a loan volume of \$3,300,000 or greater. For an institution in this category, the interest expenses for the total amount of loan commitments under the same conditions above, would equal an estimated \$33,226. The potential loss of interest earnings on those funds equals an estimated \$8,137 per institution.

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

The total potential cost in interest expenses and increased paperwork burden for most small entities with low FFEL Program loan volume is estimated at \$11,511. For the approximately 15 percent of small entities with a high FFEL Program loan volume, as noted above, the total potential cost per institution is estimated at \$41,593. These costs are estimates and the costs experienced by actual institutions will

undoubtedly be different. These estimates are provided to satisfy the RFA requirement that costs of compliance be described and should be used as illustrative examples only. The Secretary particularly invites comments on these estimates of each of these alternatives for small entities.

Discussion of Economic Impacts

This analysis has determined that an estimated 138 small for-profit entities, an estimated 28 small nonprofit entities, and an estimated 9 small governmental entities will experience adverse economic impacts from these proposed regulations. The adverse economic impacts experienced by some small (and large) entities is balanced by the positive economic impacts accruing to the U.S. taxpayer. These positive impacts arise (1) From the ability of the Secretary to ensure that eligible students receive title IV, HEA program funds in the amounts for which they are eligible in cases where there is a need to strictly monitor title IV, HEA program funds at an institution and (2) from the protection of students and the Federal interest in the title IV, HEA programs.

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

Identification of Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rule

The Secretary has not found any other Federal rules which duplicate, overlap, or conflict with the proposed rule. The Secretary particularly invites comments on other Federal rules that meet these criteria.

Significant Alternatives That Would Satisfy the Same Legal and Policy Objectives While Minimizing the Economic Impact on Small Entities

The Secretary has identified no other significant alternatives that would satisfy the same legal and policy objectives while minimizing the economic impact on small entities. The Secretary believes that the proposed approach is the least complicated and burdensome for small (and large) entities involved in the administration of the title IV, HEA programs while still allowing for the proper protection of the Federal fiscal interests and the interests of students and their parents. The Secretary particularly invites comments on this determination.

Conclusion

The Secretary concludes that a substantial number of small entities are likely to experience significant economic impacts from the proposed rule. However, as discussed in the section referring to the cost-benefit assessment of this proposed rule pursuant to Executive Order 12866, the Secretary has concluded that the costs are outweighed by the benefits. In this case, the benefits are better protection of the Federal fiscal interest as well as improved service to students participating in the title IV, HEA programs.

The Secretary invites comments on any aspect of this analysis, particularly comments on the definition of small entity, the estimated number of institutions that are expected to experience economic impacts, the estimated costs, and any significant alternatives that would satisfy the same legal and policy objectives while minimizing the economic impact on small entities.

Paperwork Reduction Act of 1995

Proposed §§ 668.16, 668.162, 668.165, and 668.167 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these regulations to the Office of Management and Budget (OMB) for its review.

Collection of information: Student Assistance General Provisions—Section 668.16—Standards of Administrative Capability—The Department currently has this section approved under OMB control number 1840–0537. To be considered administratively capable to participate in the title IV, HEA programs, the Secretary proposes that an institution participate in the electronic services that the Secretary provides at no substantial charge to the institution. This requirement does not change the information that an institution reports or receives but does change the way that the institution reports or receives the information.

Section 668.162—Requesting funds—The Secretary proposes under § 668.162(c) the requirements for a “just-in-time” payment method. Under the just-in-time payment method, for each student that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student. The just-in-time payment method provides for reporting information that is no

different than current student-level data that an institution is reporting; however, it does require an institution to report that information earlier.

Section 668.165—Notices and authorizations—Institutions are required to provide a notice once each award year of the amount of title IV, HEA program funds a student can expect to receive, how and when those funds will be paid, and whether any title IV, HEA program loans are subsidized or unsubsidized. Annual recordkeeping and reporting burden contained in this collection of information as proposed in these regulations are estimated to average 78.9 hours annually per respondent. There are 6,576 respondents and the burden hours total 518,846.4 hours including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Institutions are also required to provide a notice to a student or parent in the case of PLUS funds, of (1)

Disbursements of title IV, HEA loan funds credited to the student's account at the institution or the student's or parent's bank account, and (2) the student- or parent-borrower's right to cancel a loan or loan disbursement, and when that cancellation request must be made. Annual recordkeeping and reporting burden contained in this collection of information as proposed in these regulations are estimated to average 116.7 hours annually per respondent. There are a 5,944 respondents and the burden hours total 693,644.8 hours including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden hours for § 668.165 equals 1,212,491 hours. The Secretary understands that respondents are already providing this notice and the actual increase in burden would be much less than this estimate.

