

DEPARTMENT OF EDUCATION**[Docket ID ED-2009-OPE-0005]****34 CFR Parts 600, 668, 675, 686, 690, and 692****RIN 1840-AC99****General and Non-Loan Programmatic Issues****AGENCY:** Office of Postsecondary Education, Department of Education.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to implement various general and non-loan provisions that were added to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Opportunity Act of 2008 (HEOA) by amending the regulations for Institutional Eligibility Under the Higher Education Act of 1965, the Student Assistance General Provisions, the Federal Work-Study (FWS) Programs, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, the Federal Pell Grant Program, and the Leveraging Educational Assistance Partnership Program (LEAP).

DATES: We must receive your comments on or before September 21, 2009.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site."

- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Jessica Finkel, U.S. Department of Education, 1990 K Street, NW., room 8031, Washington, DC 20006-8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at <http://www.regulations.gov>. Therefore, commenters should be careful to include in their

comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT: For general information or information related to the non-Title IV revenue requirement (90/10), John Kolotos. Telephone: (202) 502-7762 or via the Internet at: John.Kolotos@ed.gov.

For information related to all Federal Pell Grant Program issues and the LEAP/GAP Program, Fred Sellers and Jacquelyn Butler. Telephone: (202) 502-7502 and (202) 502-7890, respectively, or via the Internet at: Fred.Sellers@ed.gov or Jacquelyn.Butler@ed.gov.

For information related to the provisions for readmission for servicemembers, teach-outs, peer-to-peer file sharing, baccalaureate in liberal arts, and institutional plans for improving the academic program, Wendy Macias. Telephone: (202) 502-7526 or via the Internet at: Wendy.Macias@ed.gov.

For information related to all Federal Work-Study Program issues, Nikki Harris and Harold McCullough. Telephone: (202) 219-7050 and (202) 377-4030, respectively, or via the Internet at Nikki.Harris@ed.gov or Harold.McCullough@ed.gov.

For information related to the provisions for fire safety standards, missing students procedures, hate crime reporting, emergency response and evacuation, and students with intellectual disabilities, Jessica Finkel. Telephone: (202) 502-7647 or via the Internet at: Jessica.Finkel@ed.gov.

For information related to the provisions for extenuating circumstances under the TEACH Grant Program, Jacquelyn Butler. Telephone: (202) 502-7890, or via the Internet at: Jacquelyn.Butler@ed.gov.

For information related to the consumer information requirements, Brian Kerrigan. Telephone: (202) 219-7058, or via the Internet at: Brian.Kerrigan@ed.gov.

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:**Invitation to Comment**

As outlined in the section of this notice entitled *Negotiated Rulemaking*, significant public participation, through six public hearings and three negotiated

rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). In accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before September 21, 2009. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations. Note that enactment as final regulations of any and all provisions of these proposed regulations is subject to the availability of sufficient administrative savings and any provision may be removed from the final rules if sufficient savings do not materialize.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the proposed regulations and feasible alternatives, and to make a reasoned determination that the benefits of these proposed regulations justify their costs. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

As noted elsewhere in the NPRM, two of the Department's negotiated rulemaking committees were to a minor extent involved in the proposed revisions to 34 CFR 668.184(a)(1) (Determining cohort default rates for institutions that have undergone a change in status) in part 668, subpart M of the Student Assistance General Provisions. Team V—General and Non-Loan Programmatic Issues (Team V), was the negotiating committee responsible for the regulations regarding the treatment of cohort default rates for institutions that conduct teach-outs of closed institutions. Team II—Loans-School-based Issues (Team II), negotiated all other changes to cohort default rates.

We have included the proposed change to 34 CFR 668.184(a)(1) in this NPRM as well as in the notice of proposed rulemaking that we are publishing as a result of the negotiations of Team II. The proposed change is simply a cross-reference in 34 CFR 668.184(a)(1) to 34 CFR 600.32(d) which provides that under certain circumstances the cohort default rate of a closed institution does not transfer in any way to the institution that conducts

a teach-out at the site of the closed institution. We ask that when submitting any comments on the proposed changes to §§ 600.32(d) or 668.184(a)(1), you submit the comments in the docket for this NPRM (Docket ID ED-2009-OPE-0005).

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8031, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at: <http://www.ed.gov/policy/highered/leg/hea08/index.html>.

On December 31, 2009, the Department published a notice in the **Federal Register** (73 FR 80314) announcing our intent to establish five negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to lender and general loan issues

(Team I—Loans—Lender General Loan Issues). A second committee would focus on school-based loan issues (Team II—Loans—School-based Loan Issues). A third committee would focus on accreditation (Team III—Accreditation). A fourth committee would focus on discretionary grants (Team IV—Discretionary Grants). A fifth committee would focus on general and non-loan programmatic issues (Team V—General and Non-Loan Programmatic Issues). The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee.

Team V—General and Non-Loan Programmatic Issues (Team V) met to develop proposed regulations during the months of March 2009, April 2009, and May 2009. Team V agreed to establish five subcommittees to facilitate the discussion of the issues and expedite the development of the proposed regulations. The subcommittees included some of non-Federal negotiators and their alternates, outside experts regarding the particular issues addressed by a subcommittee, ED staff, and other interested parties. The subcommittees were:

(1) Campus Safety, responsible for issues relating to Fire Safety Standards, Missing Student Procedures, Hate Crime Reporting, and Emergency Response and Evacuation Procedures.

(2) Peer-to-Peer File Sharing, responsible for issues relating to illegal downloading of copyrighted materials.

(3) Intellectual Disabilities, responsible for issues relating to establishing title IV eligible educational programs for students with intellectual disabilities.

(4) LEAP/GAP, responsible for issues relating to LEAP and GAP programs.

(5) 90/10, responsible for issues relating to the requirement that a proprietary institution must derive at least 10 percent of its revenue from sources other than funds from the title IV, HEA programs.

In this NPRM we propose regulations for a variety of provisions, stemming from the work of the subcommittees and main committee, relating to the Federal grant and work-study programs, campus safety, educational programs for students with intellectual disabilities, copyright infringement, teach-outs, readmission of servicemembers, and non-Title IV revenue.

The Department developed a list of proposed regulatory provisions based on the provisions contained in the HEOA and from advice and recommendations submitted by individuals and organizations as testimony to the

Department in a series of six public hearings held on:

- September 19, 2008, at Texas Christian University in Fort Worth, Texas;
- September 29, 2008, at the University of Rhode Island, in Providence, Rhode Island;
- October 2, 2008, at Pepperdine University, in Malibu, California;
- October 6, 2008, at Johnson C. Smith University, in Charlotte, North Carolina;
- October 8, 2008, at the U.S. Department of Education in Washington, DC; and
- October 15, 2008, at Cuyahoga Community College, in Cleveland, Ohio.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket for this NPRM. Transcripts of the regional meetings can be accessed at <http://www.ed.gov/policy/highered/leg/hea08/index.html>.

Staff within the Department also identified issues for discussion and negotiation.

At its first meeting, Team V reached agreement on its protocols. These protocols provided that for each community of interest identified as having interests that were significantly affected by the subject matter of the negotiations, the non-Federal negotiators would represent the organizations listed after their names in the protocols in the negotiated rulemaking process.

Team V included the following members:

- Clais Daniels-Edwards, University of California Student Association, and Serena Unrein (alternate), Arizona Students Association, representing students.
- David Baime, American Association of Community Colleges, and Dr. Karla Leach (alternate), Western Wyoming Community College, representing two-year public institutions.
- John Curtice, State University of New York, and Karen Fooks (alternate), University of Florida, representing four-year public institutions.
- Scott Fleming, Georgetown University, and Suzanne Day (alternate), Harvard University, representing private, non-profit institutions.
- Elaine Neely, Kaplan Higher Education Corp., and Mark Pelesh (alternate), Corinthian Colleges, Inc., representing private, for-profit institutions.
- Ray Testa, Empire Education Group, and Dr. Richard Dumaresq

(alternate), Pennsylvania Association of Private School Administrators, representing cosmetology schools.

- David Tipton, Berea College, and Ian Robertson (alternate), Warren Wilson College, representing work colleges.

- Dr. Ray Keck, Texas A&M International University, and Karl Brockenbrough (alternate), Bowie State University, representing minority-serving institutions.

- David Gelinas, Davidson College, and David Smedley (alternate), George Washington University, representing financial aid administrators.

- Sandy Tallman, Ross Education LLC, and Diane Fleming (alternate), Central Michigan University, representing financial aid administrators.

- Karen McCarthy, NASFAA, and Joan Berkes (alternate), NASFAA, representing financial aid administrators.

- Maureen Laffey, Delaware Higher Education Commission, and Dr. Alan Edwards (alternate), State Council of Higher Education for Virginia, representing State student grant agencies.

- Dr. Nick Bruno, University of Louisiana System, and John Higgins (alternate), Purdue University, representing business officers and bursars.

- Dr. John Cavanaugh, Pennsylvania State Systems of Higher Education, representing State higher education executive officers.

- S. Daniel Carter, Security on Campus, Inc., and Jonathan Kassa (alternate), Security on Campus, Inc., representing campus safety advocates.

- Brendan McCluskey, UMDJ Office of Emergency Management, and Dr. John Petrie (alternate), George Washington University, representing campus safety administrators.

- Ed Comeau, Campus Firewatch, and Phil Hagen (alternate) Georgetown University, representing fire safety advocates and administrators.

- Paul D. Martin, Center for Campus Fire Safety, representing fire safety advocates.

- Michael Lieberman, Anti-Defamation League, and Cristina Finch (alternate), Human Rights Campaign, representing human rights advocates.

- Delores Stafford, George Washington University, and Lisa Phillips (alternate), IACLEA, representing law enforcement.

- Stephanie Smith Lee, NDSS, and Madeleine C. Will (alternate), representing individuals with intellectual disabilities.

- Gregory Jackson, The University of Chicago, and Matthew Arthur

(alternate), representing institutions on peer-to-peer file sharing.

- David Green, NBC Universal, and Jennifer Jacobsen (alternate), Sony Music Entertainment, representing digital content owners on peer-to-peer file sharing.

- Brian Kerrigan, U.S. Department of Education, representing the Federal Government.

These protocols also provided that, unless agreed to otherwise, consensus on all of the amendments in the proposed regulations had to be achieved for consensus to be reached on the entire NPRM. Consensus means that there must be no dissent by any member.

During the meetings, Team V reviewed and discussed drafts of proposed regulations. At the final meeting in May 2009, Team V did not reach consensus on the proposed regulations in this document.

Summary of Proposed Changes

These proposed regulations would implement general and non-Loan provisions of the HEA, as amended by the HEOA, including:

- Establishing requirements under which students may receive up to two Federal Pell Grant Scheduled Awards during a single award year (see section 401(b)(5)(A) of the HEA);

- Providing the maximum Federal Pell Grant eligibility to a student whose parent was in the armed forces and died in Iraq or Afghanistan if the student was under 24 years old or enrolled in an institution of higher education at the time the parent died (see section 401(F)(4) of the HEA);

- Establishing extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation (see section 420N(d)(2) of the HEA);

- Expanding the use of FWS funds to permit institutions to compensate students employed in projects that teach civics in school, raise awareness of government functions or resources, or increase civic participation (see section 443 of the HEA);

- Allowing institutions located in major disaster areas to make FWS payments to disaster-affected students (see section 445(d) of the HEA).

- Revising definitions and terms relating to work colleges (see section 448 of the HEA).

- Establishing new requirements for determining how proprietary institutions calculate the amount and percent of revenue derived from sources other than title IV, HEA program funds (see section 487(d) of the HEA).

- Expanding the information that institutions must make available to prospective and enrolled students to include information on: The employment and placement of students, the retention rates of first-time, full-time undergraduate students, and completion and graduation rate data that is disaggregated by gender, race, and grant or loan assistance (see section 485(a) of the HEA).

- Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).

- Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).

- Expanding the list of crimes that institutions must include in the hate crimes statistics reported to the Department (see section 485(f) of the HEA).

- Requiring institutions to include in the annual security report a statement of emergency response and evacuation procedures (see section 485(f) of the HEA).

- Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).

- Establishing requirements under which an institution must readmit servicemembers to the same academic status they had when they last attended the institution (see section 484C of the HEA).

- Providing that an institution that conducts a teach-out at a site of a closed institution may, under certain conditions, establish that site as an additional location (see sections 487(f) and 498 of the HEA).

- Amending the definition of “proprietary institution of higher education” to include institutions that provide a program leading to a baccalaureate degree in liberal arts, if the institution provided that program since January 1, 2009, and has been accredited by a regional accrediting agency since October 1, 2007, or earlier (see section 102(b)(1)(A) of the HEA).

- Providing that an institution must certify that it has plans to effectively combat unauthorized distribution of copyrighted material and will offer alternatives to illegal downloading or peer-to-peer distribution of intellectual

property (see sections 485(a)(1) and 487(a) of the HEA).

- Expanding the information that an institution must make available to prospective and enrolled students to include a description of any plans the institution has to improve its academic program (see section 485(a) of the HEA).

- Providing that the non-Federal share of student grants or work-study jobs under the LEAP Program must be State funds and that the non-Federal share no longer has to come from a direct appropriation of State funds (see section 415C(b)(10) of the HEA).

- Requiring the State program to notify students that grants are LEAP Grants that are funded by the Federal Government, the State, and for LEAP Grants to students under the new Grants for Access and Persistence (GAP) Program, other contributing partners (see section 415C(b) of the HEA).

- Establishing the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program (see sections 415B and 415E of the HEA).

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Part 600 Institutional Eligibility Under the Higher Education Act of 1965, as Amended

Definition of Baccalaureate Liberal Arts Programs Offered by Proprietary Institutions (§ 600.5)

Statute: Effective July 1, 2010, the HEOA amends the definition of *proprietary institution of higher education* in section 102(b)(1)(A) of the HEA to include an institution that provides a program leading to a baccalaureate degree in liberal arts that the institution has provided since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier. As the language in section 102(b)(1)(A)(i) of the HEA is not new, this change does not affect the eligibility of current programs or alter the method used by the Department in determining that a program of training prepares students for gainful

employment in a recognized occupation.

Current Regulations: Section 600.5(a)(5) defines a *proprietary institution of higher education* as one that provides an eligible program of training, defined in § 668.8, to prepare students for gainful employment in a recognized occupation.

Proposed Regulations: The proposed change to § 600.5(a)(5) would add to the definition of *proprietary institution of higher education*, an institution that provides a program leading to a baccalaureate degree in liberal arts that the institution has provided since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier. In addition, a new paragraph (e) would be added to § 600.5 to include a definition of a *program leading to a baccalaureate degree in liberal arts*. The definition would require that the institution's recognized regional accreditation agency or organization determine that the program is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more generally accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently designed programs, individualized programs, and unstructured studies. The generally accepted instructional categories would be:

- A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study;
- An undifferentiated program that includes instruction in the general arts or general science;
- A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy and religion; and
- Any single instructional program in liberal arts and sciences, general studies and humanities not listed above.

Reasons: The regulations are amended to reflect the changes made by the HEOA. The regulations would require that an institution's accrediting agency determine that a program is a liberal arts program as defined in this section in order to ensure that a program meets a generally accepted standard for liberal arts programs. The proposed definition of a *program leading to a baccalaureate degree in liberal arts* is from the U.S. Department of Education's National

Center for Education Statistics' (NCES) Classification of Instructional Programs (CIP), the Federal government statistical standard on instructional program classifications. Specifically, the instructional categories are from the description of CIP 24, Liberal Arts and Sciences, General Studies, and Humanities, which would ensure that a program meets a generally accepted standard for liberal arts programs. The definition excludes independently-designed programs, individualized programs, and unstructured studies as the Department believes that, to meet the statutory requirement that an institution offer a program, it must be an organized program of study that is essentially the same for all students, except that it could include some elective courses.

Institutional Requirements for Teach-Outs and Eligibility and Certification Procedures (§§ 600.2, 600.32, 668.14)

Statute: The HEOA added paragraph (f) to section 487 of the HEA to provide that, whenever the Department initiates an action to limit, suspend, or terminate (LS&T) an institution's participation in any Title IV program or initiates an emergency action against an institution, the institution must prepare a teach-out plan for submission to its accrediting agency. The teach-out plan must be prepared in accordance with section 496(c)(6) of the HEA (mistakenly cited as section 496(c)(4) in the HEA) and any applicable title IV, HEA program regulations or accrediting agency standards. A *teach-out plan* is defined as a written plan that provides for equitable treatment of students if an institution ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement.

The HEOA also added section 498(k) of the HEA to provide that a location of a closed institution is eligible as an additional location of another institution for the purpose of conducting a teach-out if the teach-out is approved by the institution's accrediting agency. The institution that conducts the teach-out under this provision is permitted to establish a permanent additional location at the closed institution without having to satisfy the requirements for additional locations in sections 102(b)(1)(E) and 102(c)(1)(C) of the HEA—*i.e.*, that a proprietary institution or a postsecondary vocational institution must have been in existence for two years to be eligible—and without assuming the liabilities of the closed institution.

One of the four new accrediting agency operating procedures added by the HEOA as section 496(c)(3) of the HEA requires accrediting agencies to approve teach-out plans submitted by institutions they accredit if the Department notifies the agency of an action against an institution in accordance with section 487(f) of the HEA, if the institution's accreditation is withdrawn, terminated or suspended, or if the institution intends to cease operations. This provision was negotiated by Team III—Accreditation and will be reflected in the NPRM developed to implement accreditation issues (Docket ID ED–2009–OPE–). Because of the overlap in these three provisions, the development of proposed regulatory language was coordinated between the two negotiating committees.

Current Regulations: Section 600.32 provides that an additional location is eligible to participate in the title IV, HEA programs if it meets the requirements for institutional eligibility in (1) § 600.4 (eligibility requirements for an institution of higher education), § 600.5 (eligibility requirements for a proprietary institution), or § 600.6 (eligibility requirements for a postsecondary vocational institution); (2) § 600.8 (treatment of a branch campus), and (3) § 600.10 (date, extent, duration, and consequences of eligibility). However, to qualify as an eligible additional location, a location is not required to have been in existence for two years unless (1) the location was a facility of another institution that has closed or ceased to provide educational programs for a reason other than a normal vacation period or a natural disaster that directly affects the institution or the institution's students; (2) the applicant institution acquired, either directly from the institution that closed or ceased to provide educational programs, or through an intermediary, the assets at the location; and (3) the institution from which the applicant institution acquired the assets of the location owes a liability for a violation of an HEA program requirement and is not making payments in accordance with an agreement to repay that liability. An additional location that must meet the two-year rule for these reasons, nevertheless, is exempt from the two-year rule if it agrees (1) to be liable for all improperly expended or unspent title IV program funds received by the institution that has closed or ceased to provide educational programs; (2) to be liable for all unpaid refunds owed to students who received title IV program funds; and (3) to abide by the

policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date.

Proposed Regulations: Section 600.2 would define a *teach-out plan* as a written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

Section 668.14 would be amended to include in the program participation agreement the requirement in section 487(f) of the HEA. In addition to requiring an institution to submit a teach-out plan to its accrediting agency whenever the Department initiates an LS&T, or an emergency action against the institution, as required by statute, proposed § 668.14(b)(31) would require an institution to submit a teach-out plan when (1) the institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution; (2) the institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program; (3) the institution intends to close a location that provides 100 percent of at least one program; or (4) the institution otherwise intends to cease operations.

Proposed § 600.32(d) would implement section 498(k) of the HEA to provide that an institution that conducts a teach-out for a closed institution whenever the Department initiates an LS&T, or an emergency action against the institution, may apply to have that site approved as an additional location, if the teach-out plan was approved by the closed institution's accrediting agency. If the Department approves the institution to add the additional location, the "two-year rule" would not apply to the additional location. In addition, the institution would not assume the liabilities of the closed institution, and the institution would not assume the cohort default rate of the closed institution, provided the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in proposed 34 CFR 668.188(b) and 34 CFR 668.207(b) (these sections address the

determination of cohort default rates for institutions that have undergone a change in status). An institution that accepts responsibility for conducting a teach-out of students under such an arrangement would still have to comply with § 600.32(c)(3), which requires the additional location to abide by the policy of the institution that has closed or ceased to provide educational programs regarding refunds of institutional charges to students in effect before the date of the acquisition of the assets of the additional location for the students who were enrolled before that date. As a condition for approval of the additional location, the Department may require that payments from the institution conducting the teach-out to the owners of the closed institution, or related parties, be used to pay any liabilities owed by the closed institution.

Reasons: The regulations are amended to reflect the changes made by the HEOA.

In proposed § 668.14(b)(31), the circumstances under which an institution would be required to submit a teach-out plan to its accrediting agency would be expanded beyond the circumstances listed in the statute to specifically address other situations where the Department believes the potential closure will put significant numbers of students at risk of being unable to complete their program, including the closure of a location that provides 100 percent of at least one program. This list of circumstances would conform with proposed changes in §§ 602.3 and 602.24 of the Team III—Accreditation NPRM (Docket ID ED–2009–OPE–) for implementing section 496(c)(3) of the HEA, which directs accrediting agencies to require institutions to submit a teach-out plan for approval upon the occurrence of certain events. As a result, the definition of a *teach-out plan* would apply to an institutional location that provides 100 percent of at least one program, and would be the same definition used in 34 CFR part 602 for the Secretary's Recognition of Accrediting Agencies.

Proposed § 600.32(d) would be consistent with statutory intent to encourage an institution to conduct a teach-out of a closed institution and our view that the cohort default rate of a closed institution could be a potential impediment that could dissuade another institution from conducting the teach-out if its default rate would be adversely affected by the closed institution's default rate. However, the proposed regulations would ensure that this provision is not used by an owner to circumvent an undesirable cohort

default rate or liabilities for one institution by having it become an additional location of another institution under the same, or related, ownership. Preserving the Department's right to require that payments from the institution conducting the teach-out to the owners of the closed institution, or related parties, be used to pay any liabilities owed by the closed institution, provides the benefit to the institution that conducts the teach-out of not assuming any liabilities owed by the closed school, while ensuring that any funds paid to the owners of the closed school are applied against any title IV program liabilities owed by that institution.

No changes are proposed to the applicability of § 600.32(c)—that the institution opening the additional location must continue to apply the refund policy for the students from the institution that has closed or ceased to provide educational programs. This obligation to protect the students by keeping the same refund policy in place continues because it is different from the pre-existing liabilities that the institution is not required to assume under this provision.

Some non-Federal negotiators felt that, in keeping with proposed 34 CFR 668.14(b)(31), proposed § 600.32(d) should be expanded to allow the exemptions from the two-year rule, the assumption of liabilities, and the assumption of the cohort default rate, to apply when an institution conducts a teach-out at an institution that closes for reasons other than those listed in section 498(k) of the HEA—*i.e.*, the initiation of a limitation, suspension, or termination of the institution, or an emergency action against the institution by the Department. The Department would limit the availability of this procedure (allowing an institution to conduct a teach-out of a closed institution without the imposition of customary restrictions to discourage institutions not subject to an LS&T, or emergency action from arranging a closure and sale of the institution) without liabilities in situations where a buyer would otherwise purchase the institution and assume the institution's liabilities under existing change of ownership rules.

Part 668 Student Assistance General Provisions

Readmission Requirements for Servicemembers (§ 668.18)

Statute: The HEOA added new section 484C to the HEA to address institutional readmission requirements for servicemembers. Section 484C of the

HEA provides that an institution of higher education may not deny readmission to a servicemember of the uniformed services for reasons relating to that service. In addition, a student who is readmitted to an institution under this section must be readmitted with the same academic status as the student had when he or she last attended the institution. An affected servicemember is any individual who is a member of, applies to be a member of, or performs, has performed, applies to perform, or has the obligation to perform, service in the uniformed services. This requirement applies to service in the uniformed services, whether voluntary or involuntary, on active duty in the Armed Forces, including service as a member of the National Guard or Reserve, for a period of more than 30 days under a call or order to active duty of more than 30 days.

Any student whose absence from an institution of higher education is necessitated by reason of service in the uniformed services is entitled to readmission if:

- The student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance written or verbal notice of such service to the appropriate official at the institution;
- The cumulative length of the absence and of all previous absences from that institution of higher education by reason of service in the uniformed services does not exceed five years; and
- Except as otherwise provided in this section, the student submits a notification of intent to reenroll in the institution.

However, no advance notice by the student is required if the giving of such notice is precluded by military necessity, such as a mission, operation, exercise, or requirement that is classified; or a pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge. In addition, any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance notice of service to the appropriate official at the institution may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the student's institution that the student performed service in the uniformed services that necessitated the student's absence from the institution.

When determining the cumulative length of the student's absence for

service, the period of service does not include any service:

- That is required, beyond five years, to complete an initial period of obligated service;
 - During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and the inability to obtain those orders was through no fault of the student; or
 - That is performed by a member of the Armed Forces (including the National Guard and Reserves) who is—
 - Ordered to or retained on active duty under section 688, 12301(a), 12301(g), 12302, 12304, or 12305 of Title 10, U.S.C., or under section 331, 332, 359, 360, 367, or 712 of Title 14, U.S.C.;
 - Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress;
 - Ordered to active duty (other than for training) in support of an operational mission for which personnel have been ordered to active duty under section 12304 of Title 10, U.S.C.;
 - Ordered to active duty in support of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or
 - Called into Federal service as a member of the National Guard under chapter 15 of Title 10, U.S.C., or section 12406 of Title 10, U.S.C.
- An affected servicemember must, upon the completion of a period of service in the uniformed services, notify the institution of his or her intent to return to the institution not later than three years after the completion of the period of service. However, a student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services must notify the institution of his or her intent to return to the institution not later than two years after the end of the period that is necessary for recovery from such illness or injury. A student who fails to apply for readmission within the required period does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.
- A student who submits an application for readmission to an institution must provide to the institution documentation to establish that:
- The student has not exceeded the specified service limitations; and
 - The student's eligibility for readmission has not been terminated.

An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

A student's eligibility for readmission to an institution under this section by reason of such student's service in the uniformed services terminates upon the occurrence of any of the following events:

- A separation of such person from the Armed Forces (including the National Guard and reserves) with a dishonorable or bad conduct discharge;
- A dismissal of such person permitted under section 1161(a) of Title 10, U.S.C.; or
- A dropping of such person from the rolls pursuant to section 1161(b) of Title 10, U.S.C.

Current Regulations: None.

Proposed Regulations:

General

Section 668.18(a) would include the general requirements of the statute that an institution may not deny readmission to a servicemember, but must readmit the servicemember with the same academic status as the student had when the student was last admitted to the institution. The proposed regulations would clarify that the requirements of this section also apply to a student who was admitted to an institution, but did not begin attendance because of service in the uniformed services. The proposed regulations would specify that the institution must promptly readmit a student, and would define "promptly readmit" as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date.

Section 668.18(a)(2)(iii) would specify that to readmit a person with the "same academic status" means that the institution admits the student:

- To the same program to which he or she was last admitted by the institution or, if that program is no longer offered, the program that is most similar, unless the student requests or agrees to admission to a different program;
- At the same enrollment status that the student last held at the institution, unless the student requests or agrees to admission at a different enrollment status;
- With the same number of credit hours or clock hours completed previously by the student, unless the student is readmitted to a different

program to which the completed credit hours or clock hours are not transferable;

- With the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had;
- If the student is readmitted to the same program, for the first academic year in which the student returns, by assessing the same institutional charges that the student was or would have been assessed for the academic year during which the student left the institution;
- If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, by assessing no more than the institutional charges that other students in the program are assessed for that academic year; and
- Waiving charges for equipment required in lieu of equipment the student paid for when the student was previously enrolled.

In the case of a student who is not prepared to resume the program at the point where he or she left off or will not be able to complete the program, § 668.18(a)(2)(iv) would require the institution to make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost. The institution would not be required to readmit the student if, after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off, or is still unable to complete the program. In addition, an institution would not be required to readmit a student if there are no reasonable efforts the institution can take to prepare the student to resume the program, or to enable the student to complete the program.

The proposed regulations would define "reasonable efforts" as actions that do not place an undue hardship on the institution. An "undue hardship" would be defined as requiring significant difficulty or expense to the institution. An institution would carry the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

Section 668.18(a)(3) would make clear that the requirements of this section apply to an institution even if that institution has undergone a change of ownership since the student ceased attendance.

Finally, § 668.18(a)(4) would make clear that the provisions of this section supersede any State law or other requirement that reduce, limit, or eliminate any right or benefit provided by this section.

Service in the Uniformed Services

Section 668.18(b) would delineate what service in the uniformed services means for purposes of this section. This section would expand upon the statutory language to clarify that service in the uniformed services includes active duty for training and full-time National Guard duty under Federal authority (i.e., not National Guard service under authority of State law). In addition, the regulations would specify that qualifying service must be for more than 30 *consecutive* days under a call or order to active duty of more than 30 *consecutive* days.

Readmission Procedures

Section 668.18(c) would list the statutory conditions under which an institution must readmit a servicemember. In addition, § 668.18(c)(2)(i) would require an institution to designate one or more offices for the purpose of receiving advance notice from students of their absence from the institution necessitated by service in the uniformed services, and notice from students of an intent to return to the institution. Section 668.18(c)(1)(i) would make clear that advance notice must be provided by the student as far in advance as is reasonable under the circumstances. However under § 668.18(c)(2)(ii) and (iii), such notice would not need to follow any particular format, nor would a student have to indicate as part of the notice whether the student intends to return to the institution. Also, the regulations would make clear that an institution may not set a brightline deadline for submission of any such notice, but must judge the timeliness of submission by the facts of a particular case. As such notice may be provided by an appropriate officer of the Armed Forces, § 668.18(c)(2)(iv) would clarify who an "appropriate officer" is. The regulations would also provide that a student's notice of intent to return may be provided orally or in writing and would not need to follow any particular format. Section 668.18(c)(1)(ii) would make clear that the cumulative length of all previous absences by an affected student from the institution would include only the time the student spends actually performing service in the uniformed services. A period of absence from the institution before or after performing service in the

uniformed services would not count against the five year limit. For example, after the individual completes a period of service in the uniformed services, he or she is provided a certain amount of time to return to the institution. The period between completing the uniformed service and returning to the institution would not count against the five-year limit.

Exceptions to Advance Notice

Section 668.18(d) would restate the statutory language for exceptions to advance notice.

Cumulative Length of Absence

Section 668.18(e) would restate the statutory types of service that are not included in the cumulative length of the student's absence, including a brief description of the types of services referenced in titles 10 and 14 of the United States Code.

Notification of Intent to Reenroll

Section 668.18(f) would restate the statutory provision providing that a student who fails to apply for readmission within the required periods does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

Documentation

Section 668.18(g) would list the documentation required by the statute that a student must submit with an application for readmission. The regulations would list several specific types of documentation that satisfy the statutory documentation requirements, making clear that the types of documentation available or necessary will vary from case to case.

Termination of Readmission Eligibility

Section 668.18(h) would list the circumstances listed in the statute under which a student's eligibility for readmission to an institution would be terminated, including a brief description of the types of circumstances referenced in title 10 of the United States Code.

Reasons: The regulations are amended to reflect the changes made by the HEOA. The statutory provisions for readmission of servicemembers to institutions of higher education were based on the provisions of the Uniformed Services Employment and Reemployment Rights Act (USERRA) (38 U.S.C. 4301–4334), which established the process for servicemembers to return to employment after serving on active duty. Therefore, in developing these

proposed regulations, the Department sought to be as consistent as possible with the regulations implementing the USERRA. The Department believes that the purpose of these provisions, as with the USERRA, is to minimize the disruption to the lives of persons performing service in the uniformed services, allowing a student to return to an institution without penalty for having left because of service in the uniformed services.

General

Because the statute refers to "readmission" of servicemembers, the Department believes that the statute was intended to apply not just to a student who began attendance at an institution and left because of service in the uniformed services, but also to a student who was admitted to an institution, but did not begin attendance because of service in the uniformed services.

In line with the goal of minimizing the disruption to the lives of persons performing service in the uniformed services and to prevent an institution from unduly delaying an individual's readmission, the proposed regulations would require an institution to promptly readmit a student, and would define "promptly readmit" as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date. If, for example, an institution must make efforts to help the student become prepared to resume the program, and such efforts would not be completed in time for the student to begin the next class, a later date of admission would be justified.

The proposed requirements in § 668.18(a)(2)(iii) for readmitting a person with the "same academic status" are consistent with USERRA regulations (20 CFR 1002.191 and 1002.192), which require an employer to employ a returning servicemember in the same position he or she left, so as to not penalize the individual for having left to serve in the uniformed services. The Department has chosen to focus only on the readmission of a servicemember by requiring that, if the student is readmitted to the same program, for the first academic year in which the student returns, the institution would have to assess the same institutional charges that the student had or would have been assessed for the academic year during which the student left the institution. However, this protection would not apply to subsequent years, when the institution could assess the institutional charges that other students in the

program are assessed for that academic year.

To address concerns voiced by non-Federal negotiators that the regulations would not allow an institution to readmit a student with a different academic status, even if the student wanted the change, the regulations would make clear that the institution may admit the student with a different academic status if the student requests or agrees to the change.

Consistent with USERRA regulations (20 CFR 1002.198) which require an employer to make reasonable efforts, if necessary, to help an employee become qualified for the reemployment position, § 668.18(a)(2)(iv) would require the institution to make reasonable efforts, if necessary, to help a returning student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost. The Department believes requiring an institution to make such an effort is in line with the goal of allowing a student to return to an institution without penalty for having left because of service in the uniformed services. To ensure that such an effort does not unduly burden the institution financially or administratively, the proposed regulations would use the USERRA regulations definitions of "reasonable efforts"—actions that do not place an undue hardship on the institution and "undue hardship"—requiring significant difficulty or expense to the institution.

In addition, as USERRA regulations (20 CFR 1002.139) provide an employer with a degree of flexibility in meeting its reemployment obligations by not requiring an employer to reemploy an individual under very limited circumstances, so would § 668.18(a)(2)(iv)(B) provide institutions with some flexibility to not readmit a student if, (1) after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off, or is still unable to complete the program; or (2) if there are no reasonable efforts the institution can take to prepare the student to resume the program, or to enable the student to complete the program. Consistent with USERRA regulations (20 CFR 1002.139), an institution would carry the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

Consistent with the Department's practice of treating an institution that has undergone a change of ownership as the same institution, § 668.18(a)(3) provides that the requirements of this section would apply to an institution even if that institution has undergone a change of ownership since the student ceased attendance.

As with USERRA regulations (20 CFR 1002.7(b)), § 668.18(a)(4) would make clear that the provisions of this section supersede any State law or other requirement that reduces, limits, or eliminates any right or benefit provided by this section. This provision would make it possible, for example, to readmit a servicemember into a class for a semester even if that class was at the maximum enrollment level set by the institution's State. The preemption only applies when it is the admission of the returning servicemember that would be prevented by the State law or other requirement. The institution is expected to take other steps to come into compliance with the State law or other requirements for future periods of enrollment. As with USERRA regulations, these regulations would not supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes an individual's right or benefit that is more beneficial than, or is in addition to, a right or benefit provided under the HEA.

Service in the Uniformed Services

Section 668.18(b) clarifies that service in the uniformed services includes active duty for training, because it is a form of active duty in the Armed Forces. Consistent with USERRA regulations (20 CFR 1002.57), service in the uniformed services would include full-time National Guard duty under Federal authority, but not National Guard service under authority of State law, which is not considered to be service in the uniformed services for purposes of these provisions. As explained in 20 CFR 1002.57 of the USERRA regulations:

The National Guard has a dual status. It is a Reserve component of the Army, or, in the case of the Air National Guard, of the Air Force. Simultaneously, it is a State military force subject to call-up by the State Governor for duty not subject to Federal control, such as emergency duty in cases of floods or riots. National Guard members may perform service under either Federal or State authority, but only Federal National Guard service is covered by USERRA.

In addition, the regulations would specify that qualifying service must be for more than 30 *consecutive* days under

a call or order to active duty of more than 30 *consecutive* days. This would exclude shorter periods of Reserve and National Guard service from being added together to trigger this provision.

Readmission Procedures

Section 668.18(c) would list the statutory conditions under which an institution must readmit a servicemember. An institution would be required to designate one or more offices for the purpose of receiving advance notice from students of their absence from the institution necessitated by service in the uniformed services, and notice from students of an intent to return to the institution to ease administrative burden for institutions and to assist students in directing their notice to the appropriate individuals.

Also, consistent with USERRA regulations (20 CFR 1002.85), to ease administrative burden for institutions, a student would have to provide notice that he or she is leaving as far in advance as is reasonable under the circumstances. However, also consistent with USERRA regulations (20 CFR 1002.85 and 1002.88), to ensure that a student's advance notice is not subject to unreasonable requirements by an institution: (1) Such notice would not need to follow any particular format; (2) an institution would have to judge the timeliness of submission by the facts of a particular case; and (3) a student would not have to indicate as part of the notice whether the student intends to return to the institution. For the same reason, the regulations would also provide that a student's notice of intent to return may be provided orally or in writing and would not need to follow any particular format (consistent with USERRA regulations section 1002.118).

Consistent with USERRA regulations (20 CFR 1002.100), § 668.18(c)(1)(ii) would make clear that the cumulative length of all previous absences by an affected student from the institution would include only the time the student spends actually performing service in the uniformed services. This means that the time a servicemember spent away from the institution either before, after, or in-between periods of service in the uniformed services does not count toward the maximum amount of time the servicemember may spend in active service before losing the protections in this provision.

Documentation

The list of specific types of documentation was included to assist students and institutions in identifying documents that satisfy the statutory documentation requirements.

Non-Title IV Revenue Requirement (90/10)

Institutional Eligibility and Sanctions (§§ 668.14(b)(16), 668.28(c), and 668.13(c))

Statute: The HEOA moved the requirement that a proprietary institution derive at least 10 percent of its revenue from sources other than title IV, HEA program funds from the institutional eligibility provisions in section 102(b) of the HEA to the general provisions in section 487(d) of the HEA. As a result, a proprietary institution that does not satisfy the 90/10 revenue requirement for a fiscal year, no longer loses its eligibility to participate in the title IV, HEA programs. Instead, as provided in section 487(d)(2) of the HEA, the institution's participation becomes provisional for two fiscal years. If the institution does not satisfy the 90/10 revenue requirement for two consecutive fiscal years, it loses its eligibility to participate in the title IV, HEA programs for at least two fiscal years.

During the two fiscal years the institution is provisionally certified because it failed to satisfy the 90/10 revenue requirement for a fiscal year, the institution's provisional certification terminates on the expiration date of its program participation agreement or the date it loses its eligibility to participate because it failed to satisfy the requirement for two consecutive fiscal years. To regain eligibility, the institution must demonstrate that it complied with all eligibility and certification requirements under section 498 of the HEA for a minimum of two fiscal years after the fiscal year it became ineligible.

Current Regulations: The regulations in 34 CFR 600.5(a)(8), (e), (f), and (g), identify the requirements for, and consequences of failing, the 90/10 revenue provision.

Proposed Regulations: In general, the proposed regulations would remove all of the 90/10 revenue provisions from 34 CFR 600.5 and relocate those provisions, as amended by the HEOA, to subpart B of part 668. Accordingly, proposed § 668.14(b)(16) would amend the program participation agreement to specify that a proprietary institution must derive at least 10 percent of its revenue for each fiscal year from sources other than title IV, HEA program funds. If an institution does not satisfy the 90/10 requirement, the proposed regulations in § 668.28(c) would incorporate the statutory consequences and require the institution to notify the Secretary no later than 45 days after the end of its

fiscal year that it failed the 90/10 requirement. Also, and in keeping with the provisional certification requirement in the statute, § 668.13(c) would be amended by adding proposed paragraph (1)(ii) to provide that a proprietary institution's certification automatically becomes provisional if it fails the 90/10 requirement for any fiscal year.

Reasons: The proposed regulations reflect the statutory requirements. The provision under which an institution would notify the Department that it failed the 90/10 requirement no later than 45 after its fiscal year, parallels, but would shorten, the current 90-day timeframe in 34 CFR 600.5(f). An institution at risk of failing the 90/10 requirement is expected to monitor its revenue sources and amounts carefully throughout the year, and is expected to know if it failed shortly after the end of its fiscal year. Consequently, we believe that 45 days provides ample time for the institution to confirm on-going assessments of its compliance with this requirement.

Calculating the Revenue Percentage (§ 668.28(a))

Statute: Section 487(d) of the HEA prescribes the requirements that proprietary institutions must follow in calculating their 90/10 revenue percentage. Under these requirements, an institution must—

(1) Use the cash basis of accounting, except for certain loans made by the institution;

(2) Consider as revenue only those funds generated by the institution from:

- Tuition, fees, and other institutional charges for students enrolled in eligible programs.
- Activities conducted by the institution that are necessary for the education and training of the institution's students, if those activities are conducted on campus or at a facility under the control of the institution, are performed under the supervision of a member of the institution's faculty, and are required to be performed by all students in a specific educational program at the institution.

- Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible for title IV, HEA program funds, if the program is approved or licensed by the appropriate State agency, is accredited by an accrediting agency recognized by the Department, or provides an industry-recognized credential or certification;

(3) Presume that any title IV, HEA program funds are disbursed or delivered to or on behalf of a student

will be used to pay the student's tuition, fees, or other institutional charges, regardless of whether the institution credits those funds to the student's account or pays those funds directly to the student, except to the extent that the student's tuition, fees, or other institutional charges are satisfied by:

- Grant funds provided by non-Federal public agencies or private sources independent of the institution;
- Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who are in need of that training;

- Funds used by a student from savings plans for educational expenses established by or on behalf of the student and which qualify for special tax treatment under the Internal Revenue Code of 1986; or

- Institutional scholarships.

(4) Include institutional aid as revenue to the school only as follows:

- For loans made by the institution on or after July 1, 2008 and prior to July 1, 2012, the net present value (NPV) of those loans made by the institution during the applicable institutional fiscal year accounted for on an accrual basis and estimated in accordance with generally accepted accounting principles and related standards and guidance, if the loans are bona fide as evidenced by enforceable promissory notes; are issued at intervals related to the institution's enrollment periods; and are subject to regular loan repayments and collections.

- For loans made by the institution on or after July 1, 2012, only the amount of loan repayments received during the applicable institutional fiscal year, excluding repayments on loans made and accounted for which the NPV was used.

- For scholarships provided by the institution, only those scholarships provided by the institution in the form of monetary aid or tuition discounts based upon the academic achievements or financial need of students, disbursed during each fiscal year from an established restricted account, and only to the extent that funds in that account represent designated funds from an outside source or from income earned on those funds.

(5) For each student who receives a loan on or after July 1, 2008, and prior to July 1, 2011, that is authorized under section 428H of the HEA or that is a Federal Direct Unsubsidized Stafford Loan, treat as revenue received by the institution from sources other than funds received under this title, the amount by which the disbursement of

the loan received by the institution exceeds the limit on such loan in effect on the day before the date of enactment of the Ensuring Continued Access to Student Loans Act (ECASLA) of 2008; and

(6) Exclude from revenues—

- The amount of funds the institution received under part C (Federal Work Study), unless the institution used those funds to pay a student's institutional charges.

- The amount of funds the institution received under subpart 4 of part A (LEAP, SLEAP, or GAP).

- The amount of funds provided by the institution as matching funds for a title IV, HEA program.

- The amount of title IV, HEA program funds provided by the institution that are required to be refunded or returned.

- The amount charged for books, supplies, and equipment, unless the institution includes that amount as tuition, fees, or other institutional charges.

Current regulations: The regulations in 34 CFR 600.5 address many, but not all, of the statutory requirements for calculating the 90/10 revenue percentage. However, as discussed previously, the regulations in this section would be removed.

Section 668.23(d)(4) requires a proprietary institution to report its 90/10 ratio in a footnote to its audited financial statements.

Proposed regulations: Proposed § 668.28(a) incorporates the statutory requirements.

We propose to implement the statutory provision relating to counting revenue from non-title IV eligible programs by providing that these programs may prepare students to take an examination for an industry-recognized credential or certificate issued by an independent third-party, provide training needed for students to maintain State licensing requirements, or provide additional training for practitioners.

An institution would continue to report the revenue percentages in a footnote to its audited financial statements, but the revisions in proposed § 668.23(d)(4) would require the institution to identify in that footnote the non-Federal and Federal revenues by category.

With regard to institutional loans for which an NPV would be calculated, the proposed regulations establish that institutional loans would have to be credited in-full to the student's account, be evidenced by standalone repayment agreements between students and the institution, and be separate from

enrollment contracts signed by students. Loans made to students by third parties but subsequently acquired by the institution would not meet this definition of institutional loans, and could not be included in either of the NPV calculations. Moreover, all payments from the institution to acquire the loans would be counted against any non-Federal revenues from the loan proceeds the institution received.

For the purpose of counting revenue from loan funds in excess of the loan limits in effect prior to ECASLA, we propose that institutions count the excess amount on a payment-period basis.

Finally, in proposed appendix C to subpart B of part 668 we illustrate how an institution calculates its 90/10 revenue percentage.

Reasons: To a large extent, the proposed regulations adopt the statutory provisions which, also to a large extent, reflect current regulations and practice. However, we are incorporating suggestions from some of the non-Federal negotiators in implementing three of the new provisions for non-Federal sources of revenue that may be included in the 90/10 calculation. First, we would identify the types of non-title IV eligible programs from which an institution could count, as revenue, the funds paid for students taking those programs. We believe this eliminates much of the ambiguity regarding whether the revenue from a non-title IV eligible program offered by an institution could be counted for 90/10 purposes. Second, for purposes of the 90/10 calculation, we are identifying the elements that will distinguish an institutional loan from other types of student account receivables. Third, the regulations would allocate the excess loan funds that are treated as non-Federal revenue to each payment period to simplify the 90/10 calculation. This will minimize some complexities that may result if the excess funds were only counted after all of the pre-ECASLA loan funds were provided to a student, particularly if the disbursements for a loan are received by an institution in two different fiscal years.

An institution would continue to report its 90/10 ratio in a footnote included with the institution's annual audited financial statements. Given the additional revenues that may be counted as non-Federal funds in this calculation, and that Federal funds may be treated as non-Federal funds (i.e., loan amounts in excess of the pre-ECASLA limits), we believe it is necessary for the institution to report in that footnote the amounts of the revenues, by category, derived from

Federal and non-Federal funds that are included in its 90/10 calculation. The certified public accountant that prepares the institution's audited financial statements will be required to review that information and test the institution's calculation. On a case by case basis, Department staff will continue to review the accountant's work papers when more information is needed to determine if the calculation is correct.

Some of the non-Federal negotiators suggested that the regulations permit tuition discounts given to students be counted for 90/10 purposes, since tuition discounts are mentioned in the HEA, along with monetary aid provided to students, as types of scholarships provided by a proprietary institution. The HEA also requires that these scholarships be disbursed to a student's account from an established restricted account at the institution holding funds from an outside source, or income earned on those funds. The proposed regulations implement the statutory provision that institutions may pay scholarships with tuition discounts that are credited from such restricted accounts.

Net Present Value (NPV) (§ 668.28(c))

Statute: For loans an institution makes to students on or after July 1, 2008 and prior to July 1, 2012, section 497(d)(1)(D)(i) of the HEA requires an institution to count as revenue the NPV of the loans it makes during a fiscal year.

Current regulations: There are no current regulations regarding NPV, however 34 CFR 600.5(d)(3)(i) allows an institution to count as revenue the amount of loan repayments it receives on institutional loans during its fiscal year.

Proposed regulations: In proposed § 668.28(b), the Department defines the NPV as the sum of the discounted cash flows $R^t/(1+i)^t$. The variable "i" is the discount rate, which would, for 90/10 purposes, be the most recent annual inflation rate. The variable "t" is the time or period of the cash flow, in years, starting from the time the loan entered repayment. The variable "R" is the net cash flow at time or period t.

If the institution's loans made during the fiscal year have substantially the same repayment period, the proposed regulations provide that an institution may use that repayment period for those loans to set the range of values of variable "t" in the NPV formula. However, if an institution's loans have different repayment periods, the institution would group the loans by repayment period and use the

repayment period for each group to set the range of values for variable "t". For each group of loans, as applicable, the institution would multiply the total annual payments due on the loans by the institution's collection rate (the total amount of payments collected divided by the total amount of payments due). The resulting amount is the cash flow used for variable "R" in each period "t" for each group of loans for which an NPV is calculated. Proposed appendix C to subpart B of part 668 illustrates this NPV calculation.

As a simpler alternative to performing the NPV calculation, the proposed regulations allow an institution the option to use 50 percent of the total amount of loans it made during the fiscal year as the NPV. However, if the institution chooses to use this alternative, it may not sell any of the associated loans until they have been in repayment for at least two years.

Reasons: The Department would implement the statutory requirement to establish the net present value of an institution's loans by adopting the formula— $NPV = \text{sum of the discounted cash flows } R^t/(1+i)^t$. However, this formula is generally intended for, and used primarily, in making investment decisions. Nevertheless, the discount rate "i" is the rate of return that could be earned on an investment in the financial markets with similar risk, or more generally, the rate of return sought or expected by the investor. Translating this for 90/10 purposes, the formula determines the NPV of institutional loans by taking into consideration the discounted value caused by inflation.

The proposed regulations define the expected cash flows represented by variable "R" to be the annual payments due on the loans (i.e., the scheduled payments) multiplied by the institution's loan collection rate (the total amount of payments collected on loans for a fiscal year divided by the total amount of payments due on those loans for that year). In this way, the expected cash flows are adjusted to take into account loans that are not collected or loan payments that are not collected timely. The institution's loan collection rate should be based on the institution's own loan collection history, and may be a prior annual rate or historical rate covering several years. We seek public comment on other ways that an institution may establish a loan collections rate. In any case, the institution would need to document that rate and the institution's auditor would examine that information as a part of the institution's annual financial statement audit.

With regard to the alternative provision that allows an institution to use 50 percent of the total amount of loans it made during the fiscal year as the NPV, we propose this option as an administrative convenience for institutions that either prefer a simpler method to establish the NPV or who do not need the additional non-Federal revenues that might be counted if the formula were used. This option provides a conservative, simple calculation for the NPV that is intended to be a fair compromise in exchange for choosing not to perform the NPV calculations. However, if the institution chooses this option, it may not sell the loans associated with the 50 percent calculation until those loans have been in repayment for two years. As provided in section 487(d)(1)(D)(i)(III) of the HEA, institutional loans are subject to regular loan repayment and collections. The regular NPV formula would use the institution's own collection rate, but the alternative formula would not. To make sure that alternative formula institutional loans are legitimate, the institution may not sell them until they have been in repayment for two years. This will permit the Department, or another oversight entity, to determine whether these loans were subject to regular loan repayment and collection as required by the statute. Moreover, we wish to avoid an outcome where an institution would sell the loans in the short term for less than the 50 percent amount it claimed for 90/10 purposes.

Institutional Plans for Improving the Academic Program (§ 668.43(a))

Statute: As part of the required information on its academic program that an institution must make available to prospective and enrolled students under section 485(a) of the HEA, the HEOA adds the requirement that an institution make available any plans the institution has for improving that academic program.

Current Regulations: Section 668.43(a)(5) requires an institution to make readily available to enrolled and prospective students information on the academic program of the institution, including (1) the current degree programs and other educational and training programs; (2) the instructional, laboratory, and other physical facilities that relate to the academic program; and (3) the institution's faculty and other instructional personnel.

Proposed Regulations: Section 668.43(a)(5) would be amended to add to the information on the academic program of the institution that an institution must make readily available to enrolled and prospective students

any plans by the institution for improving the academic program of the institution. An institution would be allowed to determine what a "plan" is, including when a plan becomes a plan.

Reasons: The regulations are amended to reflect the changes made by the HEOA.

Peer-to-Peer File Sharing and Copyrighted Material (§§ 668.14(b) and 668.43(a))

Statute: The HEOA added a new requirement to section 487 of the HEA (Program Participation Agreement) under which an institution must certify that it has developed plans to effectively combat the unauthorized distribution of copyrighted material (including through the use of a variety of technology-based deterrents) and will, to the extent practicable, offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property, as determined by the institution in consultation with the chief technology officer or other designated officer of the institution.

In addition, as part of the required information an institution must make available to prospective and enrolled students, the HEOA added new subparagraph (P) to section 485(a)(1) of the HEA to require a description of institutional policies and sanctions related to the unauthorized distribution of copyrighted material. This description includes (1) an annual disclosure that explicitly informs students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject the students to civil and criminal liabilities; (2) a summary of the penalties for violation of Federal copyright laws; and (3) the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in unauthorized distribution of copyrighted materials using the institution's information technology system.

Current Regulations: Section 668.41(c) requires an institution to provide to enrolled students an annual notice containing a list and brief description of the consumer information it must disclose and the procedures for obtaining this consumer information. The term *notice* is defined in § 668.41(a) as a means of notification of the availability of information an institution is required to disclose on a one-to-one basis through a direct individual notice to each enrolled student. This notice must be made through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service,

campus mail or electronic mail. Posting on Internet or Intranet Web sites does not constitute notice. If the institution discloses the consumer information listed in § 668.41(c) by posting the information on a Web site, it must include in the notice the exact electronic address at which the information is posted, and a statement that the institution will provide a paper copy of the information on request.

Section 668.41(a) defines a *prospective student* as an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Proposed Regulations:

Program Participation Agreement (PPA)

Section 668.14(b)(30)(i) would implement section 487(a)(29)(A) of the HEA to require an institution, as a condition of participation in a title IV, HEA program, to agree that it has developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network without unduly interfering with the educational and research use of the network.

An institution would have to include in its plan:

- The use of one or more technology-based deterrents;
- Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material. The written plan would include the information contained in proposed § 668.43(a)(10). These mechanisms could include any additional information and approaches determined by the institution to contribute to the effectiveness of the plan, such as including pertinent information in student handbooks, honor codes, and codes of conduct in addition to e-mail and/or paper disclosures.

- Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and

- Procedures for periodically reviewing the effectiveness of the plans to combat the unauthorized distribution of copyrighted materials by users of the institution's network using relevant assessment criteria. It would be left to each institution to determine what relevant assessment criteria are.

The regulations would make clear that no particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance will

be, including those that prohibit content monitoring.

Proposed § 668.14(b)(30)(ii) would implement section 487(a)(29)(B) of the HEA by requiring that an institution, in consultation with the chief technology officer or other designated officer of the institution, to the extent practicable, offer legal alternatives to illegal downloading or otherwise acquiring copyrighted material, as determined by the institution. The proposed regulations would also require that institutions (1) be required to periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material and (2) make the results of the review available to their students through a Web site or other means.

Consumer Information

Proposed § 668.43(a)(10) would implement section 485(a)(1)(P) of the HEA. Information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material would be included in the list of institutional information provided upon request to prospective and enrolled students. This information would be required to (1) explicitly inform its students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject a student to civil and criminal liabilities; (2) include a summary of the penalties for violation of Federal copyright laws; and (3) describe the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system. The Department will work with representatives of copyright holders and institutions to develop a summary of the civil and criminal penalties for violation of Federal copyright laws to include as part of the *Federal Student Aid Handbook* that an institution may use to meet this requirement.

As current § 668.41(c) requires an institution to provide to enrolled students an annual notice containing a list and brief description of the consumer information it must disclose and the procedures for obtaining this consumer information, an institution would be required to add to this list the fact that it must make readily available information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material. Consistent with the current definition of *notice* in

§ 668.41(a), an institution would be required to provide this annual notice on a one-to-one basis through a direct individual notice to each enrolled student. This notice must be made through an appropriate mailing or publication, including direct mailing through the U.S. Postal Service, campus mail or electronic mail. Posting on Internet or Intranet Web sites does not constitute notice. If the institution discloses the consumer information by posting the information on a Web site, it must include in the notice the exact electronic address at which the information is posted, and a statement that the institution will provide a paper copy of the information on request.

The current definition of *prospective student* in § 668.41(a) would be used—i.e., an individual who has contacted an eligible institution requesting information concerning admission to that institution.

Reasons: The regulations are amended to reflect the changes made by the HEOA.

These proposed regulations reflect the work of a subcommittee of representatives of institutions, digital content owners, and Department staff that was formed by the larger committee to address copyright issues. The members of the subcommittee were able to successfully reconcile vastly disparate viewpoints on several contentious parts of the statute to develop proposed regulatory language that was then presented to, and tentatively agreed upon by, the full committee. The Department has chosen to preserve the compromises made by all sides on this issue by including the proposed regulatory language on which tentative agreement was reached. The Department believes that the proposed regulations provide enough specificity to emphasize that institutions must take seriously their role in combating unauthorized distribution of copyrighted materials by users of their network, while providing enough flexibility to institutions in how they combat any unauthorized distribution to acknowledge the differences among institutions and their networks, as well as variances in the scope of the problem of unauthorized distribution of copyrighted material.

Program Participation Agreement

The Department believes the intent of the statute was to require institutions to actively combat the unauthorized distribution of copyrighted material. Accordingly, § 668.14(b)(30)(i) would require an institution to agree as part of its program participation agreement that it not only has developed a plan to do

so, but has also implemented that plan. In recognition that there must be a balance between network security and the functioning of a network for its intended use, § 668.14(b)(30)(i) would also make clear that an institution is not required to take measures to effectively combat the unauthorized distribution of copyrighted material that would unduly interfere with the educational and research use of the network. The Department believes that all institutions can achieve this balance, given the flexibility provided by the proposed regulations allowing individual institutions to determine how to best effectively combat such unauthorized distribution. Institutions should not view this provision as a justification for not effectively combating the unauthorized distribution of copyrighted material. Although there was some discussion of requiring an institution to effectively combat the unauthorized distribution of copyrighted material by only student users of the institution's network, the regulatory language on which tentative agreement was reached would apply the requirement more broadly to "users." This approach ensures that institutions will be more likely to deter and prevent downloads of copyrighted material by employees and members of the public that may use computers at a school library, for example, and also allow them to identify illegal downloads being made by students who are not accessing the computer systems using their student accounts. The Department believes that this approach meets the intent of the statute that institutions secure their networks from misuse by individuals who are given access to the networks.

In recognition of the diversity among institutions and how technology is continuously evolving, § 668.14(b)(30)(i)(A) would leave it up to an institution's discretion to determine how many and what type of technology-based deterrents it uses as a part of its plan—although every institution must employ at least one. The Statement of Managers in the Conference Report for the HEOA discusses this issue on pages 547–549 (H. R. Conf. Rep. No. 110–803, at 547–549 (2008)), and provides context and clarification to this requirement as follows:

Experience shows that a technology-based deterrent can be an effective element of an overall solution to combat copyright infringement, when used in combination with other internal and external solutions to educate users and enforce institutional policies.

Effective technology-based deterrents are currently available to institutions of higher education through a number of vendors. These approaches may provide an institution with the ability to choose which one best meets its needs, depending on that institution's own unique characteristics, such as cost and scale. These include bandwidth shaping, traffic monitoring to identify the largest bandwidth users, a vigorous program of accepting and responding to Digital Millennium Copyright Act (DMCA) notices, and a variety of commercial products designed to reduce or block illegal file sharing.

Rapid advances in information technology mean that new products and techniques are continually emerging. Technologies that are promising today may be obsolete a year from now and new products that are not even on the drawing board may, at some point in the not too distant future, prove highly effective. The Conferees intend that this Section be interpreted to be technology neutral and not imply that any particular technology measures are favored or required for inclusion in an institution's plans. The Conferees intend for each institution to retain the authority to determine what its particular plans for compliance with this Section will be, including those that prohibit content monitoring. The Conferees recognize that there is a broad range of possibilities that exist for institutions to consider in developing plans for purposes of complying with this Section.