Section 668.167—FFEL Program funds—Institutions that participate in the FFEL program that are on the reimbursement payment method for other title IV, HEA programs or for which the Secretary determines there is a need to strictly monitor FFEL program funds must submit documentation to the Secretary or an approved entity in support of disbursements of FFEL program funds to eligible students and parents. The information to be collected includes: specific information from the institution's files regarding eligibility and documentary evidence. The

Secretary needs and uses the information to approve disbursements of FFEL program funds.

All information is to be collected on a case-by-case basis. Annual recordkeeping and reporting burden contained in the collection of information proposed in these regulations are estimated to average 1 hour for an average of 10 submissions for 175 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual recordkeeping and reporting burden hours equals 1750 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have a practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3053, ROB-3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4 p.m., Eastern standard time Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by, or is available from, any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

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

34 CFR Parts 674, 675, and 676

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

34 CFR Part 682

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

34 CFR Part 685

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

34 CFR Part 690

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

Dated: September 12, 1996.

Richard W. Riley,
Secretary of Education.

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

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

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

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

Subpart A—General

2. Section 668.4 is added to read as follows:

§ 668.4 Payment period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 668.16 Standards of administrative capability.

* * * * *

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

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

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

* * * * *

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

4. Subpart K is amended by revising §§ 668.161 through 668.165 and

§ 668.166(a) and by adding a new § 668.167 to read as follows:

Subpart K—Cash Management

§ 668.161 Scope and purpose.

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

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

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

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

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

(3) As used in this subpart—

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

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

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

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

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

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

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

§ 668.162 Requesting funds.

(a) *General.* The Secretary has sole discretion to determine the method under which the Secretary provides title IV, HEA program funds to an

institution. In accordance with procedures established by the Secretary, the Secretary may provide funds to an institution in advance of the institution's need for those funds (advance payment method), by the date the institution needs those funds (just-in-time payment method), or by reimbursing an institution for disbursements already made to eligible students and parents (reimbursement payment method).

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

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

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

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

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

(1) For each student that an institution determines is eligible for title IV, HEA program funds, the institution transmits electronically to the Secretary, within a timeframe established by the Secretary, records that contain program award information for that student. As part of those records, the institution reports the date and amount of the disbursements that it will make or has made to that student or that student's parent;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 668.163 Maintaining and accounting for funds.

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

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

program funds are maintained in that account by—

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

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

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

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

(1) The requirements in this subpart;

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

(3) Applicable program regulations.

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

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

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

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

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

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

(4) If an institution maintains Direct Loan, Federal Pell Grant, FSEOG, and FWS program funds in an interest-bearing or investment account, the institution may keep the initial \$250 it

earns on those funds during an award year. By June 30 of that award year, the institution must remit to the Secretary any earnings over \$250.

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

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

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

(2) An institution must maintain its financial records in accordance with the provisions under 34 CFR 668.24.

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

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

§ 668.164 Disbursing funds.

(a) *Disbursement.* An institution makes a disbursement of title IV, HEA program funds on the date that the institution credits a student's account at the institution or pays the student or parent directly with—

(1) Funds received from the Secretary;

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

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

(b) *Disbursements by payment period.*

(1) Except as provided in paragraph (b)(2) of this section, an institution must disburse title IV, HEA program funds on a payment period basis. Except as

provided in paragraph (g) of this section, an institution may disburse title IV, HEA program funds to a student or parent for a payment period only if the student is enrolled for classes for that payment period and is eligible to receive those funds.

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

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

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

(ii) The number of excused absences under the written policy for purposes of

this paragraph does not exceed the lesser of—

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Tuition and fees;

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

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

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

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

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

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

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

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

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

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

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

(f) *Early disbursements.* (1) Except as provided under paragraph (f)(2) of this section, the earliest an institution may disburse title IV, HEA program funds to a student or parent for any payment period is the later of—

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

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

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

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

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

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

(2) *Conditions for late disbursements.*

An institution may disburse funds under a title IV, HEA program to an ineligible student described in paragraph (g)(1) of this section if, before the date the student became ineligible—

(i) The institution received a SAR from the student or an ISIR from the Secretary; and

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

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

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

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

(E) For a Federal Perkins Loan Program loan or an FSEOG Program award, the institution received from the student an acceptance of that loan or award.