The Department believes that some institutions may be able to effectively combat the unauthorized distribution of copyrighted material using only one of the four types of technology-based deterrents (bandwidth shaping, traffic monitoring, accepting and responding to DMCA notices, or a commercial product designed to reduce or block illegal file sharing) while others may need to employ a combination of such deterrents.

The additional proposed components of an effective plan in § 668.14(b)(30)(i)(B) and (C) reflect general agreement by the committee that a plan to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network should include an educational component and a description of the institution's procedures for handling the unauthorized distribution of copyrighted material to provide a deterrent by ensuring that users are made aware that the unauthorized distribution of copyrighted material is illegal, what actions constitute illegal distribution of copyrighted material, and the potential penalties for the unauthorized distribution of copyrighted materials.

The final component of the plan, in proposed § 668.14(b)(30)(i)(D), would require an institution to periodically

review its plan to evaluate whether it is working. One of the most controversial aspects of the proposed regulations was the evaluation of whether a plan was effectively combating the unauthorized distribution of copyrighted material. There was extensive discussion over how a plan should be reviewed to determine its effectiveness, and how much discretion institutions should be given in this area. Ultimately, tentative agreement was reached on a provision requiring an institution to periodically review its plan using relevant assessment criteria, permitting an institution discretion to determine the most appropriate criteria. As the specifics of a plan will be determined by an institution, the Department believes that the institution is in the best position to determine the appropriate criteria to assess its plan. In some cases, appropriate assessment criteria might be process-based, so long as the institution's information system information does not contradict such a determination. Such process-based criteria might look at whether the institution is following best practices, as laid out in guidance worked out between copyright owners and institutions or as developed by similarly situated institutions that have devised effective methods to combat the unauthorized distribution of copyrighted material. In other cases, assessment criteria might be outcome-based. The criteria might look at whether there are reliable indications that a particular institution's plans are effective in combating the unauthorized distribution of copyrighted material. Among such indications may be "before and after" comparisons of bandwidth used for peer-to-peer applications, low recidivism rates, and reductions (either in absolute or in relative numbers) in the number of legitimate electronic infringement notices received from rights holders. The institution is expected to use the assessment criteria it determines are relevant to evaluate how effective its plans are in combating the unauthorized distribution of copyrighted materials by users of the institution's networks.

In addition to reflecting the statute requiring that institutions, to the extent practicable, offer legal alternatives to illegal downloading or otherwise acquiring copyrighted material, proposed § 668.14(b)(30)(ii) reflects general agreement that institutions should periodically review the legal alternatives, and make available the results of the review to its students through a Web site or other means, as such legal alternatives are likely to

change over time. Based on the discussions of the subcommittee, the Department anticipates that individual institutions, national associations, and commercial entities will develop and maintain up-to-date lists that may be referenced for compliance with this provision.

Consumer Information

For consistency, § 668.43(a)(10) would implement the consumer information portion of the statute within the existing framework and using the definitions found in current regulations. The committee discussed whether the statutorily required annual disclosure should be a one-to-one notice provided directly to each student by the institution. However, as the statute requires that most institutional information in this section of the HEA instead be made readily available to prospective and enrolled students, the information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material would be handled in the same manner (i.e., included in the list of institutional information that an institution must make available pursuant to § 668.43). The Department believes that the required disclosure of institutional policies and sanctions related to the unauthorized distribution of copyrighted materials can be met without imposing the burden of a one-to-one notification on institutions.

There was some discussion by the committee of extending the statutory provision to require an institution to disclose the required information to employees of the institution in addition to students. As the statute does not require disclosure of this information to employees, this would not be mandated in the regulations. The Department believes that employees of an institution are more likely to be aware that unauthorized distribution of copyrighted material is illegal and does not believe that the benefit of such disclosure would justify the potential added burden to the institution. However, we encourage institutions to make such information available to employees and the general public if they believe it will be beneficial.

Consumer Information (§§ 668.41 and 668.45)

Statute: Section 485(a) of the HEA lists the types of information that institutions are required to make available to prospective and enrolled students. Section 488 of the HEOA expands the list of consumer information requirements in section 485(a)(1) of the HEA, and from that

expanded list, Team V discussed a number of the requirements, including the following:

- The placement and types of employment obtained by graduates of the institution's degree or certificate programs;
- The types of graduate and professional education in which graduates of the institution's four-year degree programs enrolled; and
- The retention rates of the certificate or degree seeking, first-time, full-time, undergraduate students entering the institution.

Note that the information required by section 485(a)(1) of the HEA addressing "institutional policies and sanctions that relate to copyright infringements" and "the fire safety report" (that is prepared by the institution pursuant to section 485(i) of the HEA) is discussed elsewhere in this preamble.

Section 488 of the HEOA also amends the calculation procedures for completion and graduation rates in section 485(a)(4) of the HEA that address situations in which students leave school to serve in the Armed Forces, on official church missions, or with a recognized foreign aid service of the Federal Government. Section 488 of the HEOA also adds section 485(a)(7) to the HEA, which directs an institution to disaggregate its completion and graduation rate information by gender, by each major racial and ethnic subgroup, and by recipients of several types of Federal title IV aid—if the number of students in each such subgroup or with each such status is sufficient to yield statistically reliable information and reporting this information will not reveal personally identifiable information about an individual student.

Current Regulations: Section 668.41 lists the types of information that an institution must make available to enrolled and prospective students (and in some cases, employees, prospective employees, prospective student-athletes, the public, and others). This information includes:

- Financial assistance available to students;
- The institution's completion and graduation rate;
- An annual security report (including institutional security policies and crime statistics that are described in § 668.46);
- The completion and graduation rates for student-athletes;
- Athletic program participation rates and financial support data; and
- Institutional information (including the cost to attend the institution, its academic programs and faculty, etc.).

Section 668.45 specifies how an institution must prepare the annual completion or graduation rate for its certificate- or degree-seeking, full-time, undergraduate students. It also addresses how an institution must prepare a transfer-out rate if the institution's mission includes providing substantial preparation for students to enroll in another institution. An institution must make its completion or graduation rate, and if applicable, its transfer-out rate available by July 1 following the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation has elapsed for the students on which the institution bases its calculations.

Proposed Regulations: In proposed § 668.41(d), we would add retention rate information, placement rate information, and information on the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, to the types of information that an institution must provide to its enrolled and prospective students. When reporting its retention rate, proposed § 668.41(d) would require an institution to disclose the institution's retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). We have adopted IPEDS' definition of "retention rate" in proposed § 668.41(a) for this purpose. For its placement information, the institution may use various sources of information (such as State data systems, surveys, or other relevant sources). However, if it calculates an actual placement rate, it must disclose that rate. For the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, the institution also may use various sources of information (such as State data systems, surveys, or other relevant sources). For both placement information and the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, the institution would have to identify the source of the information it discloses, as well as the time frames and methodology associated with that information.

In addressing the requirement for an institution to make certain information available to students or prospective students (and sometimes the public), we have removed the words "on request" in proposed § 668.41(d) and (g)(1)(i). Similar words have been deleted from proposed § 668.43(a) and (b).

Under proposed § 668.45, an institution's completion and graduation

rate information must be disaggregated by gender, by each major racial and ethnic subgroup, and by whether or not the institution's students received certain types of Federal student aid. The disaggregation by receipt of aid is categorized by whether students were—

- Recipients of a Federal Pell Grant;
- Recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan); and
- Recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford loan).

The institution would report its completion and graduation rate information in a disaggregated manner only if the number of students in each category is sufficient to yield statistically reliable information, and doing so would not reveal personally identifiable information about an individual student. Otherwise, the institution would note that it enrolled too few students in the affected category to disclose the information with confidence and confidentiality.

In calculating its completion and graduation rate, an institution normally counts students as completing or graduating if they have completed or graduated by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from the program has elapsed. However, as proposed, if 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution left school to serve in the Armed Forces, to serve on official church missions, or to serve with a foreign aid service of the Federal Government (such as the Peace Corps), then the institution may recalculate the completion or graduation rate of those students by adding to the 150 percent time frame they normally have to complete or graduate, the time period the students were not enrolled due to their service in one of these specified categories.

Reasons: The proposed changes in §§ 668.41 and 668.45 would implement statutory changes to section 485 of the HEA made by section 488 of the HEOA. As specified in § 668.41(d), institutions are allowed to use various sources to compile information on placements and on the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll. A number of the non-Federal negotiators noted that this latitude to compile information from various sources should not be compromised or otherwise qualified by

requiring institutions to disclose methodologies used in compiling the data. However, because the information can come from any number of sources and may not be comparable to similar-looking information at another institution, the Department believes it is important that the institution disclose the source of the information, as well as the time frames and methodology associated with it, when the institution discloses that information to its enrolled and prospective students. This will allow the student and prospective student recipients of the information to make more informed decisions regarding their educational choices.

Since the statute is silent about requiring an institution to calculate an actual placement rate, or to disseminate that rate if it calculates one, a number of non-Federal negotiators argued that the regulations should remain silent in that regard. However, the Department believes that disclosing placement rate information would be beneficial to students and prospective students. If the institution makes available placement rates that it has, students and especially prospective students will be able to make more informed decisions about enrollment in various programs at the institution. Therefore, when a placement rate is voluntarily calculated by the institution, proposed § 668.41(d) would require the institution to disclose that rate along with other placement information.

The words “on request” (or “upon request”) were removed from §§ 668.41(d), 668.41(g)(1)(i), and 668.43(a) and (b) because the Department believes that they do not reflect how institutions currently operate in terms of making various types of information available to their students, prospective students, and sometimes the public. While it is true that an individual may not receive information unless he or she asks about it, institutions, in essence, are considered to “make their information available” by having it on a Web site or in printed material without regard to whether any one individual requests it or not. When an individual inquires about the information in question, the institution would direct him or her to the appropriate source.

The requirement in proposed § 668.45 for an institution to disaggregate its completion and graduation rate information by gender, by each major racial and ethnic subgroup, and by receipt or nonreceipt of certain types of Federal student aid is from section 485 of the HEA. All of the negotiators agreed that the Department should use the IPEDS racial and ethnic categories for

this purpose, but several of them raised the issue of how institutions should disaggregate the information by receipt or nonreceipt of student aid. For example, should a student be considered to have received aid if the student received it at any time during his enrollment, or only during the student's first year, or for some other period of time? The Department and the non-Federal negotiators ultimately agreed that the question of receipt of aid for this determination should be based on whether the student received the aid during the time period when the student entered the institution that is associated with the cohort of students the student is a part of for purposes of the institution's calculation of completion or graduation, retention, and transfer out rates. For institutions with a predominate number of programs based on semesters, trimesters, or quarters, this would be the fall term of the year the student's cohort of certificate- or degree-seeking, first-time, full-time undergraduate students first entered the institution. For other institutions, this would be the period between September 1 of one year and August 31 of the following year when the student's cohort of certificate- or degree-seeking, first-time, full-time undergraduate students first entered the institution.

It is possible that an institution could have a significant number of its students interrupt their education to serve in the Armed Forces, on church missions, or with a foreign aid service of the Federal Government (e.g., the Peace Corps). Were that to occur, the normal calculation of the institution's completion or graduation rate would result in a misleadingly smaller rate. Thus, consistent with section 485 of the HEA, when 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution leave school to serve in one of the ways listed in § 668.45(d)(1)(i) through (iii), the institution may recalculate its completion or graduation rate to take that fact into consideration. That is, when the institution calculates its completion or graduation rate, it may add the time period the students were not enrolled due to their service time to the 150 percent time frame that students normally have to complete or graduate.

Campus Safety Provisions

Hate Crime Reporting (§ 668.46(c)(3))

Statute: Section 488(e)(1)(c) of the HEOA amended section 485(f) of the HEA to expand the list of hate crimes that institutions must report to the Department to include larceny-theft, simple assault, intimidation, and

destruction, damage, or vandalism of property.

Current Regulations: Section 668.46(c)(3) of the Department's regulations currently requires institutions to report as hate crimes the occurrence of criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson, and any other crime involving bodily injury reported to local police agencies or a campus security authority if there is manifest evidence that the victim was intentionally selected on the basis of certain characteristics.

Proposed Regulations: We propose to revise § 668.46(c)(3) to add the crimes of “larceny-theft,” “simple assault,” “intimidation,” and “destruction/damage/vandalism of property” to the crimes that must be reported in hate crime statistics. Additionally, we would update the definitions of the terms “Weapons: carrying, possessing, etc.,” “Drug abuse violations,” and “Liquor law violations” in appendix A to subpart D of 34 CFR part 668, which are excerpted from the Federal Bureau of Investigation's Uniform Crime Reporting Program, to reflect changes made by the FBI.

Reasons: The proposed regulations would implement the statutory changes made by the HEOA by using the FBI's Hate Crime Data Collection Guidelines in the Uniform Crime Reporting Handbook (available at <http://www.fbi.gov/ucr/hatecrime.pdf>) to define the hate crimes to be reported.

Definition of Test (§ 668.46(a))

Statute: Section 488(e)(1)(D) of the HEOA amended section 485(f) of the HEA to require institutions to include a statement of policy regarding their emergency response and evacuation procedures in the annual security report. As part of this policy statement an institution must describe how it will test its emergency response and evacuation procedures on an annual basis. *Current Regulations:* Section 668.46(a) contains definitions that apply to the requirements for institutional security policies and the reporting of crime statistics.

Proposed Regulation: Under proposed § 668.46(a), we would define *test* for purposes of the emergency response and evacuation procedures as “regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.”

Reasons: This definition would clarify the meaning of *test* for the purposes of complying with the statutory requirement that an institution test its emergency response and evacuation

procedures. Following a recommendation from some of the non-Federal negotiators, the definition of the term was drawn from the Emergency Management Accreditation Program (EMAP) Standard, which was designed to serve as a set of standards defining a quality emergency management program and was collaboratively developed by numerous organizations involved in emergency management and response.

Annual Security Report—Emergency Response and Evacuation Procedures (§ 668.46(b))

Statute: Section 485(f) of the HEA outlines the elements that must be included in an institution's annual security report. Section 488(e)(1)(D) of the HEOA added to section 485(f) of the HEA a requirement that an institution must include a statement of policy regarding emergency response and evacuation procedures in its annual security report. This statement must describe how the institution will immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, unless the notification will compromise efforts to contain the emergency.

Current Regulations: Section 668.46(b) delineates the elements that must be included in an institution's annual security report.

Proposed Regulations: Proposed § 668.46(b)(13) would require institutions to include a statement of policy regarding their emergency response and evacuation procedures in the annual security report. Institutions must satisfy this requirement beginning with the annual security report distributed by October 1, 2010.

Reasons: These new provisions implement the new statutory requirement. We would require this statement of policy for the October 1, 2010 report because it is the first report due after these regulations would go into effect. As institutions are expected to make a good faith effort to comply with the statute in the absence of regulations, institutions should be gathering this information in preparation for the 2010 report.

Timely Warning and Emergency Notification (§ 668.46(e))

Statute: Section 485(f)(3) of the HEA requires institutions to make timely warnings to the campus community on crimes considered to be a threat to students and employees that are reported to campus security or local police agencies. Section 488(e)(1)(D) of

the HEOA added section 485(f)(1)(J) to the HEA to require institutions to have a policy for emergency notification of the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, unless the notification will compromise efforts to contain the emergency.

Current Regulations: Section 668.46(e) describes the situations in which an institution must send a timely warning to the campus community to report on crimes that are considered by the institution to represent a threat to students and employees.

Proposed Regulations: Proposed § 668.46(e)(3) would clarify the difference between the existing timely warning requirement and the new requirement for an emergency notification policy. While a timely warning must be issued in response to crimes specified in § 668.46(c)(1) and (3), an emergency notification is required in the case of an immediate threat to the health or safety of students or employees occurring on campus, as described in proposed § 668.46(g). The proposed language would clarify that an institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

Reasons: Many of the non-Federal negotiators requested that the regulations clearly explain the difference between a timely warning circumstance and an emergency notification circumstance. The emergency notification requirement applies to a wider range of threats, such as crimes, gas leaks, highly contagious viruses, or hurricanes. Many non-Federal negotiators also asked that the Department make it clear that institutions may satisfy a timely warning requirement with an emergency notification in appropriate circumstances to avoid inundating students and employees with messages that may become ineffective. On the other hand, some non-Federal negotiators also expressed concern that providing insufficient information could jeopardize the safety of the campus community, for instance, in a situation in which the emergency or investigation is still developing.

To address these concerns, we are proposing to require an institution that uses its emergency notification system to provide follow-up information to the community as needed. The phrase "as

needed" was used to address the wide variety of threats that might occur.

Annual Security Report—Emergency Response and Evacuation Procedures (§ 668.46(g))

Statute: Section 485(f)(1)(J) of the HEA, added by the HEOA, requires institutions to include a statement of policy regarding emergency response and evacuation procedures in the annual security report. This policy statement must describe how the institution will immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, unless the notification will compromise efforts to contain the emergency.

Current Regulations: None.

Proposed Regulations: Proposed § 668.46(g) would set out the following elements that an institution must include in its statement of policy describing its emergency response and evacuation procedures in its annual security report:

- Procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.
- A description of the process that the institution will use to (1) confirm that there is a significant emergency or dangerous situation, (2) determine the appropriate segment or segments of the campus community to receive a notification, (3) determine the content of the notification, and (4) initiate the notification system.
- A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing the notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.
- A list of the titles of the persons or organizations responsible for carrying out the actions in proposed § 668.46(g)(2).

• Procedures for disseminating emergency information to the larger community.

• Procedures for testing its emergency response and evacuation procedures on at least an annual basis. Such tests could be announced or unannounced, would be publicized in conjunction with at least one test per calendar year,

and would be documented, including a description of the exercise, the date, time, and whether it was announced or announced.

Reasons: The proposed regulations are intended to ensure that institutions have sufficiently prepared for an emergency situation on campus, that they are testing these procedures to identify and improve weaknesses, and that they have considered how they will inform the campus community and other individuals, such as parents. While the non-Federal negotiators generally agreed with these goals, some of them expressed concern that institutions need to have flexibility to appropriately respond to situations while maintaining a level of accountability in the system.

To allow appropriate flexibility in the system, the Department has not specified that institutions use a particular mode of communication, but notes that institutions may and should have multiple methods of communication with the campus community. For example, in the case of a gas leak, an institution may determine that the most effective mode of communication is a fire alarm, whereas in other situations it might be best to use a text message system. The Department encourages institutions to consider overlapping means of communication in case one method fails or malfunctions. Additionally, institutions have the flexibility to alert only the appropriate segment or segments of the population that they determine to be at risk; for instance, only notifying individuals in the building where there is a gas leak. This provision is intended to guard against the possibility that too many emergency notifications would lead some members of the campus community to begin to ignore the notices, thus dampening its response to a potentially dangerous situation. Institutions also have the flexibility to list the organizations that may be best equipped to respond to different situations, for instance, the health department may best respond to an outbreak of a virus. Further, institutions would have a great deal of flexibility in designing tests of the emergency notification system, as a *test*, as defined in the proposed changes to § 668.46(a), could be done in many ways, such as by a tabletop exercise or a test conducted on a campus-wide scale.

Parents and students affected by the shootings at the Virginia Polytechnic Institute and State University in 2007 attended part of the negotiations and discussed their experiences and opinions regarding how the Department

should regulate in this area. They emphasized the need for institutions to keep parents and families informed in the case of an emergency. Some non-Federal negotiators suggested that institutions be encouraged to use Web sites, radio, and television stations to keep the larger community apprised of emergency situations. Additionally, in the case of an institution that uses a texting system to relay emergency notification information, several non-Federal negotiators suggested allowing parents to sign up to receive texts along with students and employees.

Some non-Federal negotiators were concerned that an institution could misinterpret these proposed regulations to mean that, as part of its procedures, it should disclose all of the details of how it would respond to any of a variety of situations. The negotiators noted that this approach could potentially hamper law enforcement efforts to address or investigate an emergency. In response, we note that the proposed regulations would not require institutions to publish in great detail how they would respond to specific emergencies. Finally, many non-Federal negotiators raised concerns that institutions consider the needs of students with disabilities in developing emergency response and evacuation policies and procedures. The Department expects an institution to consider the diverse needs of all members of the campus community in developing or revising an emergency plan.

Definition of On-Campus Student Housing Facility (§ 668.41(a))

Statute: Section 488(g) of the HEOA added section 485(j) to the HEA to require an institution that maintains an on-campus student housing facility to establish, for students who reside in on-campus student housing, a missing student notification policy that allows students to confidentially register a contact person, and procedures to notify that contact person if the student is missing for more than 24 hours.

Current Regulations: Section 668.41(a) contains definitions that apply to 34 CFR part 668, subpart D.

Proposed Regulations: The proposed regulations would add a definition of the term *on-campus student housing facility* to § 668.41(a) to mean a dormitory or other residential facility for students that is located on an institution's campus, as defined in § 668.46(a).

Reasons: The proposed definition would be added to clarify what is meant by *on-campus student housing facility* and to link the meaning of "on-campus" to the existing regulatory definition of

campus in § 668.46(a), which is used for crime reporting under § 668.46(c). For the purposes of the fire safety reporting requirements under proposed § 668.49 and the missing student notification policies and procedures requirements under proposed § 668.46, a student housing facility that is on property owned by an institution, even if the building is owned and maintained by a student organization or other party, would be considered an on-campus student housing facility. If neither the property nor the building is owned by the institution, then the student housing facility would not be covered by this definition. While *on-campus student housing facility* is used in the statute in reference to the new fire safety and missing student notification provisions, the definition of *on-campus student housing facility* would also apply to the existing crime reporting requirements in § 668.46. The Department believes this approach will minimize confusion and create less administrative burden for institutions.

Annual Security Report—Missing Student Notification Policy (§ 668.46(b) and (h))

Statute: Section 485(f) of the HEA, as amended by the section 488(g) of the HEOA, requires institutions that maintain an on-campus student housing facility to establish, for students who reside in an on-campus student housing facility, both a missing student notification policy that allows students to confidentially register a contact person, and procedures for notifying a missing student's contact person.

Current Regulations: Section 668.46(b) delineates the elements that must be included in an institution's annual security report.

Proposed Regulations: The proposed changes in § 668.46(b)(14) would require an institution to include its missing student notification policy and procedures in its annual security report. This would be required beginning with the annual security report distributed by October 1, 2010.

Reasons: Some non-Federal negotiators felt that an institution should have the flexibility to decide how and when to distribute its missing student policies and procedures. The Department considered this suggestion but agrees with other negotiators who argued that having the information in the annual security report would enable students and parents to more easily compare policies across institutions. We propose to require that these policies and procedures be included in the institution's annual security report, but note that institutions may also distribute

these policies and procedures at other appropriate times, such as during a new student orientation. This policy statement must be included in the report that must be distributed by October 1, 2010 because it is the first report due after these regulations go into effect. Institutions must make a good faith effort to comply with the statute in the absence of regulations; therefore, institutions should be gathering this information in preparation for the 2010 report.

Missing Student Notification Policy
(§ 668.46(h))

Statute: Section 485 of the HEA, as amended by section 488 of the HEOA, requires an institution that maintains an on-campus student housing facility to establish, for students who reside in on-campus student housing, a missing student notification policy that includes notifying students that they can confidentially register an individual to be contacted if the student is determined to be missing. The statute requires an institution to advise students who are under 18 years old and not emancipated that a custodial parent or guardian must be notified if the student is determined to be missing. Further, all students residing in an on-campus student housing facility must be advised that, regardless of whether they register a contact person, the local law enforcement agency will be notified in the event that the student is determined to be missing.

Current Regulations: None.

Proposed Regulations: Proposed § 668.46(h)(1) implements the new statutory requirements, specifying that an institution's statement of policy regarding missing student notification for students residing in on-campus student housing facilities must include:

- A list of the titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;
- A requirement that any official missing student report be immediately referred to the institution's police or campus security department or to the local law enforcement agency with jurisdiction in the area;
- The option for each student to identify a contact person to be notified if the student is determined missing by the institutional police or campus security department, or the local law enforcement agency; and
- A disclosure that contact information will be registered and maintained confidentially.

Proposed § 668.46(h)(1) would further require an institution to advise students

who are under 18 and not emancipated that if the student is missing it will notify a custodial parent or guardian in addition to any contact person designated by the student. All students must also be advised that, regardless of whether they name a contact person, the institution must notify the local law enforcement agency that the student is missing, unless the local law enforcement was the entity that determined that the student is missing.

Reasons: These new provisions would implement the statutory requirements. Like the existing crime reporting regulations and the proposed fire reporting regulations, these proposed regulations require institutions to include a list of the titles of the persons or organizations to which a student should be reported missing.

These regulations provide that only authorized campus officials, and law enforcement officers in furtherance of a missing person investigation, may have access to the confidential contact information and that it may not be disclosed to others. This limit was proposed in order to protect the privacy rights and safety of the student.

Missing Student Notification Procedures
(§ 668.46(h))

Statute: Section 485 of the HEA, as amended by section 488(g) of the HEOA, requires an institution that maintains an on-campus student housing facility to establish procedures that the institution will follow if a student who resides in on-campus student housing is determined to be missing. The statute specifies time frames during which certain actions must occur. When a student is reported missing, the institution has 24 hours to inform the local law enforcement agency with jurisdiction in the area where the student has been reported missing. After the law enforcement agency determines that the student is missing, the institution has 24 hours to notify the student's contact person, if applicable.

Current Regulations: None.

Proposed Regulations: Proposed § 668.46(h)(2) reflects the statutory requirements.

Reasons: The proposed regulations reflect the new statutory requirements. These regulations do not preclude the institution from contacting the student's contact person or the parent immediately upon determination that the student has been missing for 24 hours.

Annual Fire Safety Report (§ 668.41(e))

Statute: Section 488(g) of the HEOA amended section 485 of the HEA to require institutions that maintain on-

campus student housing facilities to publish a fire safety report each year and provide a copy of the report to the Secretary.

Current Regulations: None.

Proposed Regulations: Proposed § 668.41(e) would provide that institutions that maintain an on-campus student housing facility must distribute an annual fire safety report, as described in proposed § 668.49(b). In addition, we propose to revise § 668.41(e) to create publication requirements for the annual fire safety report that are similar to the long-standing regulations for the annual security report.

The proposed regulations would allow an institution to publish the annual security report and the annual fire safety report together, as long as the title of the document clearly states that it contains both the annual security report and the annual fire safety report. If an institution chooses to publish the reports separately, it would have to include information in each of the two reports about how to directly access the other report.

Reasons: We are proposing to require the same distribution method for both the annual fire safety report and the annual security report to reduce administrative burden and to make it easier for students and parents to access the information. The Department believes that providing one source for this information best ensures that students and parents will find and review the material. Under the proposed regulations, institutions would have the flexibility to choose whether to combine the two reports; however, if the reports are combined, the title of the combined document must make it clear that both the annual fire safety report and the annual security report are included to give both reports equal emphasis and to clarify that the fire safety provisions are separate from the crime provisions. An institution that chooses to publish the reports separately must provide information in each report about how to directly access the other report to aid students and parents in locating and comparing information across institutions.

Annual Fire Safety Report—Definitions of Terms (§ 668.49(a))

Statute: Section 485(i)(1) of the HEA, as amended by section 488(g) of the HEOA, specifies that the annual fire safety report must contain statistics concerning the number of fires in the institution's on-campus housing facilities; the cause of each fire; the number of injuries and deaths related to each fire; and the value of property damage caused by each fire.

Additionally, the annual fire safety report must include a description of each on-campus student housing facility fire safety system and the number of regular mandatory supervised fire drills.

Current Regulations: None.

Proposed Regulations: We are proposing to add new § 668.49(a) to define the following terms relevant to the fire safety reporting requirements:

- *Cause of fire:* The factor or factors that give rise to a fire. The causal factor may be, but is not limited to, the result of an intentional or unintentional action, mechanical failure, or act of nature.

- *Fire:* Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.

- *Fire drill:* A supervised practice of a mandatory evacuation of a building for a fire.

- *Fire-related injury:* Any instance in which a person is injured as a result of a fire, including an injury sustained from a natural or accidental cause, while involved in fire control, attempting rescue, or escaping from the dangers of a fire. The term "person" may include students, faculty, staff, visitors, firefighters, or any other individuals.

- *Fire-related death:* Any instance in which a person (1) is killed as a result of a fire, including death resulting from a natural or accidental cause while involved in fire control, attempting rescue, or escaping from the dangers of a fire; or (2) dies within one year of injuries sustained as a result of a fire.

- *Fire-safety system:* Any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. This may include sprinkler systems or other fire extinguishing systems; fire detection devices; stand-alone smoke alarms; devices that alert one to the presence of a fire, such as horns, bells, or strobe lights; smoke-control and reduction mechanisms; and fire doors and walls that reduce the spread of a fire.

- *Value of property damage:* The estimated value of the loss of the structure and contents, in terms of the cost of replacement in like kind and quantity. This estimate should include contents damaged by fire, and related damages caused by smoke, water, and overhaul; however, it does not include indirect loss, such as business interruption.

Reasons: We have added these definitions to enable comparability across institutions of the statistics that institutions are required to report under section 485(i)(1) of the HEA. The definitions for *cause of fire*, *fire-related*

injury, *fire-related death*, and *value of property damage* were drawn largely from the National Fire Incident Reporting System (NFIRS), a standard national reporting system used by U.S. fire departments to report fires and other incidents. The non-Federal negotiators recommended, and we agreed, that we should use the NFIRS definitions to remain consistent with definitions already used in the field. The definition of *fire drill* was developed to capture the HEA requirement that institutions report regular, mandatory, supervised fire drills. Further, the definition of fire safety system was developed through collaboration with experts in the fire safety field, who advised that the definition should include the variety of systems and mechanisms used to detect and alert someone to the presence of a fire, reduce the spread of fire, and control and reduce the amount of smoke from a fire.

The committee discussed the definition of *fire* at length. Generally, the negotiators agreed that the critical elements of a reportable fire are that it occurs in a place not intended to contain the fire or involves any burning that is not under control. For instance, under these proposed regulations, a fire in a trash can would count as a fire for reporting purposes, even if the fire was still under control, because a trash can is not intended to contain a fire. A lit candle, by contrast, while possibly against the institution's policies for candles in dorms, would not generally be considered a reportable fire, as it is in a place intended to contain the fire and is under control. However, if the flame from a lit candle were to spread and become uncontrolled, it would be considered a reportable fire. The definition of *fire* is also intended to capture situations in which there is burning (not necessarily an open flame) that might easily become a fire, such as a smoldering couch. Burning or other flames can easily become a fire, at great risk to students and other individuals.

Annual Fire Safety Report—Statistics (§ 668.49(b) and (c))

Statute: Section 485(i)(1), as amended by section 488(g) of the HEOA, requires an institution to include in its annual fire safety report statistics on the number of fires and the cause of each fire; the number of injuries related to a fire that resulted in treatment at a medical facility; the number of deaths related to a fire; and the value of property damage caused by a fire. Section 485(i)(2) of the HEA requires that an institution report these statistics to the Secretary.

Current Regulations: None.

Proposed Regulations: Proposed § 668.49(b)(1) would require an institution to report the statistics that it submits to the Department in its annual fire safety report. The institution would have to provide data for the three most recent calendar years for which data are available. Proposed § 668.49(c) would delineate the statutorily required statistics.

Reasons: The proposed regulations would implement the statutory requirements. The majority of the committee supported the position that institutions should report statistics for the three most recent calendar years to remain consistent with current reporting requirements for crime statistics under § 668.46(c). Moreover, the three year time frame will better enable consumers to compare statistics across institutions while helping to identify trends in the data. This reporting requirement would be phased in beginning with the collection of statistics for calendar year 2009 in the October 1, 2010 Annual Fire Safety Report. Data would be collected for three subsequent calendar years until three years are represented. The first report to contain the full three years of data would be the report due on October 1, 2012.

Annual Fire Safety Report—Description of Policies (§ 668.49(b))

Statute: Section § 485(i)(1) of the HEA, as amended by section 488(g) of the HEOA, requires that, in its annual fire safety report, an institution must include a description of each on-campus student housing facility fire safety system, including fire sprinkler systems; the number of regular mandatory supervised fire drills; the institution's policies on portable electrical appliances, smoking, and open flames; procedures for evacuation; fire safety education and training program policies; and plans for future improvements in fire safety, if applicable.

Current Regulations: None.

Proposed Regulations: Proposed § 668.49(b) would outline the elements that an institution must disclose in its annual fire safety report, including:

- The fire statistics required by paragraph 485(i)(1)(A) of the HEA;
- A description of each on-campus student housing facility fire safety system;
- The number of fire drills held during the previous calendar year;
- Policies or rules on portable electrical appliances, smoking, and open flames in student housing facilities;

- Procedures for evacuation of student housing facilities in the case of a fire;
- Policies on fire safety education and training programs provided to students, faculty, and staff, including a description of the procedures that students and employees should follow in the case of a fire;
- For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire has occurred; and
- Plans for future improvements in fire safety, if determined necessary by the institution.

Reasons: These proposed regulations would implement the statutory requirements for the annual fire safety report, and specify that an institution must include: (1) A description of the procedures that students and employees should follow in the case of a fire, and (2) procedures for reporting fires that do not require a call to the fire department, for instance, those that are discovered after the fact and are no longer a threat to safety. In response to concerns expressed by some negotiators that all fires, even those that have already been put out, should be included in reported statistics, the proposed regulations would require institutions to provide a list of the titles of each person or organization to which such fires should be reported.

Fire Log (§ 668.49(d))

Statute: Section 485(i)(3) of the HEA, as amended by section 488(g) of the HEOA, requires an institution that maintains an on-campus student housing facility to maintain a log of all fires that occur in on-campus student housing facilities, including the nature, date, time, and general location of each fire. An institution must make annual reports to the campus community on such fires.

Current Regulations: None.

Proposed Regulations: Proposed § 668.49(d) would specify that an institution that maintains an on-campus student housing facility must maintain a written and easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. The log would have to include the nature, date, time, and general location of each fire. Further, the proposed regulations would specify that additions or changes to the log must be made within two business days of the receipt of the information, and require that the log be available for public inspection for the most recent 60-day period. Any

portion of the log older than 60 days must be made available within two business days of a request for inspection. Finally, the proposed regulations would also implement the statutory requirement that an institution make an annual report to the campus community on the fires recorded in the fire log; however, the proposed regulations specify that this requirement may be satisfied by the annual fire safety report described in proposed § 668.49(b).

Reasons: The proposed regulations would implement the statutory requirement that an institution record all reportable fires in a fire log. Many of the negotiators recommended that institutions have flexibility in maintaining this log. Therefore, we have not specified a format for the log, and we would allow institutions to determine whether to combine the annual report to the campus community on the fires in the fire log with the annual fire safety report. Many negotiators also recommended, and we agreed, that the fire log follow the requirements for the crime log. As a result, we have specified requirements for how information in the fire log should be updated, in accordance with the long-standing requirements for the crime log described in § 668.46(f).

Financial Assistance for Students With Intellectual Disabilities

Institutional Eligibility and Eligible Program (§§ 600.2, 600.4, 600.5, 600.6, and 668.8)

Statute: Section 485(a)(8) of the HEOA added section 484(s) to the HEA to provide that a student with intellectual disabilities who enrolls in a comprehensive transition and postsecondary program is eligible to receive title IV, HEA program funds under the Federal Pell Grant, FSEOG, and FWS programs. Under the newly added provision, the student does not have to be a high school graduate (or have obtained a GED, or have passed an ability-to-benefit test) and does not have to be enrolled in a program that leads to a degree or certificate.

Current Regulations: Section 600.2 defines an *educational program* as a legally authorized postsecondary program of organized instruction or study that, in part, leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential.

Under the definitions of an *institution of higher education* (§ 600.4(a)(2)), *proprietary institution of higher education* (§ 600.5(a)(3)), and

postsecondary vocational institution (§ 600.6(a)(2)), the institution is required to admit as regular students, as defined in § 600.2, only those persons who have a high school diploma or its equivalent. In addition, in §§ 600.4(a)(4), 600.5(a)(5), 600.6(a)(4), and the definition of an eligible program under § 668.8(c)(1) and (d)(1)(iii), the institution must provide an educational program for which it awards a degree, certificate, or other recognized credential or that prepares students for gainful employment in a recognized occupation.

Proposed Regulations: Proposed §§ 600.2 (paragraph (1)(i) of the definition of *educational program*), 600.4(a)(4), 600.5(a)(5), and 600.6(a)(4) would provide that an institution may provide a comprehensive transition and postsecondary program for students with intellectual disabilities. In addition, proposed § 668.8(n) would define a comprehensive transition and postsecondary program as an eligible program if it is approved by the Secretary.

Reasons: The proposed regulations would implement the statutory requirements by making it clear that an institution does not jeopardize its participation in the title IV, HEA programs by admitting students with intellectual disabilities who do not have a high school diploma or its equivalent, or admitting students with intellectual disabilities into non-degree or non-certificate programs. In addition, the proposed regulations would specify that a comprehensive transition and postsecondary program approved by the Secretary qualifies as an eligible program.

Scope and Purpose (§ 668.230)

Statute: Section 485(a) of the HEOA added section 484(s) to the HEA authorizing the Secretary to develop regulations allowing students with intellectual disabilities to be eligible for funds under the Federal Pell Grant, FSEOG, and FWS programs. New section 484(s)(3) of the HEA authorizes the Secretary to waive any statutory provision applicable to these programs, except needs analysis provisions, or waive any institutional eligibility provisions, to ensure that students with intellectual disabilities who enroll in comprehensive transition and postsecondary programs remain eligible for this assistance.

Current Regulations: None.

Proposed Regulations: The proposed regulations would specify that students with intellectual disabilities who enroll in comprehensive transition and postsecondary programs are eligible for

assistance under the Federal Pell Grant, FSEOG, and FWS programs, and would restate the Secretary's waiver authority by providing that, except for provisions related to needs analysis, the Secretary may waive any title IV, HEA program requirement related to these programs or institutional eligibility.

Reasons: The proposed regulations would implement the statutory provisions, and clarify that the Secretary's waiver authority may be used to ensure that students with intellectual disabilities remain eligible for Federal Pell Grant, FSEOG, and FWS program funds.

Definition of a Comprehensive Transition and Postsecondary Program (§ 668.231)

Statute: Section 709 of the HEOA added section 760 to the HEA to define a *comprehensive transition and postsecondary program* as a degree, certificate, or non-degree program that—

- Is offered by an institution of higher education;
- Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution to prepare for gainful employment;
- Includes an advising and curriculum structure; and
- Requires students with intellectual disabilities to participate on not less than a half-time basis, as determined by the institution, with that participation focusing on academic components and occurring through one or more of the following activities:
 - Regular enrollment in credit-bearing courses with students without disabilities.
 - Auditing or participating in courses with students without disabilities for which the student does not receive regular academic credit.
 - Enrollment in non-credit-bearing, nondegree courses with students without disabilities.
 - Participation in internships or work-based training in settings with students without disabilities.

Current Regulations: None.

Proposed Regulations: Proposed § 668.231 would define a *comprehensive transition and postsecondary program* by incorporating the statutory provisions, but would add a provision that the program would have to be delivered to students physically attending the institution. The proposed regulations would also clarify that the program must provide opportunities for students with intellectual disabilities to participate in coursework and other

activities with students without disabilities.

Reasons: Proposed § 668.231 would incorporate the statutory requirements from section 760 of the HEA except for the proposed addition and clarification described in the preceding *Proposed Regulations* section. Some of the non-Federal negotiators initially opposed the proposed requirement that a comprehensive transition and postsecondary program must be delivered to students physically attending the institution. The negotiators argued that students should have the option of taking distance courses because they might be unable to commute to a campus or because some courses might only be offered online. Other negotiators and experts in the field argued that Congress intended for students with intellectual disabilities to be integrated into campus life as much as possible and did not want to allow distance education to be the sole or main delivery method. The Department does not wish to regulate to preclude all distance courses for students with intellectual disabilities and may permit a limited number of courses to be delivered via distance, as long as the institution explains why it believes the course is applicable to, and benefits, students with intellectual disabilities. Similarly, we wish to clarify that a comprehensive transition and postsecondary program may include an internship for students or other activities that are located off-campus—the physically-attending requirement does not exclude these activities.

With regard to students participating in one or more of the identified activities with students without disabilities, an institution has the flexibility to determine the activity or combination of activities that is best aligned with student needs and interests, as long as students with intellectual disabilities participate in these activities for at least half the time that they are enrolled in the program.

Some non-Federal negotiators suggested that comprehensive transition and postsecondary programs might offer multiple ways for students with intellectual disabilities to participate in campus life beyond those that are delineated in the statute. In response, we propose that a program provide students with opportunities to participate in coursework and other activities with students without disabilities, such as student government, clubs, social events, and sports.

Definition of a Student With an Intellectual Disability (§ 668.231)

Statute: Section 709 of the HEOA added section 760 of the HEA to define *student with an intellectual disability* as a student:

- With mental retardation or a cognitive impairment characterized by significant limitation in intellectual and cognitive functioning and adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and
- Who is currently, or was formerly, eligible for a free appropriate public education (FAPE) (i.e., special education and related services) under the Individuals with Disabilities Education Act (IDEA).

Current Regulations: None.

Proposed Regulations: Proposed § 668.231 would define *student with an intellectual disability* as set forth in the statute, but clarify that a student who was determined eligible for services under the IDEA but was home-schooled or attended private school would also meet this part of this definition.

Reasons: Proposed § 668.231 would incorporate the statutory requirements from section 760 of the HEA except for the proposed clarification regarding students who are home-schooled or attended private school.

While some non-Federal negotiators felt that the statute could be read to include students with intellectual disabilities who are home-schooled or attended a private school but were not determined eligible for special education and related services under the IDEA, the Department does not believe that the HEA provides this flexibility. Under §§ 612(a)(3), 612(a)(10)(A)(ii)(I) and 613(a)(1) of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1221e-3, 1406, 1411–1419; 23 CFR part 304), State educational agencies (SEAs) and local educational agencies (LEAs) are required to locate, identify and evaluate all students with disabilities within the jurisdiction of the State and LEA. In addition, under § 614(a)(1)(B) of the IDEA, LEAs and SEAs must assess students for eligibility for special education and related services under the IDEA if requested by the parent. These are ongoing responsibilities that extend to all children residing in the State, or in the jurisdiction of the LEA, including children attending private schools. To qualify for title IV aid pursuant to § 484(s) of the HEA, a student should obtain an IDEA eligibility determination while the student is still age-eligible for IDEA services from, (1) for students attending private elementary and secondary schools, including home

schools if home schools are considered private schools under State law, the LEA in which the private school is located, or (2) for students not attending private elementary and secondary schools, the LEA that is responsible for making available a FAPE to the student (generally, the LEA in which the student resides).

Program Eligibility (§ 668.232)

Statute: Section 485(a)(8) of the HEOA adds section 484(s) to the HEA to establish the eligibility of students with intellectual disabilities who enroll in comprehensive transition and postsecondary programs to receive aid under the Federal Pell Grant, FSEOG, and FWS programs.

Current Regulations: None.

Proposed Regulations: Consistent with current procedures under which an institution adds an additional program, an institution that wishes to offer a comprehensive transition and postsecondary program would have to apply and receive approval from the Secretary under proposed § 668.232. The proposed regulations outline the elements that an institution must include in its application, including:

- A detailed description of the comprehensive transition and postsecondary program, addressing all of the components of the program as defined in proposed § 668.231;
- The policy for determining whether a student enrolled in the program is making satisfactory academic progress;
- A statement of the number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program, including the equivalent credit or clock hours associated with noncredit or reduced credit courses or activities;
- A description of the educational credential offered or identified outcome or outcomes established by the institution for all students enrolled in the program;
- A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program; and
- Any other information the Secretary may require.

Reasons: Proposed § 668.232 would incorporate the statutory provisions from section 484(s) of the HEA. The Department would use the requested information to determine whether to approve the institution's program for funding under the Federal Pell Grant, FSEOG, and FWS programs.

The requirement that an institution provide a copy of the notice sent to its accrediting agency is intended only to

ensure that the accrediting agency is informed that the institution offers or will offer a comprehensive transition and postsecondary program. The accrediting agency would then decide whether to take any actions.

One of the non-Federal negotiators felt that an institution should not have to set up a separate advising and curriculum structure for students with intellectual disabilities. The Department will consider, on a case-by-case basis, allowing an institution to use an existing structure based on the institution's explanation of how that structure is applicable to, and benefits, students with intellectual disabilities.

Other negotiators asked whether the Department would approve a comprehensive transition and postsecondary program developed to serve the needs of a single student, as this is already the practice in the field. The Department will consider, on a case-by-case basis, whether to approve a comprehensive transition and postsecondary program developed to serve the needs of a single student. However, an institution would have to submit a separate application for each comprehensive transition and postsecondary program for which it seeks approval, even if the program is developed for only one student, as each would be considered a separate program.

Student Eligibility (§§ 668.32 and 668.233)

Statute: Section 484(s) of the HEA specifies that a student with an intellectual disability must:

- Be enrolled or accepted for enrollment in a comprehensive transition and postsecondary program for students with intellectual disabilities at an institution of higher education;
 - Be maintaining satisfactory progress in the program as determined by the institution, in accordance with standards established by the institution; and
 - Meet the student eligibility requirements in sections 484(a)(3), (4), (5), and (6) of the HEA, under which a student must not be in default on any Federal student loans, must have filed a FAFSA, must be a United States citizen or national, and, if the student was convicted of fraud in obtaining funds under this title, must have repaid those funds.
- Current Regulations:* Section 668.32 describes the requirements for student eligibility for title IV, HEA program assistance. In part, under this section a student must:
- Be enrolled for the purpose of obtaining a degree or certificate;

- Have a high school diploma, a recognized equivalent of a high school diploma, or have passed an ability to benefit test; and

- Be making satisfactory progress according to the institution's published standards for satisfactory progress that satisfy the provisions of § 668.16(e) and, if applicable, those under § 668.34.

Proposed Regulations: Proposed §§ 668.32(n) and 668.233 would provide that a student with intellectual disabilities enrolled in a comprehensive transition and postsecondary program may be eligible for title IV, HEA program assistance under the Federal Pell Grant, FSEOG, and FWS programs if—

- The student is making satisfactory academic progress in accordance with the institution's published standards for students enrolled in the comprehensive transition and postsecondary program; and
- The institution obtains a record from a local or State educational agency that the student is or was eligible for special education and related services under IDEA. If the student's record does not indicate that the student has an intellectual disability, as discussed in paragraph (1) of the definition of a *student with an intellectual disability* in proposed § 668.231, the institution would have to also obtain documentation from another source that identifies the intellectual disability.

Reasons: The proposed regulations would implement the statutory requirements by clarifying that a student with an intellectual disability is exempt from the requirements that he or she have a high school diploma or its equivalent, and is making satisfactory academic progress under § 668.16(e) and § 668.34, if applicable. Also, because a student with an intellectual disability does not have to be enrolled in a degree or certificate program, the student would be eligible for a second Pell Grant in the same award year if the student otherwise qualifies for that grant under proposed § 690.67.

With respect to documentation establishing an intellectual disability, there was some concern among the negotiators that institutions would require updated evaluations that could be costly or cost prohibitive. Proposed § 668.233 would allow institutions to accept the most recent documentation, even if it is more than a few years old. Also, if available in the student's record and to better understand a student's abilities and limitations, we encourage institutions to consider using a student's summary of academic achievements and functional performance, as described in 34 CFR 300.305(e)(3), which includes

recommendations on how to assist the student in meeting the student's postsecondary goals.

Institutional Information (§ 668.43)

Statute: Section 485(a)(I) of the HEA specifies that institutions must disseminate information about special facilities and services available to students with disabilities.

Current Regulations: Section 668.43 requires an institution to provide a description of any special facilities and services available to disabled students.

Proposed Regulations: Proposed § 668.43(a)(7) would change the phrase "any special facilities and services" to "the services and facilities," and replace the phrase "disabled students" with "students with disabilities." The proposed changes would also clarify that a description of services and facilities for students with disabilities must also contain the services and facilities available for students with intellectual disabilities.

Reasons: The proposed changes reflect changes in terminology in the special education and disability fields. Further, we wanted to clarify that a description of the services and facilities available to students with intellectual disabilities must be included in the description of the services and facilities available to all students with disabilities.

Part 675 Federal Work-Study Programs

Definition of Community Services (§ 675.2)

Adding the Field of Emergency Preparedness and Response

Statute: Section 441 of the HEOA amended the definition of *community services* in section 441(c)(1) of the HEA to include the field of emergency preparedness and response.

Current Regulations: Section 675.2(b) provides the definitions of terms for the FWS Program, including the term *community services*. The definition of *community services* includes a list of possible services in fields such as literacy training and education tutoring that may be considered *community services* under the FWS Program. The definition does not provide a complete list of acceptable services, but highlights certain services that may improve the quality of life for outside community residents, particularly low-income individuals, or solve particular problems related to their needs.

Proposed Regulations: We propose to revise the definition of the term *community services* in § 675.2(b) to include the field of emergency

preparedness and response to reflect the statutory definition.

Reasons: This proposed regulatory change is needed to conform the regulatory definition of *community services* with section 441(c)(1) of the HEA.

Conforming FWS Payment Requirements to the Cash Management Regulations (§ 675.16)

Handling Minor Prior-Year Charges

Statute: Under Part E—Need Analysis of the HEA (particularly sections 471 through 473), a student's need for most Title IV, HEA program funds for a period of enrollment during an award year is determined by subtracting the expected family contribution (EFC) and other estimated financial assistance for that same enrollment period during the award year from the student's cost of attendance for the same period. The cost of attendance is based on current award year educational expenses. The EFC is the amount that can reasonably be contributed toward meeting the student's educational expenses for the period of enrollment during the award year for which a need determination is made. The Title IV, HEA funds are awarded to defray the educational costs for the award year.

Current Regulations: Under § 675.16(a)(3)(iv), an institution may use a student's current year FWS compensation to pay for minor prior-award year charges if the charges are less than \$100, or the charges are \$100 or more and the payment of those charges does not prevent the student from paying his or her current educational costs. In either case, the institution must first obtain the student's written authorization. The cash management requirements in § 668.164(d) for the other title IV, HEA programs allow an institution to use a student's current year title IV, HEA program funds to pay for minor prior-year charges if the charges are not more than \$200.

Proposed Regulations: Under the provisions in proposed § 675.16(b)(1)(ii) and (b)(2), the FWS regulations are amended in three ways regarding the use of current award year FWS funds to pay prior award year charges. First, the amount of prior award year charges that could be paid with current award year FWS funds would increase to not more than \$200. Second, the FWS provision that allows an institution to pay for prior award year charges of \$100 or more would be removed. Finally, we clarify that the \$200 limit applies to all title IV, HEA program funds that an institution uses to pay prior-year

charges. For example, if an institution uses FWS funds in combination with other title IV, HEA program funds to credit a student's account to satisfy prior award year charges, the total amount of the funds used must be \$200 or less. We note that an institution is still required to obtain the student's written authorization to credit FWS to the student's account.

Reasons: The proposed changes are needed to conform the FWS payment regulations to the cash management requirements in § 668.164(d) regarding the prior award year limit. When the Department amended the regulations for minor prior award year charges under § 668.164(d) in November 1, 2007, for the other title IV, HEA programs, we failed to make the conforming change for the FWS Program in § 675.16.

Electronic Disbursements

Statute: The HEA does not address the issue of electronic disbursement of FWS or other Title IV, HEA program funds.

Current Regulations: The current FWS regulations in § 675.16(a) provide that an institution may pay a student by check or similar instrument that the student can cash on his or her own endorsement, by initiating an electronic funds transfer (EFT) to the student's bank account, or by crediting the student's account at the institution. If an institution wishes to make an EFT or credit the student's account at the institution, it must obtain the student's written authorization. The current FWS regulations do not allow an institution to require a student to have a bank account in order to be paid FWS compensation. Also, the current FWS regulations do not address payments made via a stored-value card.

Proposed Regulations: The proposed FWS regulations in § 675.16(a)(1) would adopt the regulations in § 668.164(c) for the direct payment of FWS compensation. The provisions for issuing a check and expanding the use of EFTs to bank accounts that underlie stored-value cards and other transaction devices that already exist for the other title IV, HEA programs would also apply to the FWS Program. The proposed regulations would remove the FWS requirement that an institution obtain a student's written authorization to make an EFT payment and add a provision allowing an institution to issue a stored-value card or similar device. The proposed regulations continue the current requirement that an institution must obtain a student's written authorization to credit FWS compensation to a student's account at the institution for any purpose because

the funds are earnings and holding those funds without the student's permission would be a garnishment of wages. Finally, the proposed FWS regulations would allow an institution to establish a policy requiring students to provide bank account information or open an account at a bank of the student's choosing, as long as this policy does not delay the disbursement of FWS earnings to the student. Thus, if the student does not comply with the policy, the institution must still disburse the funds to the student in a timely manner in another way. Further, an institution is not allowed to refuse to hire a student who does not comply with the policy to provide bank account information or open a bank account, nor to fire him or her for that same reason. This policy is based on section 445(c) of the HEA, which states that an institution may, upon the request of a student, make a direct deposit to the student's account.

Reasons: The proposed regulations eliminate inconsistencies and otherwise harmonize the requirements in the FWS and cash management regulations. Providing consistency among the title IV, HEA programs for making direct payments to students would make the FWS Program easier for institutions to administer and make the process easier for students to understand.

Eliminating Separate Student Authorizations

Statute: The HEA does not address the issue of student written authorizations for crediting FWS funds directly to the student's account at the institution or holding FWS credit balances on behalf of a student.

Current Regulations: Under § 675.16(a), an institution must obtain written authorization from the student to credit the student's account at the institution with FWS funds and to hold a title IV credit balance. The authorization to credit FWS funds to a student's account at the institution must be separate from any other authorization. The FWS written authorization may not be included as part of a list or in combination with other types of authorizations signed by the student, including authorizations for all the other title IV, HEA programs as provided in § 668.165. This requirement for a separate student authorization to credit FWS funds to a student's account also applies to the written authorization required to hold an FWS credit balance for the student.

Proposed Regulations: Under the provisions in proposed § 675.16(d), the FWS written authorization required to credit a student's account at the

institution or the written authorization required to hold a credit balance for the student will no longer be required to be separated from other authorizations.

Reasons: The proposed FWS change would allow the administrative collection of the student authorizations required under the FWS Program for crediting student accounts and holding credit balances at the institution to be combined with the student authorizations required in § 668.165 for the other title IV, HEA programs. This combination of student authorizations will make the collection process easier for both the student and the institution.

Terms for the Work Colleges Program (Subpart C of Part 675)

Statute: The amendments made by the HEOA to section 448 of the HEA replace the term *work-learning* each place it appears in the statute for the Work Colleges Program with the term *work-learning-service*. In addition, the name of the *comprehensive student work-learning program* that a work college must have, was changed to the *comprehensive student work-learning-service program*.

Current Regulations: Throughout subpart C of part 674, the current Work Colleges Program regulations refer to the term *work-learning* or the term *comprehensive work-learning programs* and the term *comprehensive student work-learning program* is defined in § 675.41(b).

Proposed Regulations: Under the proposed changes to the regulations in subpart C of part 674, the term *work-learning* is replaced with the term *work-learning-service* each place that it appears. Further, the name of the defined term *comprehensive student work-learning program* in § 675.41(b) would be changed to *comprehensive student work-learning-service program*.

Reasons: This change is needed to conform the wording in the Work Colleges Program regulations to the wording used in the HEA. The addition of the word *service* is important because it recognizes the value of service as an intrinsic element and educational outcome of work that is provided as part of the overall education program at a Work College that benefits the college, the community, and the student. The word *service* that was added as part of the term *work-learning-service* in the HEA and now in the proposed regulations, refers to uncompensated volunteer service or compensated service for work performed for the good of the college community or the external community beyond the campus. It includes work performed in the public interest at a Federal, State, or local

public agency, or at a private nonprofit organization.

Additional Standards for the Definition of the Term Work College

Statute: The amendments made by the HEOA to section 448 of the HEA amended the definition of *work college*. The term *work college* was amended by adding additional standards that a public or private nonprofit institution must meet to be eligible for this program. The institution must be a four-year, degree-granting institution and must require at least one-half of all of its full-time students to participate in a comprehensive student work-learning-service program. The institution must continue to have all of its resident students participate in a comprehensive student work-learning-service program. In addition, the institution must require the students to participate in a comprehensive student work-learning-service program for at least five hours each week or at least 80 hours during each period of enrollment, except for summer school, an approved study abroad program, or an externship program. A *period of enrollment* means a semester, quarter, trimester, or a similar period.

Current Regulations: Section 675.41(a) defines the term *work college*.

Proposed Regulations: Under proposed § 675.41(a), the definition of *work college* would now include the requirement that an institution must be a four-year, degree-granting institution. The proposed definition would also provide that the institution must have at least one-half of all of its full-time students participate in the required comprehensive work-learning-service program. In addition, all of the students in that program must participate for a minimum of five hours each week or a minimum of 80 hours during each period of enrollment, except for summer school, an approved study abroad program, or an externship program.

Reasons: The proposed additional requirements are needed to conform the definition of a *work college* to the statutory definition.

Expanding FWS Community Service Jobs (§§ 675.18(g) and 675.26(d)) Promoting Civic Education and Participation Activities

Statute: The amendments made by the HEOA to section 443 of the HEA permit institutions to meet the FWS seven percent community service expenditure requirement by using FWS funds to pay students employed in projects that teach civics in schools, raise awareness of government functions or resources, or increase civic participation.

If an institution decides to place FWS students in a community service project performing civic education and participation activities, it must to the extent practicable:

- Give priority to the employment of FWS students in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations; and
- Ensure that the FWS students performing these projects receive the appropriate training to carry out the required educational services.

The FWS students employed in community service projects performing these civic education and participation activities may be paid for the time spent in training and travel. Further, the FWS students employed in community service projects performing civic education and participation activities may be paid FWS compensation with a Federal share that exceeds the regular 75 percent limit.

Current Regulations: The current FWS regulations do not address and promote civic education and participation activities as a community service project.

Proposed Regulations: Section 675.18(g) would be amended to implement section 443 of the HEA that promotes the use of FWS funds to employ FWS students in community service projects performing civic education and participation activities. The proposed regulations would provide that when a school decides to have FWS students perform these activities, to the extent practicable, it must give priority to the employment of students participating in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations. The institution, to the extent practicable, would also have to ensure that the students receive the appropriate training to carry out the educational services required.

Section 675.26(d) would be amended to implement the requirement in section 443 of the HEA to allow the Federal share of the compensation paid to FWS students performing the civic education and participation activities in community service projects to exceed the regular 75 percent limit. These FWS students may be paid with a Federal share of up to 100 percent.

Reasons: The proposed changes to the FWS regulations are needed to add this new use of FWS funds and to promote the employment of FWS students in

community service projects performing civic education and participation activities. Allowing institutions to pay FWS students with a Federal share of up to 100 percent encourages institutions to place students in community service projects performing civic education and participation activities.

We note that the conference language in the HEOA urges FWS participating institutions to improve the availability and quality of community service job information to students and to improve their outreach to community service agencies. The addition of this new use of FWS funds to have students perform civic education and participation activities in community service projects provides an opportunity for an institution to make the above requested improvements and to meet the seven percent community service expenditure requirement.