(3) *Making a late disbursement.* If a student qualifies for a late disbursement under paragraphs (g) (1) and (2) of this section—

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

(ii) If the institution chooses to make a late disbursement, it must make that late disbursement no later than 90 days after the date the student becomes

ineligible under paragraph (h)(1) of this section.

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

§ 668.165 Notices and authorizations.

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

(2) If an institution credits a student's account at the institution with Direct Loan, FFEL, or Perkins Loan Program funds, or initiates an EFT of those funds to the student's or parent's bank account and subsequently withdraws funds from that bank account to pay for tuition and fees or other authorized charges, the institution must notify the student, and parent if PLUS Loan funds are being disbursed, of—

(i) The date and amount of the disbursement;

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

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

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

(i) No earlier than 10 days before and no later than 10 days after either crediting the student's account at the institution or crediting the student's or parent's bank account; and

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

(4)(i) If a student or parent wishes to cancel a loan or loan disbursement, the student or parent must submit that cancellation request to the institution.

(ii) If the institution receives the cancellation request within 14 days after the date the institution sent the notice described in paragraph (a)(2) of this section, the institution must return the

loan proceeds, cancel the loan, or do both, in accordance with applicable program regulations.

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

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

(b) *Student or parent authorizations.*

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

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

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

(iii) Hold on behalf of the student or parent any title IV, HEA program funds that would otherwise be paid directly to the student or parent under § 668.164(f).

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 668.166 Excess cash.

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

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

* * * * *

§ 668.167 FFEL Program funds.

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

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

(i) Earlier than 27 days after the first day of classes of the first payment period for a first-year, first-time Federal Stafford Loan Program borrower as defined in § 682.604(c)(5); or

(ii) Earlier than 13 days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford Loan Program borrowers; and

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

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

(ii) Earlier than 30 days before the first day of classes for any subsequent payment period for a first-year, first-time Federal Stafford Loan Program borrower or for any payment period for all other Federal Stafford borrowers; and

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

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

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

(1) (i) Three business days following the date the institution receives the funds if a lender provides those funds via EFT or by master check; or

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

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

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

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

(ii) Determines that the student will complete the required hours within this 10-day period; or

(2) Thirty days after the date set forth in paragraph (b) of this section if the Secretary places the institution on the reimbursement payment method under paragraph (d) or (e) of this section.

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

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

(ii) If prohibited by the Secretary, may not certify a borrower's loan application until the Secretary approves a request

from the institution to make that certification for that borrower.

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

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

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

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

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

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

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

PART 674—FEDERAL PERKINS LOAN PROGRAM

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

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

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

§ 674.2 Definitions.

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

* * * * *

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

PART 675—FEDERAL WORK-STUDY PROGRAMS

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

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

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

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

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

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

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

§ 676.2 Definitions.

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

* * * * *

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

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

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

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

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

§ 682.200 Definitions.

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

* * * * *

15. Section 682.207 is amended by adding paragraphs (c) (5) and (6) to read as follows:

§ 682.207 Due diligence in disbursing a loan.

* * * * *

(c) * * *

(5) If one or more payment periods have elapsed before a lender makes a disbursement, the lender may include in the disbursement loan proceeds for completed payment periods.

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

* * * * *

16. Section 682.603 is amended by revising paragraph (a)(5) to read as follows:

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

(a) * * *

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

* * * * *

17. Section 682.604 is amended by adding paragraphs (c) (6) through (9) read as follows:

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

* * * * *

(c) * * *

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

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

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

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

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

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

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

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

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

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

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

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

Authority: 20 U.S.C. 1078a *et seq.*, unless otherwise noted.

19. Section 685.102(a)(1) is amended by adding the term "Payment period" in alphabetical order and revising the introductory clause to read as follows:

§ 685.102 Definitions

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

* * * * *

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

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

* * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

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

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

22. Section 690.2(a) is amended by adding the term "Payment period" in alphabetical order and revising the heading and introductory clause to read as follows:

§ 690.2 Definitions.

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

* * * * *

§ 690.3 [Removed and reserved]

23. Section 690.3 is removed and reserved.

[FR Doc. 96-24217 Filed 9-20-96; 8:45 am]

BILLING CODE 4000-01-P