Flexible Use of FWS Funds (§ 675.18(i))

Paying Students Under Certain Conditions in the Event of a Major Disaster

Statute: The amendments made by the HEOA added a new subsection (d) to section 445 of the HEA. This new provision allows an eligible institution located in any area affected by a major disaster to make FWS payments to disaster-affected students under certain limited conditions. The FWS payments may only be made for the period of time, not to exceed one academic year, in which the disaster-affected students were prevented from fulfilling their FWS work obligations due to the major disaster.

Payments may be made to the disaster-affected students in an amount equal to or less than the amount of FWS wages the students would have been paid had the students been able to complete the work obligation necessary to receive the FWS funds. Payments may not be made to any student who was not eligible for FWS or was not completing the work obligation necessary to receive the FWS funds prior to the occurrence of the major disaster. Any payments made to disaster-affected students must meet the applicable FWS matching requirements, unless the Secretary has waived the matching requirements.

Section 445(d) of the HEA defines the term “disaster-affected student” as a student enrolled at the institution who has received the FWS award and earned FWS wages prior to the occurrence of the major disaster, was prevented from working for all or part of the academic year due to the major disaster, and was unable to be reassigned to another FWS

job after the major disaster. The amended HEA also provides that the term “major disaster” has the meaning as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

Current Regulations: The current FWS regulations do not provide for the flexibility to pay FWS funds to disaster-affected students unable to work due to a major disaster. Under the current regulations, there is no exception to the FWS Program requirement that an FWS student may never be paid FWS funds until the student has performed the work and earned those funds.

Proposed Regulations: Section 675.18 would be amended by adding a new paragraph (i) that allows an institution located in any area affected by a major disaster to make FWS payments to disaster-affected students. However, this one special exception to the basic requirement that an FWS student may not be paid FWS funds until the student has performed the FWS work has very specific conditions that must be met.

To apply this limited flexible use of FWS funds to pay disaster-affected students an institution must be located in an area affected by a major disaster. A major disaster must be declared by the President. The counties or parishes covered by the declaration are provided by the Federal Emergency Management Agency (FEMA).

The FWS payments may only be made for the period of time in which the disaster-affected students were prevented from completing their FWS work obligations due to the major disaster. The period of time cannot exceed one academic year for this purpose. The FWS payments made to disaster-affected students cannot exceed the amount of FWS wages the students would have been paid had these students been able to complete the FWS work obligation necessary to receive the FWS funds. The institution in paying the FWS funds to the disaster-affected students must make the appropriate match for the FWS Federal funds, unless the Secretary has waived the matching requirements.

The disaster-affected students must have been eligible for FWS and awarded FWS prior to the occurrence of the major disaster. The disaster-affected students must have earned FWS funds and be completing the FWS work obligation prior to the occurrence of the major disaster. The disaster-affected students could not have been separated from their FWS employment prior to the occurrence of the major disaster. The major disaster must prevent the FWS students from working for a portion or

all of the academic year. In addition, the disaster-affected students must be unable to be reassigned to other FWS jobs by the institution after the occurrence of the major disaster.

Reasons: The proposed changes to the FWS regulations are needed to add this new flexibility to pay disaster-affected students who are unable to work because of a major disaster. The change would allow the eligible FWS students unable to work due to a major disaster to still receive the FWS funds that they need to help pay for educational costs.

Part 686 Teacher Education Assistance for College and Higher Education (TEACH) Grant Program

TEACH Grant Program

Periods of Suspension (§ 686.41)

Statute: None.

Current Regulations: Section 686.41(a) provides that a TEACH Grant recipient may be granted a suspension of the eight-year period required for completing his or her teaching service obligation, in a low-income school as a highly-qualified teacher in a high-need field, based on a call or order to active military duty. The suspension ends upon the completion of that military service.

Proposed Regulations: A TEACH Grant recipient who is called or ordered to active military duty (or his or her representative) may request a suspension of the eight-year period in increments not to exceed three years. Under proposed § 686.41(a)(2), a request for a suspension of the eight-year period may be granted in one-year increments. Proposed § 686.41(a)(2)(ii) would allow a suspension of the eight-year period for no more than three years. Once the recipient has exceeded the three-year suspension period, the recipient (or his or her representative) may request a discharge of all or a portion of his or her teaching service obligation.

Reasons: The proposed regulations would no longer provide an indefinite delay of the eight-year, service obligation period to a TEACH Grant recipient who is called or ordered to active duty. Instead a TEACH Grant recipient that exceeds the three-year suspension period could qualify for a discharge of all or part of his or her teaching service obligation as provided in proposed § 686.42. The proposed discharge provides a greater benefit than a suspension of the service obligation to a TEACH Grant recipient who is called or ordered to active military duty for extended periods.

Discharge of Agreement To Serve (§ 686.42)

Statute: Section 420N(d)(2) of the HEA, as amended by the HEOA, requires the Secretary to establish categories of extenuating circumstances under which a TEACH Grant recipient who is unable to fulfill all or a portion of his or her teaching service obligation may be excused from fulfilling that portion of the teaching service obligation.

Current Regulations: None.

Proposed Regulations: As provided in proposed § 686.42(c)(2), the recipient may qualify for a proportional discharge of his or her service obligation based on the number of years the recipient has been called or ordered to active military duty. The recipient would qualify for a one-year discharge if the call or order to active military duty is for more than three years. Similarly, the recipient would qualify for a two-year, three-year, or total discharge if the call or order to active military duty is for more than four, five, or six years, respectively.

To obtain the discharge, the recipient (or his or her representative) would be required under § 686.42(c)(3) to provide the Secretary:

- A written statement from his or her commanding or personnel officer certifying that the recipient is on active duty in the Armed Forces, the date on which that service began, and the date the service is expected to end; and
- A copy of his or her official military orders and military identification.

The term *Armed Forces* would be defined in § 686.42(c)(4) to mean the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Finally, under proposed § 686.42(c)(5), the Department would notify a TEACH Grant recipient or his or her representative of the decision reached on his or her request for a partial or full discharge of the teaching service obligation. The grant recipient would be responsible for fulfilling any teaching service obligation that is not discharged.

Reasons: The proposed regulations in § 686.41 implement the statutory requirement in section 420N(d)(2) of the HEA by providing for a discharge of a teaching service obligation based on a call or order to active military duty.

Under current § 686.42(a) and (b), a TEACH Grant recipient may have his or her teaching service obligation discharged upon the recipient's death or if he or she becomes totally and permanently disabled. The Department believes it would be appropriate to also provide a discharge of a TEACH Grant recipient's teaching service obligation in

cases when the grant recipient cannot comply with his or her agreement to teach because of a call or order to active military duty for an extended period of time. TEACH Grant recipients who are called to active military duty for an extended period of time may return from their military service with teaching credentials that are no longer valid, may require retraining to meet the standards established by the State before they can be placed in a teaching position, or may otherwise encounter difficulties in obtaining a teaching position that could be used to fulfill their teaching service obligation.

Several non-Federal negotiators believed that additional extenuating circumstances should also be considered. Some of them suggested that we expand the categories of extenuating circumstances to include economic hardship. Noting that teachers were being laid off in a number of areas, they argued that TEACH Grant recipients might not be able to find full-time employment in their high-need fields due to the current economic conditions, which they felt might continue for some time. While we are sympathetic to these concerns, the Department believes that, because a TEACH Grant recipient has eight years to complete a four-year teaching service obligation, he or she should still be able to fulfill that obligation notwithstanding the fact that he or she may encounter a temporary hardship in locating a suitable position.

Part 690 Federal Pell Grant Program

Two Federal Pell Grants in an Award Year (§§ 690.63(h), 690.64, and 690.67)

Statute: Section 401(b)(5) of the HEA, as amended by the HEOA, provides that a student may receive up to two consecutive Federal Pell Grant Scheduled Awards during a single award year if the student is enrolled at least half-time for more than one academic year, more than two semesters, or the equivalent time during a single award year. The student must also be enrolled in a certificate, associate degree, or baccalaureate degree program. Section 484(s)(3) of the HEA provides the authority to waive this provision for students with intellectual disabilities who enroll in a comprehensive transition and postsecondary program.

Student Eligibility for a Second Scheduled Award (§ 690.67(a))

Current Regulations: The current regulations provide that the Secretary announces in the **Federal Register** whether an institution may award up to

a second Federal Pell Grant Scheduled Award to a student in a particular award year. An institution may award up to a second Scheduled Award if a student is enrolled as a full-time student in an eligible program that leads to an associate or baccalaureate degree and the student has completed the credit hours and weeks of instructional time in an academic year leading to his or her associate or baccalaureate degree program. If an institution awards a student a second Scheduled Federal Pell Grant award, the institution must make that award to all students who qualify.

Proposed Regulations: The proposed regulations would amend § 690.67 to provide that a student would be eligible for a second Scheduled Award if the student has earned in an award year at least the credit or clock hours of the first academic year of the student's eligible program, and is enrolled as at least a half-time student in a program leading to a bachelor's or associate degree or other recognized educational credential (such as a postsecondary certificate or diploma), except as provided in proposed 34 CFR part 668, subpart O for students with intellectual disabilities.

Reasons: We are proposing these requirements to encourage a student to accelerate the completion of his or her program of study within a shorter time period than the regularly scheduled completion time, i.e., the published length of the program. Providing up to two Federal Pell Grants to students for attendance in all payment periods in an award year supports this acceleration. We believe that, by encouraging the student to complete the credit or clock hours in the academic year expeditiously, the benefit of most students' second Scheduled Awards would be maximized.

We initially proposed that a student would be required to complete the credit or clock hours of the first academic year before receiving a second Scheduled Award or to complete the credit or clock hours of the first academic year in the payment period for which he or she is receiving a payment from the second Scheduled Award in the award year. We further proposed to amend § 690.80 to provide that if the projected enrollment status of a student enrolled in a term-based program changed at any time during a payment period in which the student is receiving a payment from a second Scheduled Award in an award year, the institution would be required to recalculate the student's payment for the payment period. This recalculation requirement would ensure that a student who is not accelerating does not receive the benefit

of a payment from a second Scheduled Award.

We did not propose any similar recalculation requirement for clock-hour and nonterm-credit-hour programs. A recalculation requirement would not be relevant to these programs. A student enrolled in one of these programs must successfully complete the credit or clock hours of a payment period to progress to the next payment period. Thus, a student is required to earn the credit or clock hours of the first academic year to advance to a payment from a second Scheduled Award.

Some of the non-Federal negotiators objected to the recalculation requirements for term-based programs. These non-Federal negotiators were concerned that the requirements would be administratively burdensome. They also objected to the difference in treatment compared to the requirements for recalculations for payments from a student's first Scheduled Award in the award year. In addition, some of these non-Federal negotiators believed that the satisfactory academic progress standards in 34 CFR 668.16(e), as well as the new limitation under section 401(c)(5) of the amended HEA that a student's lifetime eligibility is limited to nine Scheduled Awards, provided sufficient minimum standards for ensuring a student's advancement in his or her eligible program. We are not convinced that the satisfactory progress standards at most institutions are robust enough for this purpose or that the lifetime limitation on eligibility is short enough to provide a sufficient basis for encouraging students to complete their eligible programs in less than the regularly scheduled completion time.

As a result of the non-Federal negotiators' objections to the requirements for recalculations for changes in enrollment status, we proposed an alternative approach. Instead of recalculation, we proposed that a student in a term-based program must earn the credit or clock hours in an academic year before the student would be eligible for any payment from a second Scheduled Award. This proposal would be similar to the current treatment of students in clock-hour and nonterm-credit-hour programs.

Some of the non-Federal negotiators objected to the proposed alternative approach. They did not believe it was appropriate to require a student in a term-based program to earn the credit or clock hours of the first academic year for the student to be eligible for a second Scheduled Award. In addition, the non-Federal negotiators disagreed with our understanding that acceleration means that a student would

complete his or her eligible program in less than the regularly scheduled period for completion. The non-Federal negotiators believed that acceleration meant that a student was earning additional credit or clock hours beyond the first academic year in the award year without respect to whether the additional hours were sufficient for the student to advance significantly toward the completion of his or her eligible program. Some of these non-Federal negotiators believed that the statute intended acceleration to apply only on a student-by-student basis. For example, a student would be accelerating by completing his or her eligible program in a shorter period of time than the student would otherwise have completed the program without reference to any objective standard. We do not agree. We do not believe the statute limits the implementation of these requirements in this manner, nor do we believe that adopting the non-Federal negotiators' position would provide the necessary encouragement for a student to accelerate the completion of his or her educational program.

As an alternative to our proposal, the non-Federal negotiators again advanced their belief that the satisfactory progress standards and the nine-Scheduled-Award limit were sufficient. However, they did not provide any further information on how these requirements would serve to advance a student's acceleration in his or her eligible program.

Consensus was not reached and the Department decided to move forward with the proposal to require a student to earn the credit or clock hours in the (first) academic year before the student would be eligible for any payment from a second Scheduled Award in the award year.

Transfer Students (§ 690.67(b))

Current Regulations: None.

Proposed Regulations: The proposed regulations would provide that an institution must determine the credit or clock hours that a transfer student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution. The credit or clock hours that the student would be considered to have earned would be in the same proportion to credit or clock hours in the current institution's academic year as the disbursements that the student has received at the prior institution in the award year are in proportion to the

student's Scheduled Award at the prior institution.

If the student's first Scheduled Award has been disbursed at institutions previously attended, the student would be considered to have completed the credit or clock hours of the first academic year in the award year. If less than the first Scheduled Award has been disbursed at prior institutions, the student's credit or clock hours earned would be determined by multiplying the

payments of the student's Scheduled Award disbursed at a prior institution during the award year by the number of credit or clock hours in the current institution's academic year and dividing the product of the multiplication by the amount of the Scheduled Award at the prior institution. If the student previously attended more than one institution in the award year, the institution would add the results of the calculation for each prior institution.

For example, a transfer student received \$2,000 of his or her first Scheduled Award of \$4,000 while enrolled at a prior institution. The student's current institution defines its academic year, in part, as 24 semester hours. To determine the number of credit hours the student is considered to have earned in the award year at the prior institution, the current institution performs the following calculation:

$$\frac{\$2,000 \text{ disbursement} \times 24 \text{ semester hours}}{\$4,000 \text{ Scheduled Award}} = 12 \text{ semester hours}$$

In this case the student would be considered to have earned 12 semester hours of the first academic year in the award year.

Reasons: We are proposing these changes because we believe that they limit the administrative burden for institutions in implementing the requirements for determining the eligibility of transfer students.

During negotiated rulemaking, the non-Federal negotiators noted that our initial proposal did not address the eligibility status of transfer students. As a result, we proposed that, unless the institution had information to the contrary such as a transcript from the other institution, an institution could determine the credit or clock hours that a transfer student earned at another institution during the award year based on the Federal Pell Grant disbursements that the student received at the other institution during the award year in relation to the student's Scheduled Award at that institution. Many of the non-Federal negotiators were concerned about the difficulties for institutions administering the Federal Pell Grant Program. Specifically, the non-Federal negotiators were concerned that transcripts that might be in the registrar's office might not always be readily available to the financial aid office in a form or process conducive to implementing these provisions.

Based on the non-Federal negotiators' concerns, we have revised our proposal to provide that an institution would rely solely on assuming the credit or clock hours earned in an award year based on the Federal Pell Grant disbursements received from the student's Scheduled Award at another institution.

Special Circumstances (§ 690.67(c))

Current Regulations: None.

Proposed Regulations: The proposed regulations would provide that a financial aid administrator may waive

the requirement that a student complete the credit or clock hours in the student's first academic year in the award year if the administrator determines that the student was unable to complete the clock or credit hours in the student's first academic year in the award year due to circumstances beyond the student's control. The financial aid administrator would be required to make and document the determination on an individual basis. The proposed regulations also provide examples of circumstances that may be considered beyond the student's control, such as withdrawing from classes due to illness, and those that would not be considered beyond the student's control, such as failing to register for a necessary class to avoid a particular instructor.

Reasons: During negotiated rulemaking, the non-Federal negotiators noted that our initial proposal did not provide any authority for a financial aid administrator to consider whether there were special circumstances affecting a student's ability to complete the credits or clock hours to be eligible for a payment from a second Scheduled Award. We agree.

Nonapplicable Credit or Clock Hours (§ 690.67(d))

Current Regulations: None.

Proposed Regulations: We are proposing that, in determining a student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

Reasons: A student's eligibility for a second Scheduled Award is based, in part, on the student's progress in earning the credits or clock hours of the first academic year in the award year. This provision ensures that only those

credits or clock hours earned in the award year are considered in determining the student's eligibility.

Payment Period in Two Award Years (§ 690.64)

Current Regulations: Under current § 690.64, if a payment period is scheduled to occur in two award years, an institution must consider this "crossover" payment period to occur entirely in one award year. In general, an institution may assign a crossover payment to either award year. The assignment, for example, may be on a student-by-student basis, or the institution may establish a policy of assigning the crossover payment period of all students to the same award year. If more than six months of a crossover payment period are scheduled to occur within one award year, the institution must assign the payment period to that award year.

Proposed Regulations: Under proposed § 690.64, if a student is enrolled in a crossover payment period as a half-time or less-than-half-time student, the current requirements generally would apply.

If a student is enrolled as a three-quarter-time or full-time student, an institution must consider the payment period to be in the award year in which the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution would be required to reassign the payment to the award year providing the greater payment.

A student may request that the institution place the payment period in the award year that can be expected to

result in the student receiving a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur. If the student makes that request, the institution must assign the payment period to that award year.

Reasons: To the extent practicable, we believe that a crossover payment period should be assigned in a way that maximizes a student's eligibility over the two award years in which the payment period is scheduled to occur.

Initially, we proposed that a crossover payment period should be assigned to the award year in which the student receives the greater payment for the payment period based on the information available to the institution at the time of disbursement. If, subsequent to that date, the institution determines that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution may reassign the payment period to the other award year.

The non-Federal negotiators objected to the mandatory assignment of a crossover payment period to the award year with the higher payment. They objected because, based on the student's enrollment status in a term-based program, there may be a decrease in the overall amount the student would receive for the two award years of the crossover payment period. For example, a student is enrolled in a traditional semester-based program with an academic year that is defined, in part, as 24 semester hours. The student attends half-time, 6 semester hours, for a summer term that must be assigned to the second award year due to the higher payment and enrolls for 12 semester hours in the fall semester. The student would not have earned the semester hours of the first academic year at the end of the fall semester. When the student enrolls full-time in the spring semester, the student is not yet eligible for a payment from the second Scheduled Award. Thus, the student would receive only the remaining one-fourth of his or her first Scheduled Award, instead of a full payment of one-half of a Scheduled Award. However, if the student's summer crossover payment period were assigned to the first award year of the crossover payment period, the student would be eligible for a full payment of one-half of a Scheduled Award for that following spring semester. The difference for the spring semester between a payment of one-fourth of a Scheduled Award under the first approach, and one-half of a Scheduled Award under the second approach, would usually more than

make up for the generally smaller amount that the student would receive for the summer term if it were assigned to the first award year.

In addition, the non-Federal negotiators believed that determining the higher payment for the crossover payment period at the time of disbursement created significant administrative difficulties, since the higher disbursement amount might be determined not only by a change in the Scheduled Award for the award year, but also by a change in a student's expected family contribution (EFC). As an alternative, they suggested that the determination of the higher amount be set based solely on the higher Payment or Disbursement Schedule. They believed that this approach would not require a financial aid administrator to track changes in a student's EFC.

As a result of the non-Federal negotiators' concerns regarding the assignment of crossover payment periods for term-based programs, we provided an alternative proposal that is the basis for these proposed regulations. In the case of a half-time student or less-than-half-time student, we do not believe the difference in the payments from each award year for a crossover payment period will usually be a significant amount. In these situations, we do not believe it would be necessary to mandate assignment based on the higher payment. In addition, in those circumstances where the assignment by the institution may not be to the student's advantage, the student may request a determination by the institution of the assignment that would provide the student the greater amount of Federal Pell Grants over the two award years. The institution must comply with the student's request and must reassign the crossover payment period if the reassignment would be expected to provide the student the greater amount of Federal Pell Grants over the two award years.

With regard to a student enrolled at least three-quarter-time, we believe that, generally, a student would significantly benefit from a crossover payment period being assigned to the award year in which the student would receive the greater payment for the payment period. If a student is enrolled at least three-quarter-time in a crossover payment period that is assigned to the second award year, the student would generally be able to complete the credit hours of an academic year in the next semester or next two quarters by taking slightly more than the minimum course load required for a full-time student and would be able to qualify for a full payment from the second Scheduled

Award in the subsequent spring term. As in the case of a student enrolled half-time or less, the student may request that the institution assign the crossover payment period to the award year that would be expected to provide the student the greater amount of Federal Pell Grants over the two award years, and the institution must comply with the student's request.

Some of the non-Federal negotiators were concerned that the time for a determination of the award year to which a crossover payment period must be assigned may prevent institutions from closing out the earlier of the two award years in which the crossover payment period is scheduled to occur. They suggested that the proposed regulations include a provision for a deadline for such determinations. We agree that an institution must be able to close out the earlier award year in a timely manner, but we do not believe a specific reference is necessary in these proposed regulations. Sections 690.12, 690.61(b), and 690.83 and 34 CFR part 668.60 already provide the necessary authorities to establish deadlines for closing out application processing and Federal Pell Grant financial reporting for an award year. If a student's higher payment for a crossover payment period is from the earlier award year, the application and financial reporting deadlines would still be applicable. If the determination occurred subsequent to those deadlines, no further action would be required of the institution. If a student's higher payment for a crossover payment period is from the later award year, the applicable deadlines would be those for the later award year.

The Department specifically invites public comment on the proposal to require institutions to initially place the crossover payment period in the award year that results in the payment of the higher amount to a student enrolled at least three-quarter-time (and to allow the student to request that the payment period be placed in the other award year if that placement would be expected to result in the student receiving a greater amount of Federal Pell Grant aid over the two award years in which the payment period is scheduled to occur). Further, the Department is interested in data from past practices and experiences of institutions in the placement of crossover payment periods and in whether, and to what degree, this proposal will burden or otherwise adversely affect institutions' administration of the Federal Pell Grant Program.

Payment From Two Scheduled Awards (§ 690.63(h))

Current Regulations: None.

Proposed Regulations: Under § 690.63(h) of the proposed regulations, if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the second Scheduled Award, the student's payment would be calculated using the annual award for his or her enrollment status for the payment period. The student's payment would be the remaining amount of the first Scheduled Award being completed plus an amount from the second Scheduled Award in the award year up to the total amount of the payment for the payment period.

Reasons: In certain circumstances, a student may, within the same payment period, be completing his or her eligibility for the remaining balance of the first Scheduled Award in the award year while also having eligibility to receive a payment from the second Scheduled Award. We have identified two circumstances in which a student may be paid from two Scheduled Awards in a payment period. One circumstance would be if the institution determined, under proposed § 690.67(c), that a student was unable to earn the credits in the first academic year due to special circumstances beyond the control of the student. The other circumstance would be that a student completed the hours of the first academic year but had not received all of his or her first Scheduled Award. This provision would provide guidance to institutions in calculating a student's payment for the payment period in these circumstances and would ensure that eligible students receive their awards.

Maximum Federal Pell Grant for Children of Soldiers (§ 690.75(e))

Statute: Section 401(f)(4) of the HEA provides that a student whose parent or guardian died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, is deemed to have a zero expected family contribution (EFC) for purposes of the Federal Pell Grant Program. The HEA further directs the Secretary of Veterans Affairs and the Secretary of Defense to provide necessary information to the Secretary of Education to carry out this provision.

Current Regulations: None.

Proposed Regulations: Under proposed § 690.75(e), a student whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after

September 11, 2001, would automatically receive a zero EFC for purposes of the Federal Pell Grant Program if he or she was under 24 years old or enrolled in an institution of higher education at the time of the parent's or guardian's death.

Reasons: These proposed regulations would implement the statutory provisions. Some of the negotiators objected to our initial proposal that a student must have an EFC in the numerical range that would make a student eligible for a Federal Pell Grant to qualify for a maximum Federal Pell Grant. The negotiators believed that the Secretary would be adding an additional student eligibility requirement that the statute did not provide. Based on the non-Federal negotiators objections and our belief that any student should receive a zero EFC if the student's parent or guardian died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, we removed the proposal that a student must have an initial Federal Pell Grant EFC that makes him or her eligible in order to qualify for a zero EFC under this provision.

The non-Federal negotiators also objected to the Secretary's position that an eligible student would be considered to have a zero EFC rather than the maximum Federal Pell Grant Scheduled Award. We do not agree. The statute explicitly states that an eligible student is deemed to have an EFC of zero.

We are not proposing any regulations in relation to the Secretary of Veterans Affairs and the Secretary of Defense providing the necessary information to the Secretary of Education to carry out this provision, nor will this provision require any additional questions on the Free Application for Federal Student Aid (FAFSA). Once a student completes the FAFSA, the Secretary of Education will perform a data match with the Department of Defense and the Department of Veterans Affairs to confirm that the student had a parent or guardian who died as a result of performing military service in Iraq or Afghanistan after September 11, 2001.

A tentative consensus was reached on these proposed regulations during the negotiations.

Part 692 Leveraging Educational Assistance Partnership Program

LEAP Program—Non-Federal Share (§ 692.10)

Statute: Section 415C(b)(10) of the HEA, as amended by the HEOA, provides that the non-Federal share of the amount of student grants or work-study jobs under the LEAP Program

must be from State funds for the program and no longer requires that the non-Federal share must be from a direct appropriation of State funds.

Current Regulations: Section 692.10(b) references "State-appropriated funds" in the provisions concerning how the Secretary determines the number of students deemed eligible for purposes of calculating State allotments under § 692.10(a).

Proposed Regulations: Proposed § 692.10(b) would remove references to State funds being appropriated funds and would make technical corrections in § 692.10(a) to reflect that multiple programs are funded under part 692.

Reasons: This proposal is necessary to implement section 415C(b)(10) of the HEA, as amended by the HEOA.

Several members of the LEAP/GAP subcommittee raised concerns regarding whether we should define the term "State funds" to clarify this change to the nature of the program's matching funds. We did not agree that a definition was necessary. During the subcommittee discussions, we noted that the term "State funds" only refers to cash funds, and this cash may be from State-appropriated funds or may be from dedicated State revenues such as revenues from a State lottery or tuition revenues at a State's public institutions of higher education used to provide grant aid. The term "State funds" would not include in-kind support to a student such as a tuition waiver at a public institution of higher education. "In-kind" support is not cash. If a State were to choose to use tuition revenues at public institutions, or some other sources of State cash, to meet its non-Federal share, use of this cash may affect information that the State must provide in its application to participate in the LEAP and GAP programs in addition to being included in the amount of funds reported for the non-Federal share.

In addition, discussions of the LEAP/GAP subcommittee noted that, in accordance with 34 CFR 80.24 of the Education Department General Administrative Regulations (EDGAR), other Federal funds generally may not be used to meet a State's non-Federal share nor may a State use the same non-Federal funds to meet the non-Federal share of more than one Federal program. For example, tuition revenues at a public institution used to meet the non-Federal share of the LEAP Program may not be used by the institution to meet the matching requirement of the FSEOG Program.

Notification to Students of LEAP Grant Funding Sources (§ 692.21(k))

Statute: Section 415C(b)(11) of the HEA requires that a State notify eligible students that grants under the LEAP Program are (1) LEAP Grants and (2) are funded by the Federal Government, the State, and, where applicable, other contributing partners.

Current Regulations: None.

Proposed Regulations: Proposed § 692.21(k) would require that the State program notify eligible students that grants under the LEAP Grant Program are (1) LEAP Grants and (2) are funded by the Federal Government, the State, and, where applicable, other contributing partners.

Reasons: The proposed regulations generally reflect the statutory language. Some LEAP/GAP subcommittee members questioned whether the regulations should reflect the extent to which States had flexibility in implementing this provision. While we noted in the discussions with the subcommittee that our intent is to provide maximum flexibility to the States in implementing this provision, we believe the statutory language as used in the proposed regulations inherently sets certain minimum standards.

As was discussed by the subcommittee members, the State would need to ensure that students who receive a LEAP Grant are aware of the source of those funds. A State would need to establish a policy that would define the term “eligible student,” the State would use the policy to identify the students that the State would notify in accordance with the proposed regulations. A State may consider an “eligible student” to be all students submitting an application, thus including potentially eligible students; we believe that this approach would minimize the State’s administrative burden. A State may consider an “eligible student” to be students awarded LEAP Grants, or, at a minimum, recipients of LEAP Grants. Also, under the proposed regulations, notifications must be to individual students rather than general notifications; a State may use electronic media; and a State may rely on institutions as the agent of the State to provide the notifications.

Some subcommittee members were concerned with whether it would be appropriate to revise the notification to say that the LEAP Grant “may be funded” by Federal, State, or, for purposes of the GAP Program, other contributing partners. We do not believe such an alteration is appropriate or

necessary. The language in the required notice would accurately describe, for example, a grant that consisted solely of State funds or solely of Federal funds. In some cases, a State may not determine actual LEAP recipients at the time State grants are made, for example, if a State selects students considered to have received a LEAP Grant after the award year has ended. In this circumstance, the State would be expected to provide notices at least to all State grant recipients.

In general, these same considerations apply to notifications for LEAP Grants made under the GAP Program in accordance with proposed § 692.100(a)(8).

Grants for Access and Persistence Program (Subpart C of Part 692 Consisting of §§ 692.90 Through 692.130)

Statute: Section 415E of the HEA, as amended by the HEOA, authorizes the Grants for Access and Persistence (GAP) Program to assist States in establishing partnerships to provide eligible students with LEAP Grants under GAP to attend institutions of higher education. The GAP Program replaces the SLEAP Program previously authorized by section 415E of the HEA.

Current Regulations: None.

Proposed Regulations: Under proposed part 692, subpart C, §§ 692.90 through 692.130, we are proposing the regulations necessary to implement the GAP Program. The proposed regulations would—

- Describe the definitions and other regulations that would apply to the GAP Program (See § 692.92);
- Provide the requirements for participation in the GAP Program by students, States, degree-granting institutions of higher education, early information and intervention, mentoring, or outreach programs (early intervention programs), and philanthropic organizations or private corporations (See § 692.93);
- Describe the requirements a State must satisfy, as the administrator of a partnership with institutions of higher education, early intervention programs, and philanthropic organizations or private corporations, to receive GAP Program funds (See § 692.94);
- Describe the requirements that a State must meet to receive an allotment under this program, including submitting an application on behalf of a partnership and serving as the primary administrative unit of the partnership (See § 692.100);
- Describe the responsibilities of the members of a State partnership in a

State that receives a GAP allotment; (See § 692.101)

- Describe how the Secretary would allot funds to the States (See § 692.110);
- Provide that the State must use at least 98 percent of the Federal funds received under the GAP Program to fund LEAP Grants under GAP and may use up to two percent of the Federal funds received for administrative expenses such as the establishment of a partnership, early notification to potentially eligible students and their families of their potential eligibility for student assistance including LEAP Grants under GAP, and issuing to students preliminary award notifications (See § 692.112);
- Describe the requirements for funds matching the Federal allotment under the GAP Program (See § 692.113);
- Describe the requirements for student eligibility under the GAP Program including that the student meets the relevant eligibility requirements in 34 CFR 668.32; has graduated from secondary school or, for a home-schooled student, has completed a secondary education; has financial need for a grant; and meets any additional requirements that the State may require for receipt of a LEAP Grant under GAP (See § 692.120);
- Provide that a State may impose reasonable time limits for a student to complete his or her degree (See § 692.120(c)(2)); and
- Describe how a participating institution may request a waiver of statutory or regulatory requirements that would inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership (See § 692.130).

Reasons: These proposed regulations are necessary to implement the provisions of section 415E of the HEA, as amended by the HEOA.

Early Intervention Programs (§§ 692.94(a)(2)(ii), and 692.101(c))

Statute: Section 415E(c)(3) provides that a State agency apply for a GAP allotment with, among others, early intervention programs located in the State. Section 415E(c)(4)(C) requires that an early intervention program in a partnership must provide direct services, support, and information (direct services) to participating students.

Current Regulations: None.

Proposed Regulations: Proposed § 692.94(a)(2)(ii) provides that a State applying for a GAP allotment must establish a partnership that includes new or existing early intervention programs. Under proposed § 692.101(c), an early intervention program

administered by a State or private organization is eligible to establish a partnership under the GAP Program, if the program provides direct services, support, and information to participating students.

Reasons: These proposed regulations are necessary to implement section 415E(c)(3) of the HEA and to clarify what is considered an eligible early intervention program.

Members of the LEAP/GAP subcommittee were concerned that the proposed regulations did not define the direct services that would be expected. We did not believe such an expansion of the regulations is necessary but agreed to provide further clarification. Under these proposed regulations, early intervention services would include, but would not be limited to, direct services such as after-school and summer-school tutoring, test preparation, assistance in obtaining summer jobs, career mentoring, a summer-bridge component, i.e., a precollege campus experience, and academic, personal and career counseling. These services may be provided through electronic media if the electronic media would be appropriate to the direct service provided and would interactively and directly engage individual students. Disseminating literature, or providing informational Web sites, would not qualify as direct services.

Members of the LEAP/GAP subcommittee also questioned the minimum number of early intervention programs that must be in a State partnership. Under these proposed regulations, a State partnership would be required to have more than one program that offers an early intervention component. Section 415E(c)(3) of the HEA, which the regulations mirror, refers to early information and intervention, mentoring, or outreach programs, suggesting that more than one of these types of programs must be included in the GAP Partnership. We believe the proposed regulations are consistent with the statute. A State or private organization that has a single early intervention program that includes several components or programs within its structure would satisfy the requirement of having more than one early intervention program.

Persistence to Degree Completion (§ 692.100(a)(6))

Statute: Section 415E(c)(1)(B)(vi) of the HEA provides that a State's application for a GAP allotment must include a description of the steps the State would take to ensure that students who receive LEAP Grants under GAP would persist to degree completion.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.100(a)(6), a State must include in its application the steps it plans to take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP would persist to degree completion.

Reasons: Proposed § 692.100(a)(6) is necessary to implement section 415E(c)(1)(B)(vi) of the HEA.

Some members of the LEAP/GAP subcommittee believed that the proposed regulations should directly address eligible students attending nonparticipating institutions of higher education. We do not agree. For a State that provides a LEAP Grant under GAP to an eligible student attending a nonparticipating institution of higher education, we would expect the State to obtain a signed assurance from the nonparticipating institution. The nonparticipating institution would assure the State that it would follow the State's plan established in the State's GAP application.

Notification to Students of LEAP Grant Funding Sources (§ 692.100(a)(8))

Statute: Section 415E(c)(1)(B)(viii) of the HEA requires that a State notify eligible students that grants are (1) LEAP Grants and (2) are funded by the Federal Government; the State; and, where applicable, other contributing partners.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.100(a)(8) a State GAP Program is required to notify eligible students that the grants they receive under GAP are LEAP Grants and that the grants are funded by the Federal Government; the State; and where applicable, other contributing partners.

Reasons: Section 415E(c)(1)(B)(viii) of the HEA for the GAP Program, which these proposed regulations implement, is basically the same as section 415C(b)(11) of the HEA for the LEAP Program. The reasons for these proposed regulations are the same as those reasons described for the LEAP Program proposed regulations as discussed under proposed § 692.21(k).

For a LEAP Grant under GAP, a State may include this notification in the award notification required under proposed § 692.111(e). The notifications would apply to LEAP Grants under GAP that are funded by in-kind contributions as well as those funded by the Federal allotment or cash contributions to the non-Federal share.

Recruiting Eligible Students (§ 692.101(b)(2))

Statute: Section 415E(c)(4)(B)(i)(I) of the HEA provides that an institution of higher education in a GAP partnership must recruit and admit participating qualified students and provide additional grant aid as agreed to with the State agency.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.101(b)(2), a degree-granting institution of higher education that is in a partnership under the GAP Program must recruit, admit, and provide institutional grant aid to participating eligible students as agreed to with the State agency.

Reasons: The proposed regulations generally reflect the language in section 415E(c)(4)(B)(i)(I) of the HEA. Some LEAP/GAP subcommittee members were concerned that the regulations may adversely affect the admissions standards of participating institutions. We believe that under these proposed regulations institutions and States would have broad discretion regarding what may be included in an agreement, e.g., there is no requirement that an institution must waive its admissions standards.

GAP and SLEAP Allotments (§§ 692.70 and 692.110)

Statute: Section 415E(b) of the HEA, as amended by the HEOA, provides that the Secretary makes an allotment under the GAP Program to each State that submits an application to meet the costs of the Federal share of the State's GAP Program. The statute requires that, in making a continuation award for a State, the Secretary would make an allotment to the State that is not less than the allotment made to the State in the previous fiscal year and further provides that the Secretary give priority to a State that applies for an allotment in partnerships with degree-granting institutions whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State.

Section 415E(g) of the HEA, as amended by the HEOA, provides that the LEAP Program provisions that are not inconsistent with GAP requirements apply to GAP.

For the programs authorized under part A, subpart 4 of title IV of the HEA, including the GAP Program, section 415B of the HEA provides that allotments are based on the ratio that the number of eligible students in a State bears to the number of eligible students in all the States except that no State may receive less than the State

received for fiscal year 1979 (1979–1980 award year). Section 415B of the HEA further provides that any allotted funds not required by a State may be reallocated to other States in proportion to the original allotments to these other States.

Section 415A(b) of the HEA, as amended by the HEOA, provides that the amount of the annual appropriation for the LEAP and GAP programs that is in excess of \$30,000,000 must be made available to carry out the GAP Program.

Section 415E(j) of the HEA, as amended by the HEOA, provides that for the two-year period that begins on August 14, 2008, the date of enactment of the HEOA, a State may continue to make grants under the SLEAP Program, i.e., through the 2010–2011 award year.

Current Regulations: There are no current regulations for the GAP Program. Section 692.70 provides that funds are allotted to States applying under the SLEAP Program in accordance with § 692.10.

Proposed Regulations: Proposed § 692.110(a)(1) would apply to the GAP Program the allotment formula authorized under section 415B of the HEA and used to allot a State's Federal LEAP funds under § 692.10(a) for a fiscal year.

Proposed § 692.110(a)(2) would provide priority to qualifying States by increasing the number of eligible students in a State to 125 percent in determining the ratio for allotting funds for a fiscal year. This provision would apply to a State that meets the requirements under proposed § 692.113(b) for reduced State matching because the State is applying for an allotment in partnership with degree-granting institutions whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State.

In some years, sufficient funds may be available to allot to each State that participated in the prior fiscal year a continuation award that is the same amount of Federal GAP funds as were allotted in the prior fiscal year, but are not sufficient both to allot at least the same amount of Federal GAP funds allotted in the prior year to these States and also to allot funds to additional States in accordance with the ratio used to allot the States' Federal LEAP funds under § 692.10(a). For these circumstances we are proposing § 692.110(a)(3)(i) that would provide to each State that participated in the prior fiscal year a continuation award in the amount the State received in the prior fiscal year. From the remaining Federal GAP funds, new applicants would be allotted an amount based on the ratio

used to allot the State's Federal LEAP funds under § 692.10(a).

Insufficient funds may be available to allot a continuation award that is at least the amount of Federal GAP funds that were allotted to each State in the prior fiscal year. In this circumstance, proposed § 692.110(a)(3)(ii) would provide that each State would receive an allotment that bears the same ratio to the amount of Federal GAP funds available as the amount of Federal GAP funds allotted to each State in the prior fiscal year bears to the amount of Federal GAP funds allotted to all States in the prior fiscal year.

Proposed § 692.110(b) provides that we would reallocate funds available for reallocation in a fiscal year in accordance with the provisions of proposed § 692.110(a) that were used to calculate initial allotments for the fiscal year.

Proposed § 692.110(c) provides that any funds made available for GAP but not expended in a fiscal year may be allotted or reallocated under the LEAP Program.

Proposed § 692.70 would clarify that, for fiscal year 2010 (2010–2011 award year), we would allot funds to States applying under the SLEAP Program in accordance with § 692.10 prior to calculating allotments to States applying for GAP funds under proposed subpart C of part 692.

Reasons: Except to carry out provisions specific to GAP, we are proposing to apply the allotment formulas applicable to the LEAP Program. This proposal is in accordance with section 415E(g) of the HEA, as amended by the HEOA, that provides that the LEAP Program provisions that are not inconsistent with GAP requirements apply to GAP.

Two specific provisions of GAP would modify the allotment formulas used for the LEAP Program. One provision gives priority to States that apply for an allotment in partnerships with degree-granting institutions whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State. The other provision provides that a State's GAP allotment may not be less than the allotment made to the State in the previous year.

We propose to implement the funding priority in proposed § 692.110(a)(2) by providing that the State's enrollment of eligible students would be 125 percent of its eligible students in applying the allotment formula to all States. We believe that the proposed 125 percent fulfills the statutory provision while providing that all eligible States have an

opportunity to qualify for funding under the allotment formula.

For continuing awards, there may be a year in which there are sufficient funds available to allot to each State that participated in the prior fiscal year the same amount of Federal GAP funds that were allotted in the prior fiscal year, but insufficient funds are available both to allot the same amount of Federal GAP funds to these continuing States as in the prior year and to allot additional funds to additional States in accordance with the ratio used to allot the States' Federal LEAP funds. For these circumstances, we believe it is in accordance with the statute to provide continuing States with the same allotment as received in the prior fiscal year as proposed in § 692.110(a)(3)(i). Additional applicants would receive an allotment based on applying to the remaining available funds the allotment formula used to allot the States' Federal LEAP funds.

Another circumstance affecting continuing awards would be a year for which there are insufficient funds available to allot a continuation award that is at least the amount of Federal GAP funds allotted to each State in the prior year. Proposed § 692.110(a)(3)(ii) would provide that we ratably reduce the allotment of each State in proportion to its prior year funding. Under this proposal we would allot to each State an amount that would bear the same ratio to the amount of Federal GAP funds available as the amount of Federal GAP funds allotted to each State in the prior fiscal year bears to the amount of Federal GAP funds allotted to all States in the prior fiscal year. This proposal would ensure that, to the extent practicable, a State with an allotment in the prior fiscal year would receive, at least proportionately, the same allotment as in the prior year.

Proposed § 692.110(b) provides that we would reallocate available funds in a fiscal year in accordance with the provisions of proposed § 692.110(a) that were used to calculate initial allotments for the fiscal year, and under proposed § 692.110(c) any funds made available to GAP but not expended would be allotted or reallocated under the LEAP Program. We believe that applying the provisions for reallocation funds as authorized under section 415B of the HEA is not inconsistent with the provisions of GAP and, therefore, must be applied to GAP allotments in accordance with section 415E(g) of the HEA. In addition we believe that it would be consistent with the provisions of section 415A(b) of the HEA to allot or reallocate funds under the LEAP

Program that were previously made available to GAP but not expended.

We are proposing to amend § 692.70 of the SLEAP Program to implement the provisions of section 415E(j) of the HEA for fiscal year 2010 (2010–2011 award year). As a practical matter, no State was able to participate in the GAP Program in fiscal year 2009 (2009–2010 award year), and these procedures are necessary only for fiscal year 2010.

In proposed appendix A to subpart C of part 692, we are providing a case study that would illustrate the proposed requirements for allotting funds under the GAP Program, including the provisions implementing the funding priority, continuation awards, and SLEAP Program funding during the transition period of fiscal year 2010 (the 2010–2011 award year) when a State may continue to participate in the SLEAP Program in lieu of GAP Program participation. Apart from State enrollments for fiscal year 1979 used in the allotment formula, nothing in the case study should be considered to reflect any State's actual circumstances or the expected results for any State.

Non-Federal Matching Funds (§ 692.113(a)(2))

Statute: Section 415E(b)(2) of the HEA provides that the non-Federal matching funds for a State's GAP Program may be cash or a noncash, in-kind contribution that has monetary value and helps a student meet the cost of attendance at an institution of higher education.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.113(a)(2), a State may include cash or in-kind contributions as non-Federal matching funds of a State partnership under the GAP Program. An in-kind contribution must be fairly evaluated; have monetary value, such as a tuition waiver; and be considered estimated financial assistance under 34 CFR 673.5(c).

Reasons: These proposed regulations would implement the provisions of section 415E(b)(2) of the HEA.

Members of the LEAP/GAP subcommittee noted the need to clarify the qualifying matching funds, including the in-kind contributions that may qualify as matching funds to make LEAP Grants under GAP to eligible students.

Cash that qualifies as matching funds may include, but is not limited to, State-appropriated funds or other State funds such as funds from a State lottery or tuition revenue at public institutions of higher education. Matching cash may also be grants to students provided by private institutions or philanthropic organizations or private corporations.

An in-kind contribution is a noncash contribution that has monetary value, such as a tuition waiver, the provision of room and board, transportation passes, or other provisions that help a student meet the cost of attending an institution of higher education. The proposed regulations would further clarify that an in-kind contribution must be considered to be estimated financial assistance under 34 CFR 673.5(c). As in the case of matching cash, matching in-kind contributions may be provided by the State, institutions of higher education, or philanthropic organizations or private corporations.

Regardless of whether the funds are cash or are an in-kind contribution, funds would qualify as matching funds only if awarded in accordance with the GAP Program requirements, and the matching funds would be considered title IV, HEA program assistance. For example, if a student receiving a tuition waiver did not graduate from secondary school, as required under § 692.120(a)(2) to qualify as an eligible student for a LEAP Grant under GAP, the amount of the tuition waiver could not qualify as matching funds for the non-Federal share of a State's GAP Program nor would it qualify as title IV, HEA program assistance. If another student receiving a tuition waiver graduated from secondary school and was otherwise eligible for a LEAP Grant under GAP, the amount of this other student's tuition waiver would qualify as matching funds for the non-Federal share of a State's GAP Program and as title IV, HEA program assistance.

Nothing in these proposed regulations would require a State to provide LEAP Grants under GAP to meet all costs of attendance. As with LEAP Grants under subpart A of this part, a State may, for example, restrict a LEAP Grant under GAP to meeting a student's tuition and fees. The restriction could apply to funds from both the Federal allotment and both cash and in-kind contributions toward the non-Federal share.

In accordance with 34 CFR 80.24 of EDGAR, generally other Federal funds may not be used to meet a State's non-Federal share nor may a State use the same non-Federal funds to meet the non-Federal share of more than one Federal program. For instance, non-Federal funds used to match the Gaining Early Awareness and Readiness for Undergraduate (GEAR UP) Program may not be used as matching funds for the GAP Program because those non-Federal funds were already used to match another Federal program. However, those non-Federal funds would be included in the State's base-year and

maintenance of effort requirements under proposed § 692.100(f) and (g).

Enrollment and the Amount of State Match (§ 692.113(b))

Statute: Section 415E(b)(2) of the HEA provides that the amount of the non-Federal matching funds for a State's GAP Program is based on the full-time equivalent enrollment of the institutions of higher education participating in the State's partnership.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.113(b), the non-Federal match of the Federal allotment must be forty-three percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State, or thirty-three and thirty-four one-hundredths percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State.

Reasons: These proposed regulations would implement the provisions of section 415E(b)(2) of the HEA. Members of the LEAP/GAP subcommittee believed that the number of students used in determining these percentages should include both in-State and out-of-State students. We agree.

Base-year Requirement (§ 692.100(f))

Statute: Section 415E(i) of the HEA provides that in determining a State's share of the costs of the State's GAP Program, the State may consider only those expenditures from non-Federal sources that exceed the State's total expenditures for need-based grants, scholarships, and work-study assistance for fiscal year 1999.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.100(f), the State must provide an assurance that the non-Federal funds used as matching dollars under the State's GAP Program is in excess of what the State spent in fiscal year 1999 on need-based grants, scholarships, and work-study assistance.

Reasons: Section 415E(i) of the HEA and proposed § 692.100(f) are identical to the base-year provisions for the previously authorized SLEAP Program. Proposed § 692.100(f) would consider the same fiscal year 1999 expenditures

from the same need-based grant, scholarship, and work-study programs a State operated in fiscal year 1999. Thus, the amount of a State's expenditures in fiscal year 1999 as determined for the SLEAP Program would be the same amount applicable for the State under these proposed regulations for the GAP Program.

Maintenance-of-Effort Requirement
(§ 692.100(g))

Statute: Section 415E(h) of the HEA provides that the aggregate amount expended by a State per student, or the aggregate expenditures by the State, for funds derived from non-Federal sources, for the authorized activities under section 415E(d) of the HEA for the preceding fiscal year were not less than the amount expended per student or the aggregate expenditure by the State for these authorized activities for the second preceding fiscal year. The authorized activities under section 415E(d) of the HEA include making LEAP Grants under GAP and certain administrative expenses.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.100(g), the State must provide an assurance that it meets the GAP maintenance-of-effort (MOE) requirement. Under the GAP MOE requirement, for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.111, i.e., making LEAP Grants under GAP and certain administrative expenses for the GAP Program, will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds.

Reasons: Section 415E(h) of the HEA and proposed § 692.100(g) are essentially the same as the MOE provisions for the previously authorized SLEAP Program except that the GAP MOE provision is concerned only with expenditures for GAP program activities. Because States can only participate in the GAP Program starting in the 2010–2011 award year, the total State expenditures for authorized GAP activities for the 2008–2009 and 2009–2010 award years would be zero. A State's MOE would not be relevant to qualifying for a GAP allotment until fiscal year 2012 (the 2012–2013 award year).

Note that although the statute and regulations refer to funding in terms of

a fiscal year, States receive LEAP, SLEAP, and GAP funds operationally on an award year (July 1 through June 30) basis. Therefore, a State's MOE and matching requirements are also measured on an award year basis.

Student Eligibility—Secondary School Graduate (§ 692.120(a)(2))

Statute: Section 415E(d)(2)(B)(i)(V)(bb) of the HEA provides that a student must graduate from secondary school to be eligible for a LEAP Grant under GAP.

Current Regulations: None.

Proposed Regulations: Under proposed § 692.120(a)(2), to be eligible for a LEAP Grant under GAP, a student must graduate from secondary school or, for a home-schooled student, must complete a secondary education.

Reasons: Proposed § 692.120(a)(2) is necessary to implement section 415E(d)(2)(B)(i)(V)(bb) of the HEA. We believe that a home-schooled student who completes a secondary education would satisfy the statutory requirement that a student graduate from secondary school. However, a student who passed an approved ability-to-benefit test or obtained a General Educational Development (GED) certificate would not satisfy the statutory provision and would not qualify as an eligible student for a LEAP Grant under GAP.

Student Eligibility—State's Maximum LEAP Program Award
(§ 692.120(a)(3)(ii)(B))

Statute: Section 415E(d)(3)(A)(ii) of the HEA provides that a student is eligible for a LEAP Grant under GAP if the student qualifies for the State's maximum undergraduate LEAP Grant under the LEAP Program as authorized under section 415(C)(b) of the HEA.

Current Regulations: None.

Proposed Regulations: Proposed § 692.120(a)(3)(ii)(B) would provide that, in an award year in which a student is receiving an additional LEAP Grant under GAP, a student's eligibility may be based, in part, on qualifying for a State's maximum undergraduate award for LEAP Grants under the LEAP Program in accordance with subpart A of part 692.

Reasons: Proposed § 692.120(a)(3)(ii)(B) is necessary to implement section 415E(d)(3)(A)(ii) of the HEA. Members of the LEAP/GAP subcommittee were concerned that a State's LEAP Program may not have a single maximum award amount. They were also concerned that a student may qualify for a maximum award but not receive the maximum amount. We agree that a student may qualify for the State's maximum LEAP Grant under the LEAP

Program in a State that may have more than one maximum award amount without qualifying for the highest of the maximum awards, e.g., a State may have different maximum awards for attendance at public and private institutions. In these cases, a student's maximum award is based on the maximum award amount established for the applicable category or program under which the student qualifies. We agree that a student would meet this requirement if the student qualifies for the State's maximum undergraduate award but does not actually receive the full amount of the maximum award.

Executive Order 12866

Regulatory Impact Analysis

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

Pursuant to the terms of the Executive order, it has been determined this proposed regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866. Virtually all of the economic impact associated with these proposed regulations flows from proposed § 690.67 (implementing the statutory provision in section 401(a) of the HEOA) allowing the award of two Pell Grants in one year for students who wish to accelerate their program of study. Outside of this provision, the cost of which is driven almost entirely by explicit statutory requirements, these proposed regulations would not be considered "economically significant."

The Secretary has assessed the potential costs and benefits of this regulatory action and has determined that the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations are needed to implement provisions of the HEA, as amended by the HEOA, related to changes to the Federal grant and work-study programs, campus safety, educational programs for students with intellectual disabilities, copyright infringement, teach-outs, readmission of servicemembers, and non-Title IV revenue.

In general, these regulations simply restate specific HEOA requirements, in many cases using language drawn directly from the statute, or make technical changes to conform with statutory requirements or other regulations. In the following areas, the Secretary has exercised limited discretion in implementing the HEOA provisions in these proposed regulations:

Definition of baccalaureate liberal arts programs offered by proprietary institutions: The Secretary determined that, to meet the statutory requirement that an institution offer a program, a liberal arts program must be an organized program of study that is essentially the same for all students, except that it could include some elective courses.

Readmission requirements for servicemembers: The Secretary determined that the statute applies both to a student who began attendance at an institution and left because of service in the uniformed services and to a student admitted to an institution who did not begin attendance because of service in the uniformed services. The Secretary defined "promptly readmit" as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date.

Non-title IV revenue requirement (90/10)—institutional eligibility and sanctions: The Secretary determined that an institution has 45 days after the end of its fiscal year to notify the Department if it failed the 90/10 requirement.

Non-title IV revenue requirement (90/10)—calculating revenue percentage: The Secretary identified types of non-title IV eligible programs from which an institution could count, as revenue, funds paid for students taking those programs; identified elements to distinguish an institutional loan from other student account receivables; and

set criteria to allocate excess loan funds treated as non-Federal revenue to each payment period.

Net present value: As discussed more fully in the net present value discussion in this preamble, the Secretary established a formula for institutions to use in calculating the net present value of institutional loans made during a fiscal year for the purpose of counting those loans as non-Federal revenue. As an alternative, the proposed regulations would also allow an institution to use 50 percent of the total amount of loans it made during the fiscal year as the NPV, provided that none of these loans are sold until they have been in repayment for at least two years.

Institutional plans for improving the academic program: While requiring institutions to provide prospective and enrolled students information about plans for improving the institution's academic program, the Secretary determined that institutions themselves are in the best position to determine what defines a plan, including when a plan becomes a plan subject to dissemination under this provision.

Peer-to-peer file sharing/copyrighted material: The Secretary determined that in implementing statutory requirements intended to reduce the unauthorized distribution of copyrighted material, institutions must incorporate at least one technological deterrent; must inform users that the unauthorized distribution of copyrighted material is illegal, what actions constitute illegal distribution of copyrighted material, and the potential penalties for doing so; and must use relevant assessment criteria to evaluate how effective its plans are in combating the unauthorized distribution of copyrighted materials by users of the institution's networks.

Consumer Information: The Secretary determined that institutions must identify the source of the information disclosed, as well as the time frames and methodology associated with that information; that institutions must disclose the retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS); that, with limited exceptions, institutions must disaggregate completion and graduation rate data by gender, by major racial and ethnic subgroup, and by whether or not the institution's students received certain types of Federal student aid; and that, in cases where 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at an institution left school to serve in the Armed Forces, to serve on official church missions, or to serve with a foreign aid service of the Federal Government (such as the Peace Corps),

the institution may recalculate the completion or graduation rate of those students by adding the time period of service to the 150 percent time frame they normally have to complete or graduate.

Campus Safety Provisions—Hate Crime Reporting: The Secretary determined that the current FBI's Hate Crime Data Collection Guidelines in the Uniform Crime Reporting Handbook should be used to define the hate crimes to be reported.

Campus Safety Provisions—Definition of Test: The Secretary defines test for purposes of emergency response and evacuation procedures as regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.

Campus Safety Provisions—Annual Security Report/Emergency Response and Evacuation Procedures: The Secretary determined that institutions must include a statement of policy regarding their emergency response and evacuation procedures in the annual security report beginning with the annual security report distributed by October 1, 2010. The Secretary established these emergency response procedures to ensure institutions are prepared for an emergency situation on campus. These procedures include testing procedures to identify and improve weaknesses and procedures to providing emergency information to the campus and larger community, such as parents.

Campus Safety Provisions—Timely Warning and Emergency Notification: The Secretary determined that a timely warning must be issued in response to crimes specified in the regulations and that an emergency notification is required in the case of an immediate threat to the health or safety of students or employees occurring on campus, covering a broader scope of situations than those covered by the timely warning requirement.

Campus Safety Provisions—Annual Security Report/Emergency Response and Evacuation Procedures/Definition of On-Campus Student Housing Facility: The Secretary defines the term *on-campus student housing facility* to mean a dormitory or other residential facility for students that is located on an institution's campus, as defined in § 668.46(a).

Campus Safety Provisions—Annual Security Report/Missing Student Notification Policy: The Secretary determined that the annual security report must include information about missing student policies and procedures.

Campus Safety Provisions—Missing Student Notification Policy: The Secretary determined that institutional missing student notification policies must include a list of the titles of the persons or organizations to which a student should be reported missing, must allow students to register in a confidential manner a contact person to be notified within 24 hours if they are reported missing, must inform students that their parent or guardian will be notified if they are under eighteen and not an emancipated minor, and must inform students that law enforcement will be notified within 24 hours if the student has been determined to be missing for 24 hours.

Campus Safety Provisions—Annual Fire Safety Report: The Secretary included definitions for *cause of fire, fire, fire drill, fire-related injury, fire-related death, fire-safety system, and value of property damage* to enable comparability across institutions of the statistics that institutions are required to report. Additionally, institutions must submit statistics to the Department in their annual fire safety report and must provide data for the three most recent calendar years for which data are available, with reporting requirements phased in beginning with the collection of calendar year 2009 statistics for inclusion in the October 1, 2010 Annual Fire Safety Report.

Financial Assistance for Students with Intellectual Disabilities: The Secretary determined that a comprehensive transition and postsecondary program for students with intellectual disabilities must be delivered to students who physically attend the institution and that such a program must provide opportunities for students with intellectual disabilities to participate in coursework and other activities with students without disabilities.

Work-Study: The Secretary determined that written authorizations from students will no longer be required before an institution can credit a student's account or hold a credit balance for the student.

TEACH Grant Program Periods of Suspension and Discharge of Agreement to Serve: The Secretary determined that a TEACH Grant recipient's teaching service obligation should be discharged in cases when the recipient cannot comply with his or her agreement to teach because of a call or order to active military duty for an extended period of time.

Two Federal Pell Grants in an Award Year: The Secretary determined that a student would be eligible for a second Scheduled Award if the student has

earned in an award year at least the credit or clock hours of the first academic year of the student's eligible program, and is enrolled as at least a half-time student in a program leading to a bachelor's or associate degree or other recognized educational credential, except as provided for students with intellectual disabilities. The Secretary determined that a financial aid administrator may, on an individual basis, waive the requirement that a student complete the credit or clock hours in the student's first academic year in the award year due to special circumstances beyond the student's control. The Secretary determined that in calculating a transfer student's eligibility to receive a second Scheduled Award, an institution determines the credit or clock hours the student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution.

The Secretary determined that if a student is enrolled as a three-quarter-time or full-time student, an institution must consider a crossover payment period, i.e., a payment period that occurs in two award years, to be in the award year in which the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution would be required to reassign the crossover payment to the award year providing the greater payment.

A student may request that the institution place the payment period in the award year that can be expected to result in the student receiving a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur. If the student makes that request, the institution must assign the payment period to that award year.

Maximum Federal Pell Grant for Children of Soldiers: The Secretary determined that a student whose parent or guardian died as a result of performing military service in Iraq or Afghanistan after September 11, 2001 is deemed to have a zero expected family contribution (EFC) for the Federal Pell Grant Program.

Regulatory Alternatives Considered

This section addresses the alternatives that the Secretary considered in implementing the discretionary portions of the HEOA provisions. Except where noted, alternatives considered did not have a measurable effect on Federal costs. These alternatives are discussed in more detail in the *Reasons* sections of this preamble related to the specific regulatory provisions.

Campus-Safety Provisions: In general, the Secretary adopted alternatives that maximized the availability of information provided to students and parents while avoiding unnecessary burden on institutions. Specific examples of this process are discussed in the *Reasons* sections accompanying individual regulatory provisions.

Two Federal Pell Grants in an Award Year: The Department proposed that a student would be eligible to receive payment from a second Scheduled Award if the student was also completing the hours of the first academic year in that payment period. In conjunction with this provision, the Department proposed to require recalculation of a student's payment for any payment period in which the student is receiving a second Scheduled Award if the projected enrollment status of a student enrolled in a term-based program changed. This recalculation requirement would ensure that a student who is not accelerating does not receive the benefit of a payment from a second Scheduled Award. Non-Federal negotiators objected to the recalculation requirements, citing concern that they would be administratively burdensome and create a different treatment compared to recalculations for first Scheduled Awards. As discussed extensively above in the *Reasons* section related to this provision, the Department rejected a number of alternatives proposed by non-Federal negotiators, because they failed to encourage a student to accelerate the completion of his or her program of study within a shorter time period than the regularly scheduled completion time, i.e., the published length of the program. Consensus was not reached on this issue.

Maximum Federal Pell Grant for Children of Soldiers: During the negotiation of these proposed regulations, the Department proposed that a student must have an EFC in the numerical range that would make a student eligible for a Federal Pell Grant to qualify for a zero EFC under this provision. Non-Federal negotiators objected that this added an additional student eligibility requirement not

provided for in the statute. Based on this objection and the Department's belief that any student with a parent or guardian who died in Iraq or Afghanistan after September 11, 2001 should receive a zero EFC, the Department agreed with the non-Federal negotiators' proposed language although the Department's alternative would have cost approximately \$450,000 less over five years than the proposed regulations that drew consensus.

Non-Federal negotiators also suggested that recipients should receive a Maximum Pell Award instead of a zero EFC. The Department declined on the basis that it conflicted with the explicit language of the statute.

TEACH Grant Program Periods of Suspension and Discharge of Agreement to Serve: Several non-Federal negotiators suggested that the Department should expand the categories of extenuating circumstances under which a TEACH Grant recipient who is unable to fulfill all or a portion of his or her teaching service obligation may be excused from fulfilling that portion of the teaching service obligation to include economic hardship, noting that teachers were being laid off in a number of areas and TEACH Grant recipients might not be able to find full-time employment in their high-need fields due to the current economic conditions. The Department rejected this alternative, believing that the eight-year timeframe to complete the four-year service requirement is sufficient to overcome temporary hardship in locating a suitable position.

Benefits

Benefits provided in these proposed regulations include greater transparency for prospective and enrolled students at institutions participating in the Federal Student Financial Assistance programs; increased eligibility for certain recipients of Federal Student Financial Assistance program funds; established requirements under which servicemembers are readmitted to participating institutions; established extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation; expanded use of FWS funds to permit institutions to compensate students employed in projects that teach civics in school, raise awareness of government functions or resources, or increase civic participation; allowing institutions located in major disaster areas to make FWS payments to disaster-affected students; new requirements for determining how proprietary institutions calculate the amount and

percent of revenue derived from sources other than title IV, HEA program funds; providing that an institution that conducts a teach-out at a site of a closed institution may, under certain conditions, establish that site as an additional location; amending the definition of "proprietary institution of higher education" to include institutions that provide a program leading to a baccalaureate degree in liberal arts, if the institution provided that program since January 1, 2009, and has been accredited by a regional accrediting agency since October 1, 2007, or earlier; providing that the non-Federal share of LEAP Grants no longer has to come from a direct appropriation of State funds; increased information to LEAP Grant recipients and recipients of the new GAP program; and the establishment of the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program. In most cases, the Department lacks data to accurately assess the impact of these benefits. The Department is interested in receiving comments or data that would support a more rigorous analysis of the impact of these provisions.

These benefits all flow directly from statutory changes included in the HEOA; they are not materially affected by discretionary choices exercised by the Department in developing these regulations. As discussed in greater detail under *Net Budget Impacts*, these proposed provisions result in net costs to the government of \$1,644 million over 2010–2014.

Costs

Many of the statutory provisions implemented through this NPRM will require regulated entities to develop new disclosures and other materials, as well as accompanying dissemination processes. Other proposed regulations generally would require discrete changes in specific parameters associated with existing guidance—such as changes to FWS cash management practices and TEACH Grant service suspension and discharge benefits.

Entities wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these proposed regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation. In assessing the

potential impact of these proposed regulations, the Department recognizes that certain provisions—such as the requirement for additional disclosures—are likely to increase workload for some program participants. This additional workload is discussed in more detail under the *Paperwork Reduction Act of 1995* section of this preamble. Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. Given the limited data available, the Department is particularly interested in comments and supporting information related to possible burden stemming from the proposed regulations. Estimates included in this notice will be reevaluated based on any information received during the public comment period.

Federal Pell Grant Program:

Statutory changes implemented by these proposed regulations are estimated to increase grant awards under the Federal Pell Grant Program by \$297 million over award year 2009–2010 and a total of \$1,643 million over five years. This will increase Federal costs by the same amount.

Statutory changes implemented by these proposed regulations to grant children of deceased soldiers a zero EFC are estimated to increase grant awards under the Federal Pell Grant Program by approximately \$280,000 over award year 2009–2010 and a total of \$500,000 over five years. This will increase Federal costs by the same amount.

Because institutions of higher education affected by these regulations already participate in the Federal Pell Grant Program, these schools have already established systems and procedures to meet program eligibility requirements. Accordingly, entities wishing to continue to participate in the program have already absorbed most of the administrative costs related to implementing these regulations. Marginal costs over this baseline are primarily related to one-time system changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation.

Net Budget Impacts

HEOA provisions implemented by these proposed regulations are estimated to have a net budget impact of \$297.4 million in 2010 and \$1.6 billion over FY 2011–2013. Absent evidence on the impact of these regulations on student behavior, budget cost estimates were based on behavior as reflected in various Department data

sets and longitudinal surveys listed under *Assumptions, Limitations, and Data Sources* in this preamble. The budgetary impact of the proposed regulations is almost entirely driven by statutory changes involving the provision of two Pell Grants in one year.

Assumptions, Limitations, and Data Sources

Because these proposed regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the HEOA changes implemented in these proposed regulations do not exist. Costs have been quantified for five years. In general, these estimates should be considered preliminary; they will be reevaluated in light of any comments or information received by the Department prior to the publication of the final regulations. The final regulations will incorporate this information in a revised analysis.

In developing these estimates, a wide range of data sources were used, including data from the National Student Loan Data System; operational and financial data from Department of Education systems; and data from a range of surveys conducted by the National Center for Education Statistics such as the 2004 National Postsecondary Student Aid Survey, the 1994 National Education Longitudinal Study, and the 1996 Beginning Postsecondary Student Survey. For the regulations related to the Federal Pell Grant Program, the sample file used for the Pell Grant estimation model is created from a representative portion of FAFSA applicants merged to Pell recipient data from the most current completed academic year (currently AY 2007–08). The sample data is “aged” using OMB economic assumptions and applicant growth assumptions to project future awards. Data from other sources, such as the Census Bureau, were also used. Data on administrative burden at participating schools and third-party servicers are extremely limited; accordingly, as noted above, the Department is particularly interested in comments in this area.

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

Accounting Statement

As required by OMB Circular A–4 (available at <http://www.whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 1, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded loan discharges, teacher loan forgiveness payments).

www.whitehouse.gov/omb/Circulars/a004/a-4.pdf), in Table 1, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers from the Federal government to student loan borrowers (for expanded loan discharges, teacher loan forgiveness payments).

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES (IN MILLIONS)

Category	Transfers
Annualized Monetized Transfers. From Whom To Whom?	\$297.4 million in 2010. Federal Government To Student Loan Borrowers.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum “Plain Language in Government Writing” 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:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 682.209 Repayment of a loan.)
- Could the description of the proposed regulations in the “Supplementary Information” section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education that participate in Title IV, HEA programs and individual students and parents. The U.S. Small Business Administration Size Standards define institutions and lenders as “small entities” if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. A significant percentage of the institutions participating in the Federal student loan programs meet the definition of “small entities.” For these institutions, the new requirements imposed under the proposed regulations are not expected to impose significant new costs. The impact of the proposed regulations on individuals is not subject to the Regulatory Flexibility Act.

The Secretary invites comments from small institutions and lenders as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Proposed §§ 668.14, 668.18, 668.23, 668.28, 668.41, 668.43, 668.45, 668.46, 668.49, 668.232, 668.233, 686.41, 686.42, 690.63, 690.64, 690.67, 690.75, 692.21, and 692.100, 692.101, 692.111 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 600.5(a)(5)—Definition of Baccalaureate Liberal Arts Programs Offered by Proprietary Institutions

The proposed change to § 600.5(a)(5) would add to the definition of *proprietary institution of higher education*, an institution that provides a program leading to a baccalaureate degree in liberal arts that the institution has provided since January 1, 2009, so long as the institution has been accredited by a recognized regional accreditation agency or organization since October 1, 2007, or earlier. This proposed change in the definition of a proprietary institution does not impact burden.

While the current regulations point to OMB 1840–0098, we estimate that there is no change in burden associated with this section of the regulations as

reported under the redesignated OMB Control Number 1845–0012.

Section 668.14(b)(31)—Institutional Requirements for Teach-Outs/Eligibility and Certification Procedures

The proposed regulations in § 668.14(b)(31) are amended to require an institution to submit a teach-out plan to its accrediting agency whenever (1) the Department or their accrediting agency initiates an LS&T, or an emergency action against the institution, as required by statute; (2) the institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program; (3) the institution intends to close a location that provides 100 percent of at least one program; or (4) the institution otherwise intends to cease operations.

While the current regulations in § 668.14 point to OMB 1840–0537, we estimate that the proposed changes in § 668.14 will increase burden by 160 hours for institutions under the redesignated OMB Control Number 1845–0022.

Section 668.18—Readmission Requirements for Servicemembers

The proposed § 668.18 of the regulations include the general requirements that an institution may not deny readmission to a servicemember, but must readmit the servicemember with the same academic status as when the student was last admitted to the institution. The proposed regulations clarify that the requirements also apply to a student who was admitted to an institution, but did not begin attendance because of service in the uniformed services. The proposed regulations specify that the institution must promptly readmit a student, and would define “promptly readmit” as readmitting a student into the next class or classes in the student's program unless the student requests a later date of admission, or unusual circumstances require the institution to admit the student at a later date. The proposed regulations require the institution to make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost. The institution would not be required to readmit the student if, after reasonable efforts by the institution, the student is still not prepared to resume the program at the point where he or she left off, or is still unable to complete the program.

The proposed regulation requires an institution to designate one or more offices for the purpose of receiving advance notice from students of their absence from the institution necessitated by service in the uniformed services, and notice from students of intent to return to the institution. However, such notice would not need to follow any particular format, nor would a student have to indicate if the student intends to return to the institution. Also, any such notice may be provided by an appropriate officer of the Armed Forces. The notice of intent to return may be provided orally or in writing and would not need to follow any particular format. A period of absence from the institution before or after performing service in the uniformed services would not count against the period of uniformed service which is limited to the five years.

The proposed regulations list the documentation that support the institution's determination for readmission that a student must submit with an application for readmission. The proposed regulations make clear that the types of documentation available or necessary will vary from case to case.

The proposed regulations list the circumstances that a student's eligibility for readmission to an institution would be terminated.

We estimate that the proposed changes will increase burden for students by 384 hours and for institutions by 1,129 hours for a total increase in burden of 1,513 hours in OMB Control Number 1845–NEW1.

Non-Title IV Revenue Requirement (90/10)

Section 668.28(a)—Calculating the Revenue Percentage

The proposed regulations in § 668.28(a) implement the statutory provisions relating to counting revenue from non-title IV eligible programs.

Regarding institutional loans for which a net present value (NPV) would be calculated, the proposed regulations establish that institutional loans would have to be credited in-full to the students' accounts, be evidenced by standalone repayment agreements between students and the institution, and be separate from enrollment contracts signed by students.

To count revenue from loan funds in excess of the loan limits in effect prior to ECASLA in the allowable revenue category, the proposed regulations allow institutions to count the excess amount on a payment-period basis.

We estimate that the proposed regulations will increase burden for

institutions; however, these proposed regulations only define non-title IV revenue. The burden increase is found in § 668.28(b) and (c) under OMB 1845–NEW2.

Section 668.28(b)—Net Present Value

The proposed regulation 668.28(b) defines the NPV as the sum of the discounted cash flows. Proposed Appendix C illustrates how an institution calculates its 90/10 revenue percentage.

The proposed regulations allow a simpler alternative to performing the NPV calculation, by allowing an institution to use 50 percent of the total amount of loans it made during the fiscal year as the NPV. However, as a condition of using the 50 percent alternative calculation, if the institution chooses to use this alternative, it may not sell any of the associated loans until they have been in repayment for at least two years.

We estimate that the proposed regulations will increase burden for institutions by 3,087 hours in the new OMB Control Number 1845–NEW2.

Section 668.28(c)—Non-title IV Revenue (90/10)

The proposed regulations in § 668.28(c) would remove all of the 90/10 provisions from 34 CFR 600.5 and relocate the amended provisions to subpart B of part 668. The proposed regulations amend the program participation agreement to specify that a proprietary institution must derive at least 10 percent of its revenue from sources other than title IV, HEA program funds. If an institution does not satisfy the 90/10 requirement, the proposed regulations require the institution to notify the Department no later than 45 days after the end of its fiscal year that it failed the 90/10 requirement. In keeping with provisional certification requirements the current regulations are amended by adding proposed language to provide that a proprietary institution's certification automatically becomes provisional if it fails the 90/10 requirement for any fiscal year.

We estimate that the proposed regulations in § 668.28(c) will increase burden for institutions by 1 hour in the new OMB Control Number 1845–NEW2.

Section 668.23(d)(4)—Audited Financial Statements

The proposed regulations in § 668.23(d)(4) require that a proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the title IV, HEA program funds that the

institution received during the fiscal year covered by that audit. The institution must also report in the footnote the non-Federal and Federal revenue by source that was included in the 90/10 calculation.

While the current regulations point to OMB Control Number 1840–0697, we estimate that the proposed regulations in § 668.23(d)(4) will increase burden for institutions by 165 hours for the redesignated OMB Control Number 1845–0038.

Section 668.43(a)(5)(iv)—Institutional Plans for Improving the Academic Program

The proposed regulation in § 668.43(a) amends the information about the academic program that the institution must make readily available to enrolled and prospective students about any plans by the institution for improving any academic program at the institution. An institution would be allowed to determine what a “plan” is, including when a plan becomes a plan.

We estimate that the proposed regulations will increase burden for institutions by 968 hours in OMB Control Number 1845–0022.

Sections 668.14(b) and 668.43(a)—Peer-to-Peer File Sharing/Copyrighted Material

Section 668.14(b)(30)—Program Participation Agreement (PPA)

The proposed regulations require an institution, as a condition of participation in a title IV, HEA program, to agree that it has developed and implemented plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network without unduly interfering with the educational and research use of the network.

An institution's plan must include:

The use of one or more technology-based deterrents;

Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material;

Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and

Procedures for periodically reviewing the effectiveness of the plans.

The proposed regulations make clear that no particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance will be, including those that prohibit content monitoring.

The proposed regulation requires an institution, in consultation with the

chief technology officer or other designated officer of the institution, to the extent practicable, offer legal alternatives to illegal downloading or otherwise acquiring copyrighted material, as determined by the institution. The proposed regulations would also require that institutions (1) periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material and (2) make the results of the review available to their students through a Web site and/or other means.

While the current regulations in § 668.14 point to OMB 1840–0537, we estimate that the proposed changes in § 668.14(b)(30) will increase burden by 91,120 hours for institutions under the redesignated OMB Control Number 1845–0022.

Section 668.43(a)(10)—Consumer Information

The proposed regulations requires information regarding institutional policies and sanctions related to the unauthorized distribution of copyrighted material be included in the list of institutional information provided upon request to prospective and enrolled students. This information must (1) explicitly inform enrolled and prospective students that unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject a student to civil and criminal liabilities; (2) include a summary of the penalties for violation of Federal copyright laws; and (3) delineate the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system.

We estimate that the proposed regulations in § 668.43(a)(10) will increase burden for institutions by 1,424 hours in OMB Control Number 1845–0022.

Section 668.41—Reporting and Disclosure of Information

The proposed regulations in § 668.41 add retention rate information, placement rate information, and information on the types of graduate and professional education in which graduates of the institution's four-year degree programs enroll, to the types of information that an institution must provide to its enrolled and prospective students. When reporting its retention rate, an institution must disclose the institution's retention rate as defined by and reported to the Integrated

Postsecondary Education Data System (IPEDS). The institution may use various sources of retention rate information and information on types of graduate and professional education in which graduates of the institution's four-year degree programs enroll (such as State data systems, surveys, or other relevant sources). If an actual placement rate is calculated by the institution, it must be disclosed. The institution would have to identify the source of the information it discloses, as well as the time frames and methodology associated with that information.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has been recently discontinued, therefore, we estimate that the proposed regulations will increase burden for institutions 8,541 hours in OMB Control Number 1845–0004.

Section 668.45—Information on Completion or Graduation Rates

Under the proposed regulations in § 668.45, an institution's completion and graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup, and by whether or not the institution's students received certain types of Federal student aid. The disaggregation by receipt of aid is categorized by:

Recipients of a Federal Pell Grant;
Recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan); and

Recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford loan).

The institution would report its completion and graduation rate information in a disaggregated fashion only if the number of students in each category is sufficient to yield statistically reliable information, and doing so would not reveal personally identifiable information about an individual student.

We estimate that the proposed regulations will increase burden for institutions 7,488 hours in OMB Control Number 1845–0004.

Campus Safety Provisions

Section 668.46(c)(3)—Hate Crime Reporting

The proposed regulations add the crimes of “larceny-theft,” “simple assault,” “intimidation,” and “destruction/damage/vandalism of property” to the crimes that must be reported in hate crime statistics. Additionally, the proposed regulations

update the definitions of the terms “Weapons: carrying, possessing, etc.,” “Drug abuse violations,” and “Liquor law violations” which are excerpted from the Federal Bureau of Investigation’s Uniform Crime Reporting Program, to reflect changes made by the FBI to these definitions in 2004.

We estimate that the proposed regulations will increase burden for institutions by 5,695 hours in OMB Control Number 1845–0022.

Reporting Emergency Response and Evacuation Procedures

Section 668.46(e)—Timely Warning and Emergency Notification

The proposed regulations clarify the difference between the existing timely warning requirement and the new requirement for an emergency notification policy. While a timely warning must be issued in response to specific crimes, an emergency notification is required in the case of an immediate threat to the health or safety of students or employees occurring on campus. The proposed language would clarify that an institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

We estimate that the proposed regulations will increase burden for institutions by 1,424 hours in OMB Control Number 1845–0022.

Section 668.46(g)—Emergency Response and Evacuation Procedures

The proposed regulations outline the elements that an institution must include in its statement of policy describing its emergency response and evacuating procedures in its annual security report to include the following:

Procedures to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat occurring on the campus.

A description of the process that (1) confirms that there is a significant emergency or dangerous situation, (2) determines the appropriate segment or segments of the campus community to receive a notification, (3) determines the content of the notification, and (4) initiates the notification system.

A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing the notification will, in the

professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.

A list of the titles of the persons or organizations responsible for carrying out the actions proposed.

Procedures for disseminating emergency information to the larger community.

Procedures for testing its emergency response and evacuation procedures on at least an annual basis with at least one test per calendar year, and be documented, including a description of the exercise, the date, time, and if it was announced or unannounced.

We estimate that the proposed regulations will increase burden for institutions by 11,390 hours in OMB Control Number 1845–0022.

Missing Student Procedure

Section 668.41(a)—Definition of On-Campus Student Housing Facility

The proposed regulations in § 668.41(a) would add a definition of the term *on-campus student housing facility* to mean a dormitory or other residential facility for students that is located on an institution’s campus.

The proposed definition would be added to clarify what is meant by *on-campus student housing facility* and to link the meaning of “on-campus” to the existing regulatory definition of *campus* in § 668.46(a), which is used for crime reporting under § 668.46(c). The proposed change is to a definition and does not impact burden.

While the current regulations point to both OMB 1845–0004 and OMB 1845–0010, OMB 1845–0010 has recently been discontinued. We estimate that there is no change in burden associated with this section of the regulations as reported under OMB Control Number 1845–0004.

Section 668.46(b)—Annual Security Report

The proposed regulations in § 668.46(b) require an institution to include its missing student notification policy and procedures in its annual security report. This would be required beginning with the annual security report distributed by October 1, 2010.

We estimate that the proposed regulations will increase burden for institutions by 456 hours for an increase in burden in OMB Control Number 1845–0022.

Section 668.46(h)—Missing Student Notification Policy

The proposed regulation in § 668.46(h) implements the new

statutory requirements, specifying that a statement of policy regarding missing student notification for students residing in on-campus student housing facilities must include:

A list of the titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;

A requirement that any official missing student report be immediately referred to the institution’s police or campus security department or, if not applicable, to the local law enforcement agency with jurisdiction in the area;

The option for each student to identify a contact person to be notified if the student is determined missing by the institutional police or campus security department, or the local law enforcement agency; and

A disclosure that contact information will be registered and maintained confidentially.

The proposed regulation further requires an institution to advise students who are under 18 and not emancipated that if the student is missing it will notify a custodial parent or guardian in addition to any contact person designated by the student. All students must also be advised that, regardless of whether they name a contact person, the institution must notify the local law enforcement agency that the student is missing, unless the local law enforcement was the entity that determined that the student is missing.

The proposed regulations reflect the new statutory requirements. These regulations do not preclude the institution from contacting the student’s contact person or the parent immediately upon determination that the student has been missing for 24 hours.

We estimate that the proposed regulations will increase burden for institutions by 2,423 hours for an increase in burden in OMB Control Number 1845–0022.

Fire Safety Standards

Section 668.41(e)—Annual Fire Safety Report

The proposed regulations provide that institutions that maintain an on-campus student housing facility must distribute an annual fire safety report and to create publication requirements for the annual fire safety report that are similar to the long-standing rules for the annual security report.

The proposed regulations allow an institution to publish the annual security report and the annual fire safety

report together, as long as the title of the document clearly states that it contains both the annual security report and the annual fire safety report. If an institution chooses to publish the reports separately, it would have to include information in each of the two reports about how to directly access the other report.

While the current regulations point to both OMB 1845-0004 and OMB 1845-0010, OMB 1845-0010 has recently been discontinued. The burden associated with the data collection and reporting for the annual fire safety report is reflected in § 668.49 as reported under OMB Control Number 1845-NEW3.

Section 668.49—Annual Fire Safety Report

The proposed regulations define the following terms relevant to the fire safety reporting requirements: Cause of fire; Fire; Fire drill; Fire-related injury; Fire-related death; Fire-safety system; and Value of property damage.

The proposed regulation requires an institution to report to the public, the statistics that it submits to the Department in its annual fire safety report. The institution would have to provide data for the three most recent calendar years for which data are available. The first full report to contain the full three years of data would be the report due on October 1, 2012.

The proposed regulations outline the elements that an institution must disclose in its annual fire safety report, including: Fire statistics; A description of each on-campus student housing facility fire safety system; The number of regular, mandatory, supervised fire drills held during the previous calendar year; Policies or rules on portable electrical appliances, smoking, and open flames in student housing facilities; Procedures for student housing evacuation in the case of a fire; Policies on fire safety education and training programs provided to students, faculty, and staff; A list of the titles of each person or organization to which students and employees should report that a fire has occurred; and Plans for future improvements in fire safety.

The proposed regulations specify that an institution that maintains an on-campus student housing facility must maintain a written and easily understood fire log that records, by the date that the fire was reported (as opposed to by the date that the fire occurred), any fire that occurred in an on-campus student housing facility. The log would have to include the nature, date, time, and general location of each fire, and require that the log be available

for public. These proposed regulations also implement the statutory requirement that an institution make an annual report to the campus community on the fires recorded in the fire log; however, this requirement may be satisfied by the annual fire safety report described in proposed § 668.49(b).

We estimate that the proposed regulations will increase burden for institutions by 7,283 hours in OMB Control Number 1845-NEW3.

Financial Assistance for Students With Intellectual Disabilities

Section 600.5—Proprietary Institution of Higher Education

The proposed regulation in § 600.5(a)(5)(i)(B)(2)(ii) defines a proprietary institution of higher education as one that may have a comprehensive transition and postsecondary program as an eligible program when it is approved by the Secretary. The proposed change in the definition of an eligible program does not impact burden.

While the current regulations in § 600.5 point to OMB 1840-0098, this information collection has been discontinued and redesignated to 1845-0012. We estimate that there is no change in burden associated with this proposed change in the regulations.

Section 668.8—Eligible Program

The proposed regulation in § 668.8(n) defines a comprehensive transition and postsecondary program as an eligible program when it is approved by the Secretary. The proposed change in the definition of an eligible program does not impact burden.

While the current regulations in § 668.8 point to OMB 1845-0537, this collection package has been discontinued; we estimate that there is no change in burden associated with this proposed change in the regulations.

Section 668.232—Program Eligibility

The proposed regulations require an institution that wishes to provide a comprehensive transition and postsecondary program to apply and receive approval from the Secretary. The proposed regulations outline the elements that an institution must include in its application, including: A detailed description of the comprehensive transition and postsecondary program; The policy for determining whether a student enrolled in the program is making satisfactory academic progress; A statement of the number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the

program; A description of the educational credential offered or identified outcome or outcomes established by the institution for all students enrolled in the program; A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program; and Any other information the Department may require. We estimate that the proposed regulations will increase burden for institutions by 66 hours in OMB Control Number 1845-NEW4.

Section 668.233—Student Eligibility

The proposed regulations in § 668.233 provide that a student with intellectual disabilities enrolled in a comprehensive transition and postsecondary program may be eligible for title IV, HEA program assistance under the Federal Pell grant, FSEOG, and FWS programs if: The student is making satisfactory academic program in accordance with the institution's published standards for students enrolled in the comprehensive transition and postsecondary program; and The institution obtains a record from a local educational agency that the student is or was eligible for FAPE under IDEA. If the FAPE record does not indicate that the student has an intellectual disability, the institution would have to obtain documentation from another source that identifies the intellectual disability.

We estimate that the proposed regulations will increase burden for institutions by 768 hours in OMB Control Number 1845-NEW4.

Section 668.43(a)(7)—Institutional Information

The proposed regulation changes the phrase "any special facilities and services" to "the services and facilities," and replaces the phrase "disabled students" with "students with disabilities." The proposed changes would also clarify that a description of services and facilities for students with disabilities must also contain the services and facilities available for students with intellectual disabilities.

We estimate that the proposed regulations will increase burden for institutions by 44 hours in OMB Control Number 1845-0022.

Federal Work Study Programs

Section 675.16—Conforming FWS Payment Requirements to the Cash Management Regulations

The proposed regulations in § 675.16(b)(1)(ii) and (b)(2), amend the FWS regulations in three ways regarding

the use of current award year FWS funds to pay prior award year charges. First, the amount of prior award year charges that could be paid with current award year FWS funds would increase to not more than \$200. Second, the FWS provision that allows an institution to pay for prior award year charges of \$100 or more would be removed. Finally, we clarify that the \$200 limit applies to all title IV, HEA program funds that an institution uses to pay prior-year charges. These changes to conform the FWS payment requirements to the current cash management regulations do not impact burden.

We estimate that there is no change in burden associated with this section of the regulations under OMB Control Number 1845-0019.

TEACH Grant Program

Section 686.41—Period of Suspension

The proposed regulations in § 686.41 provide that a TEACH Grant recipient who is called or ordered to active military duty (or his or her representative) may request a suspension of the eight-year period in increments not to exceed three years. Once the recipient has exceeded the 3-year suspension period, the recipient (or his or her representative) may request a discharge of all or a portion of his or her teaching service obligation.

We estimate that the proposed regulations will increase burden for institutions by 47,432 hours in OMB Control Number 1845-0083. The Department will submit an 83-C incorporating the changes after the final regulations have published.

Section 686.42—Discharge of Agreement To Serve

The proposed regulations in § 686.42 provide that the recipient may qualify for a proportional discharge of his or her service obligation based on the number of years the recipient has been called or ordered to active military duty.

To obtain the discharge, the recipient (or his or her representative) would be required to provide the Department:

A written statement from his or her commanding or personnel officer certifying that the recipient is on active duty status in the Armed Forces, the date on which that service began, and the date the service is expected to end; and a copy of his or her official military orders and military identification.

The Department would notify a TEACH Grant recipient of the decision reached on his or her request for a partial or full discharge of the teaching service obligation. The grant recipient would be responsible for fulfilling any teaching service obligation that is not discharged.

We estimate that the proposed regulations will increase burden for institutions by 14,400 hours in OMB Control Number 1845-0083. The Department will submit an 83-C incorporating the changes after the final regulations have published.

Federal Pell Grant Program

Two Federal Pell Grants in an Award Year

Section 690.67(a)—Student Eligibility for a Second Scheduled Award

The proposed regulations would amend § 690.67 to provide that a student would be eligible for a second Scheduled Award if the student has earned in an award year at least the credit or clock hours of the first academic year of the student's eligible program, and is enrolled as at least a half-time student in a program leading to a bachelor's or associate degree or other recognized educational credential (such as a postsecondary certificate or diploma), except as provided for students with intellectual disabilities. To the extent that the institution will be reporting these second scheduled award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the proposed regulations will increase burden for institutions by 47,432 hours in OMB Control Number 1845-NEW5.

Section 690.67(b)—Transfer Students

The proposed regulations in § 690.67(b) would provide that an institution determine the credit or clock hours that a transfer student has earned at a prior institution during the award year based on the Federal Pell Grant disbursements that the student received at the prior institution during the award year in relation to the student's Scheduled Award at that prior institution. The credit or clock hours that the student would be considered to have earned would be in the same proportion to credit or clock hours in the current institution's academic year as the disbursements that the student has received at the prior institution in the award year are in proportion to the student's Scheduled Award at the prior institution.

To the extent that the institution will be reviewing the transfer records of these students and subsequently reporting second scheduled award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the proposed regulations will increase burden for

institutions by 14,400 hours in OMB Control Number 1845-NEW5.

Section 690.67(c)—Special Circumstances

The proposed regulations in § 690.67(c) would provide that a financial aid administrator may waive the requirement that a student complete the credit or clock hours in the student's first academic year in the award year due to circumstances beyond the student's control. The financial aid administrator would be required to make and document the determination on an individual basis.

To the extent that the institution will be documenting these special circumstances and subsequently awarding second Pell grants, the institutions will be reporting the second Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the proposed regulations will increase burden for institutions by 3,429 hours in OMB Control Number 1845-NEW5.

Section 690.67(d)—Nonapplicable credit or clock hours

The proposed regulation in § 690.67(d) states that, in determining a student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

To the extent that the institution will be making determinations about the applicability of AP, IB, or other non-applicable courses, institution will subsequently award second Pell grants and thereafter report Pell disbursements via the Common Origination and Delivery (COD) system, thus there will be some additional reporting burden for institutions.

We estimate that the proposed regulations will increase burden for institutions by 2,032 hours in OMB Control Number 1845-NEW5.

Section 690.64—Payment Period in Two Award Years

In this proposed regulation in § 690.64, if a student is enrolled in a crossover payment period as a half-time or less-than-half-time student, the current requirements generally would apply.

If a student is enrolled as a three-quarter-time or full-time student, an institution must consider the payment period to be in the award year in which

the student would receive the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated. If the institution subsequently receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution would be required to reassign the payment to the award year providing the greater payment.

A student may request that the institution place the payment period in the award year that can be expected to result in the student receiving a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur. If the student makes that request, the institution must assign the payment period to that award year.

To the extent that the institution will be reviewing enrollment status in each of the two award years and making determinations about which award year must be used and subsequently reporting these second scheduled award Pell disbursements via the Common Origination and Delivery (COD) system, there will be some additional burden for institutions.

We estimate that the proposed regulations will increase burden for institutions by 33,881 hours in OMB Control Number 1845-NEW5.

Section 690.63(h)—Payment From Two Scheduled Awards

Under the proposed regulations in § 690.63(h), if a student is eligible for the remaining portion of a first Scheduled Award in an award year and for a payment from the second Scheduled Award, the student's payment would be calculated using the annual award for his or her enrollment status for the payment period. The student's payment would be the remaining amount of the first Scheduled Award being completed plus an amount from the second Scheduled Award in the award year up to the total amount of the payment for the payment period.

We estimate that the proposed regulations will increase burden for institutions by 8,471 hours in OMB Control Number 1845-NEW5.

Section 690.75(e)—Maximum Pell Grant for Children of Soldiers

Under the proposed regulation in § 690.75(e), a student whose parent or guardian was a member of the Armed Forces of the United States and died as a result of performing military service in Iraq or Afghanistan after September 11, 2001, would automatically receive a

zero EFC for purposes of the Federal Pell Grant Program if he or she was under 24 years old or enrolled in an institution of higher education at the time of the parent's or guardian's death.

We estimate that the proposed regulations will increase burden for institutions by 48 hours in OMB Control Number 1845-NEW6.

Part 692 Leveraging Educational Assistance Partnership Program

Section 692.21(k)—Notification to Students of LEAP Grant Funding Sources

The proposed regulations require that the State program notify eligible students that grants under the LEAP Grant Program are (1) LEAP Grants and (2) are funded by the Federal Government, the State, and, where applicable, other contributing partners.

The implementation of the proposed regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these proposed regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to insure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845-NEW7.

Section 692.100—Requirements a State Must Meet To Receive GAP Funds

The proposed regulations in § 692.100 describe the requirements that a State must meet to receive an allotment under this program including submitting an application on behalf of a partnership and serving as the primary administrative unit of the partnership. Under proposed § 692.100(a)(6), a State must include in its application the steps it plans to take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP would persist to degree completion.

Under proposed § 692.100(a)(8) a State GAP Program is required to notify eligible students that the grants they receive under GAP are LEAP Grants and that the grants are funded by the Federal Government, the State and where applicable, other contributing partners.

The implementation of the proposed regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these proposed regulations will be associated with the application and performance report forms under development. These forms will be developed after the final

regulations are published to insure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845-NEW7.

Section 692.101—Requirements That Must Be Met by a State Partnership

The proposed regulations in § 692.101(b)(2) provide that a degree-granting institution of higher education that is in a partnership under the GAP Program must recruit, admit, and provide institutional grant aid to participating eligible students as agreed to with the State agency.

The implementation of the proposed regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these proposed regulations will be associated with the application and performance report forms under development. These forms will be developed after the final regulations are published to insure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845-NEW7.

Section 692.111—Purposes for Which a State May Use Its GAP Grant

The proposed regulations in § 692.111 provide that each State receiving an allotment shall annually notify potentially eligible students in grades 7 through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend a LEAP-participating institution of higher education.

The notice shall include information about early information and intervention, mentoring, or outreach programs available to the student. The notice shall provide a nonbinding estimate of the total amount of financial aid that an eligible student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs. The proposed notice will also include any additional requirements that the State may require for receipt of a LEAP Grant under GAP.

The implementation of the proposed regulations for the changes to LEAP and the introduction of the GAP program will increase burden to States. We estimate that the burden in these proposed regulations will be associated with the application and performance report forms under development. These forms will be developed after the final

regulations are published to insure that the forms comport with the finalized requirements. The new forms will be submitted to OMB for approval under OMB Control Number 1845–NEW7.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the

collections that the Department will submit to the Office of Management and Budget for approval and public comment under the Paperwork and Reduction Act.

Regulatory section	Information section	Collection
668.14(b)(31)	Providing that an institution that conducts a teach-out at a site of a closed institution may, under certain conditions, establish that site as an additional location (see sections 487(f) and 498 of the HEA).	OMB 1845–0022. There will be an increase in burden of 160 hours.
668.18	Establishing requirements under which an institution must readmit servicemembers to the same academic status they had when they last attended the institution (see section 484C of the HEA).	OMB 1845–NEW1. There will be a new collection. A separate 60-day Federal Register notice will be published to solicit comments. There will be an increase in burden of 1,513 hours.
668.23(d)(4)	Adds new requirements to include in the audited financial statement footnote the non-Federal and Federal revenue that was included in the 90/10 calculation.	OMB 1845–0038. There will be an increase in burden of 165 hours.
668.28	Establishing new requirements for determining how proprietary institutions calculate the amount and percent of revenue derived from sources other than title IV, HEA program funds (see section 487(d) of the HEA).	OMB 1845–NEW2. There will be a new collection. A separate 60-day Federal Register notice will be published to solicit comments. There will be an increase in burden of 3,088 hours.
668.43(a)(5)(iv)	Expanding the information that an institution must make available to prospective and enrolled students to include a description of any plans the institution has to improve its academic program (see section 485(a) of the HEA).	OMB 1845–0022. There will be an increase in burden of 968 hours.
668.14(b)(30), 668.43(a)(10)	Providing that an institution must certify that it has plans to effectively combat unauthorized distribution of copyrighted material and will offer alternatives to illegal downloading or peer-to-peer distribution of intellectual property (see sections 485(a)(1) and 487(a) of the HEA).	OMB 1845–0022. There will be an increase in burden of 92,544 hours.
668.41	Expanding the information that institutions must make available to prospective and enrolled students to include information on: the employment and placement of students, and the retention rates of first-time, full-time undergraduate students.	OMB 1845–0004. There will be an increase in burden of 8,541 hours.
668.45	Expanding the information that institutions must make available to prospective students to include completion and graduation rate data that is disaggregated by gender, race, and grant or loan assistance (see section 485(a) of the HEA).	OMB 1845–0004. There will be an increase in burden of 7,488 hours.
668.46(c)(3), (e), (g)	Expanding the list of crimes that institutions must include in the hate crimes statistics reported to the Department. Requiring institutions to include in the annual security report a statement of emergency response and evacuation procedures (see section 485(f) of the HEA).	OMB 1845–0022. There will be an increase in burden of 18,509 hours.
668.41(a)	Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).	OMB 1845–0004. There is no change in burden associated with this section of the proposed regulations.
668.46(b), (h)	Requiring institutions that provide on-campus housing facilities to develop and make available a missing student notification policy and allow students who reside on campus to confidentially register contact information (see section 485(j) of the HEA).	OMB 1845–0022. There will be an increase in burden of 2,879 hours.
668.41(e)	Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).	OMB 1845–0004. There is no change in burden associated with this section of the proposed regulations.

Regulatory section	Information section	Collection
668.49	Establishing requirements for institutions that maintain on-campus housing facilities to publish annually a fire safety report, maintain a fire log, and report fire statistics to the Department (see section 485(i) of the HEA).	OMB 1845–NEW3. There will be a new collection. A separate 60-day Federal Register notice will be published to solicit comments. There will be an increase in burden of 7,283 hours.
668.232	Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).	OMB 1845–NEW4. There will be a new collection. A separate 60-day Federal Register notice will be published to solicit comments. There will be an increase in burden of 66 hours.
668.233	Expanding the eligibility for Federal Pell Grant, FWS, and FSEOG Program funds to students with intellectual disabilities (see sections 484(s) and 760 of the HEA).	OMB 1845–NEW4. There will be a new collection. A separate 60-day Federal Register notice will be published to solicit comments. There will be an increase in burden of 768 hours.
688.43(a)(7)	Requires that institutions report a description of services and facilities for students with intellectual disabilities.	OMB 1845–0022. There will be an increase in burden of 44 hours.
686.41, 686.42	Establishing extenuating circumstances under which a TEACH Grant recipient may be excused from fulfilling all or part of his or her service obligation (see section 420N(d)(2) of the HEA).	OMB 1845–0083. Changes will be incorporated into the Agreement to Serve form.
690.67, 690.64, 690.63(h)	Establishing requirements under which students may receive up to two Federal Pell Grant Scheduled Awards during a single award year (see section 401(b)(5)(A) of the HEA).	OMB 1845–NEW5. There will be a new collection. A separate 60-day Federal Register notice will be published to solicit comments. There will be an increase in burden of 109,645 hours.
690.75(e)	Providing the maximum Federal Pell Grant eligibility to a student whose parent was in the armed forces and died in Iraq or Afghanistan if the student was under 24 years old or enrolled in an institution of higher education at the time the parent died (see section 401(F)(4) of the HEA).	OMB 1845–NEW6. There will be a new collection. A separate 60-day Federal Register notice will be published to solicit comments. There will be an increase in burden of 48 hours.
692.21, 692.100, 692.101, 692.111	Requiring the State program to notify students that grants are LEAP Grants that are funded by the Federal Government, the State, and for LEAP Grants to students under the new Grants for Access and Persistence (GAP) Program, other contributing partners (see section 415C(b) of the HEA). Establishing the activities, awards, allotments to States, matching funds requirements, consumer information requirements, application requirements, and other requirements needed to begin and continue participating in the GAP Program (see sections 415B and 415E of the HEA).	OMB 1845–NEW7. There will be a new collection. A separate 60-day Federal Register notice will be published to solicit comments.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to OIRA_DOCKET@omb.eop.gov or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;

- Enhancing the quality, usefulness, and clarity of the information we collect; and

- Minimizing the burden on those who must respond. This includes exploring 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, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grant Program; 84.033 Federal Work-Study Program; 84.379 TEACH Grant Program; 84.069 LEAP)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 675

Colleges and universities, Employment, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Colleges and universities, Education of disadvantaged, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 692

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

Dated: July 30, 2009.

Arne Duncan,
Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend parts 600, 668, 675, 686, 690,

and 692 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

1. The authority citation for part 600 continues to read as follows:

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

2. Section 600.2 is amended by:

A. Revising paragraph (1)(i) of the definition of *educational program*.

B. Adding, in alphabetical order, a definition for *teach-out plan*.

C. Revising the authority citation at the end of the section.

The revisions and addition read as follows:

§ 600.2 Definitions.

* * * * *

Educational program: (1) * * *

(i) Leads to an academic, professional, or vocational degree, or certificate, or other recognized educational credential, or is a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

* * * * *

Teach-out plan: A written plan developed by an institution that provides for the equitable treatment of students if an institution, or an institutional location that provides 100 percent of at least one program, ceases to operate before all students have completed their program of study, and may include, if required by the institution's accrediting agency, a teach-out agreement between institutions.

* * * * *

(Authority: 20 U.S.C. 1071 et seq., 1078–2, 1088, 1091, 1094, 1099b, 1099c, 1141; 26 U.S.C. 501(c))

3. Section 600.4 is amended by:

A. Revising paragraph (a)(4).

B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.4 Institution of higher education.

(a) * * *

(4)(i) Provides an educational program—

(A) For which it awards an associate, baccalaureate, graduate, or professional degree;

(B) That is at least a two-academic-year program acceptable for full credit toward a baccalaureate degree; or

(C) That is at least a one-academic-year training program that leads to a certificate, degree, or other recognized educational credential and prepares

students for gainful employment in a recognized occupation; and

(ii) May provide a comprehensive transition and postsecondary program, as described in 34 CFR part 668, subpart O; and

* * * * *

(Authority: 20 U.S.C. 1091, 1094, 1099b, 1141(a))

4. Section 600.5 is amended by:

A. Revising paragraph (a)(5).

B. In paragraph (a)(6), adding the word “and” after the punctuation “;”.

C. In paragraph (a)(7), removing the word “; and” and adding, in its place, the punctuation “.”.

D. Removing paragraph (a)(8).

E. Removing paragraphs (d) through (g).

F. Redesignating paragraph (h) as paragraph (d).

G. Adding a new paragraph (e).

H. Revising the OMB control number and authority citation at the end of the section.

The revisions and addition read as follows:

§ 600.5 Proprietary institution of higher education.

(a) * * *

(5)(i)(A) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; or

(B)(1) Provides a program leading to a baccalaureate degree in liberal arts, as defined in paragraph (e) of this section, and has provided that program since January 1, 2009; and

(2) Is accredited by a recognized regional accrediting agency or association, and has continuously held such accreditation since October 1, 2007, or earlier; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

* * * * *

(e) For purposes of this section, a “program leading to a baccalaureate degree in liberal arts” is a program that the institution's recognized regional accreditation agency or organization determines, is a general instructional program in the liberal arts subjects, the humanities disciplines, or the general curriculum, falling within one or more of the following generally-accepted instructional categories comprising such programs, but including only instruction in regular programs, and excluding independently-designed programs, individualized programs, and unstructured studies:

(1) A program that is a structured combination of the arts, biological and physical sciences, social sciences, and humanities, emphasizing breadth of study.

(2) An undifferentiated program that includes instruction in the general arts or general science.

(3) A program that focuses on combined studies and research in the humanities subjects as distinguished from the social and physical sciences, emphasizing languages, literatures, art, music, philosophy, and religion.

(4) Any single instructional program in liberal arts and sciences, general studies, and humanities not listed in paragraph (e)(1) through (e)(3) of this section.

(Approved by the Office of Management and Budget under control number 1845-0012)

(Authority: 20 U.S.C. 1088, 1091)

5. Section 600.6 is amended by:

A. Revising paragraph (a)(4).

B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.6 Postsecondary vocational institution.

(a) * * *

(4)(i) Provides an eligible program of training, as defined in 34 CFR 668.8, to prepare students for gainful employment in a recognized occupation; and

(ii) May provide a comprehensive transition and postsecondary program for students with intellectual disabilities, as provided in 34 CFR part 668, subpart O;

* * * * *

(Authority: 20 U.S.C. 1088, 1091, 1094(c)(3))

6. Section 600.32 is amended by:

A. In paragraph (a), removing the words “(b) and (c)” and adding, in their place, the words “(b), (c), and (d)”.

B. Redesignating paragraph (d) as paragraph (e).

C. Adding a new paragraph (d).

D. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 600.32 Eligibility of additional locations.

* * * * *

(d)(1) An institution that conducts a teach-out at a site of a closed institution may apply to have that site approved as an additional location if—

(i) The closed institution ceased operations as result of an action taken by the Secretary to limit, suspend, or terminate the institution's participation under § 600.41 or subpart G of this part, or as a result of an emergency action

taken by the Secretary under 34 CFR 668.83; and

(ii) The teach-out plan required under 34 CFR 668.14(b)(31) is approved by the closed institution's accrediting agency.

(2)(i) An institution that conducts a teach-out and is approved to add an additional location described in paragraph (d)(1) of this section—

(A) Does not have to meet the two-year requirement of § 600.5(a)(7) or § 600.6(a)(6) for the additional location described in paragraph (d)(1) of this section;

(B) Is not responsible for any liabilities of the closed institution as provided under paragraphs (c)(1) and (c)(2) of this section if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b); and

(C) Will not have the default rate of the closed institution included in the calculation of its default rate, as would otherwise be required under 34 CFR 668.184 and 34 CFR 668.203, if the institutions are not related parties and there is no commonality of ownership or management between the institutions, as described in 34 CFR 668.188(b) and 34 CFR 668.207(b).

(ii) As a condition for approving an additional location under paragraph (d)(1) of this section, the Secretary may require that payments from the institution conducting the teach-out to the owners or related parties of the closed institution, are used to satisfy any liabilities owed by the closed institution.

* * * * *

(Authority: 20 U.S.C. 1088, 1099c, 1141)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

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

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

8. Section 668.8 is amended by:

A. Revising paragraph (n).

B. Removing the OMB control number at the end of the section.

The revision reads as follows:

§ 668.8 Eligible program.

* * * * *

(n) For title IV, HEA program purposes, *eligible program* includes a direct assessment program approved by the Secretary under § 668.10 and a comprehensive transition and postsecondary program approved by the Secretary under § 668.232.

* * * * *

9. Section 668.13(c) is revised to read as follows:

§ 668.13 Certification procedures.

* * * * *

(c) *Provisional certification.* (1)(i) The Secretary may provisionally certify an institution if—

(A) The institution seeks initial participation in a Title IV, HEA program;

(B) The institution is an eligible institution that has undergone a change in ownership that results in a change in control according to the provisions of 34 CFR part 600;

(C) The institution is a participating institution—

(1) That is applying for a certification that the institution meets the standards of this subpart;

(2) That the Secretary determines has jeopardized its ability to perform its financial responsibilities by not meeting the factors of financial responsibility under § 668.15 or the standards of administrative capability under § 668.16; and

(3) Whose participation has been limited or suspended under subpart G of this part, or voluntarily enters into provisional certification;

(D) The institution seeks a renewal of participation in a title IV, HEA program after the expiration of a prior period of participation in that program; or

(E) The institution is a participating institution that was accredited or preaccredited by a nationally recognized accrediting agency on the day before the Secretary withdrew the Secretary's recognition of that agency according to the provisions contained in 34 CFR part 603.

(ii) A proprietary institution's certification automatically becomes provisional if it does not derive at least 10 percent of its revenue for any fiscal year from sources other than title IV, HEA program funds, as required under § 668.14(b)(16).

* * * * *

10. Section 668.14 is amended by:

A. Adding paragraph (b)(16).

B. In paragraph (b)(25)(ii), removing the word “and” that appears after the punctuation “;”.

C. Adding paragraph (b)(30).

D. Adding paragraph (b)(31).

E. Revising the OMB control number at the end of the section.

The additions and revision read as follows:

§ 668.14 Program participation agreement.

* * * * *

(b) * * *

(16) For a proprietary institution, the institution will derive at least 10

percent of its revenues for each fiscal year from sources other than title IV, HEA program funds, as provided in § 668.28(a) and (b), or be subject to sanctions described in § 668.28(c);

* * * * *

(30) The institution—

(i) Has developed and implemented written plans to effectively combat the unauthorized distribution of copyrighted material by users of the institution's network, without unduly interfering with educational and research use of the network, that include—

(A) The use of one or more technology-based deterrents;

(B) Mechanisms for educating and informing its community about appropriate versus inappropriate use of copyrighted material, including that described in § 668.43(a)(10);

(C) Procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and

(D) Procedures for periodically reviewing the effectiveness of the plans to combat the unauthorized distribution of copyrighted materials by users of the institution's network using relevant assessment criteria. No particular technology measures are favored or required for inclusion in an institution's plans, and each institution retains the authority to determine what its particular plans for compliance with paragraph (b)(30) of this section will be, including those that prohibit content monitoring; and

(ii) Will, in consultation with the chief technology officer or other designated officer of the institution—

(A) Periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material;

(B) Make available the results of the review in paragraph (b)(30)(ii)(A) of this section to its students through a Web site or other means; and

(C) To the extent practicable, offer legal alternatives for downloading or otherwise acquiring copyrighted material, as determined by the institution; and

(31) The institution will submit a teach-out plan to its accrediting agency in compliance with 34 CFR 602.24(c), and the standards of the institution's accrediting agency upon the occurrence of any of the following events:

(i) The Secretary initiates the limitation, suspension, or termination of the participation of an institution in any title IV, HEA program under 34 CFR 600.41 or subpart G of this part or initiates an emergency action under § 668.83.

(ii) The institution's accrediting agency acts to withdraw, terminate, or suspend the accreditation or preaccreditation of the institution.

(iii) The institution's State licensing or authorizing agency revokes the institution's license or legal authorization to provide an educational program.

(iv) The institution intends to close a location that provides 100 percent of at least one program.

(v) The institution otherwise intends to cease operations.

* * * * *

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

* * * * *

11. Section 668.18 is added to subpart B of part 668 to read as follows:

§ 668.18 Readmission requirements for servicemembers.

(a) *General.* (1) An institution may not deny readmission to a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform, service in the uniformed services on the basis of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(2)(i) An institution must promptly readmit to the institution a person described in paragraph (a)(1) of this section with the same academic status as the student had when the student last attended the institution or was last admitted to the institution, but did not begin attendance because of that membership, application for membership, performance of service, application for service, or obligation to perform service.

(ii) "Promptly readmit" means that the institution must readmit the student into the next class or classes in the student's program beginning after the student provides notice of his or her intent to reenroll, unless the student requests a later date of readmission or unusual circumstances require the institution to admit the student at a later date.

(iii) To readmit a person with the "same academic status" means that the institution admits the student—

(A) To the same program to which he or she was last admitted by the institution or, if that exact program is no longer offered, the program that is most similar to that program, unless the student requests or agrees to admission to a different program;

(B) At the same enrollment status that the student last held at the institution, unless the student requests or agrees to

admission at a different enrollment status;

(C) With the same number of credit hours or clock hours completed previously by the student, unless the student is readmitted to a different program to which the completed credit hours or clock hours are not transferable;

(D) With the same academic standing (e.g., with the same satisfactory academic progress status) the student previously had;

(E)(1) If the student is readmitted to the same program, for the first academic year in which the student returns, assessing the same institutional charges that the student was or would have been assessed for the academic year during which the student left the institution; or

(2) If the student is admitted to a different program, and for subsequent academic years for a student admitted to the same program, assessing no more than the institutional charges that other students in the program are assessed for that academic year; and

(F) Waiving charges for equipment required in lieu of equipment the student paid for when the student was previously enrolled.

(iv)(A) If the institution determines that the student is not prepared to resume the program with the same academic status at the point where the student left off, or will not be able to complete the program, the institution must make reasonable efforts to help the student become prepared or to enable the student to complete the program including, but not limited to, providing refresher courses at no extra cost and allowing the student to retake a pretest at no extra cost.

(B) The institution is not required to readmit the student on his or her return if—

(1) After reasonable efforts by the institution, the institution determines that the student is not prepared to resume the program at the point where he or she left off;

(2) After reasonable efforts by the institution, the institution determines that the student is unable to complete the program; or

(3) The institution determines that there are no reasonable efforts the institution can take to prepare the student to resume the program at the point where he or she left off or to enable the student to complete the program;

(C)(1) "Reasonable efforts" means actions that do not place an undue hardship on the institution.

(2) "Undue hardship" means an action requiring significant difficulty or expense.

(D) The institution carries the burden to prove by a preponderance of the evidence that the student is not prepared to resume the program with the same academic status at the point where the student left off, or that the student will not be able to complete the program.

(3) This section applies to an institution that has continued in operation since the student ceased attending or was last admitted to the institution but did not begin attendance, notwithstanding any changes of ownership of the institution since the student ceased attendance.

(4) The requirements of this section supersede any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this section.

(b) *Service in the uniformed services.* For purposes of this section, service in the uniformed services means service, whether voluntary or involuntary, in the Armed Forces, including service by a member of the National Guard or Reserve, on active duty, active duty for training, or full-time National Guard duty under Federal authority, for a period of more than 30 consecutive days under a call or order to active duty of more than 30 consecutive days.

(c) *Readmission procedures.* (1) Any student whose absence from an institution is necessitated by reason of service in the uniformed services shall be entitled to readmission to the institution if—

(i) Except as provided in paragraph (d) of this section, the student (or an appropriate officer of the Armed Forces or official of the Department of Defense) gives advance oral or written notice of such service to an office designated by the institution, and provides such notice as far in advance as is reasonable under the circumstances;

(ii) The cumulative length of the absence and of all previous absences from that institution by reason of service in the uniformed services, including only the time the student spends actually performing service in the uniformed services, does not exceed five years; and

(iii) Except as provided in paragraph (f) of this section, the student gives oral or written notice of his or her intent to return to an office designated by the institution—

(A) For a student who completes a period of service in the uniformed services, not later than three years after the completion of the period of service; or

(B) For a student who is hospitalized for or convalescing from an illness or injury incurred in or aggravated during the performance of service in the uniformed services, two years after the end of the period that is necessary for recovery from such illness or injury.

(2)(i) An institution must designate one or more offices at the institution that a student may contact to provide notification of service required by paragraph (c)(1)(i) of this section and notification of intent to return required by paragraph (c)(1)(iii) of this section.

(ii) An institution may not require that the notice provided by the student under paragraph (c)(1)(i) or (c)(1)(iii) of this section follow any particular format.

(iii) The notice provided by the student under paragraph (c)(1)(i) of this section—

(A) May not be subject to any rule for timeliness; timeliness must be determined by the facts in any particular case; and

(B) Does not need to indicate whether the student intends to return to the institution.

(iv) For purposes of paragraph (c)(1)(i) of this section, an “appropriate officer” is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the military service concerned.

(d) *Exceptions to advance notice.* (1) No notice is required under paragraph (c)(1)(i) of this section if the giving of such notice is precluded by military necessity, such as—

(i) A mission, operation, exercise, or requirement that is classified; or

(ii) A pending or ongoing mission, operation, exercise, or requirement that may be compromised or otherwise adversely affected by public knowledge.

(2) Any student (or an appropriate officer of the Armed Forces or official of the Department of Defense) who did not give advance written or oral notice of service to the appropriate official at the institution in accordance with paragraph (c)(1) of this section may meet the notice requirement by submitting, at the time the student seeks readmission, an attestation to the institution that the student performed service in the uniformed services that necessitated the student's absence from the institution.

(e) *Cumulative length of absence.* For purposes of paragraph (c)(1)(ii) of this section, a student's cumulative length of absence from an institution does not include any service—

(1) That is required, beyond five years, to complete an initial period of obligated service;

(2) During which the student was unable to obtain orders releasing the student from a period of service in the uniformed services before the expiration of the five-year period and such inability was through no fault of the student; or

(3) Performed by a member of the Armed Forces (including the National Guard and Reserves) who is—

(i) Ordered to or retained on active duty under—

(A) 10 U.S.C. 688 (involuntary active duty by a military retiree);

(B) 10 U.S.C. 12301(a) (involuntary active duty in wartime);

(C) 10 U.S.C. 12301(g) (retention on active duty while in captive status);

(D) 10 U.S.C. 12302 (involuntary active duty during a national emergency for up to 24 months);

(E) 10 U.S.C. 12304 (involuntary active duty for an operational mission for up to 270 days);

(F) 10 U.S.C. 12305 (involuntary retention on active duty of a critical person during time of crisis or other specific conditions);

(G) 14 U.S.C. 331 (involuntary active duty by retired Coast Guard officer);

(H) 14 U.S.C. 332 (voluntary active duty by retired Coast Guard officer);

(I) 14 U.S.C. 359 (involuntary active duty by retired Coast Guard enlisted member);

(J) 14 U.S.C. 360 (voluntary active duty by retired Coast Guard enlisted member);

(K) 14 U.S.C. 367 (involuntary retention of Coast Guard enlisted member on active duty); or

(L) 14 U.S.C. 712 (involuntary active duty by Coast Guard Reserve member for natural or man-made disasters);

(ii) Ordered to or retained on active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress, as determined by the Secretary concerned;

(iii) Ordered to active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under section 12304 of title 10, United States Code;

(iv) Ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the Armed Forces (including the National Guard or Reserve); or

(v) Called into Federal service as a member of the National Guard under chapter 15 of title 10, United States Code, or section 12406 of title 10, United States Code (*i.e.*, called to respond to an invasion, danger of

invasion, rebellion, danger of rebellion, insurrection, or the inability of the President with regular forces to execute the laws of the United States).

(f) *Notification of intent to reenroll.* A student who fails to apply for readmission within the periods described in paragraph (c)(1)(iii) of this section does not automatically forfeit eligibility for readmission to the institution, but is subject to the institution's established leave of absence policy and general practices.

(g) *Documentation.* (1) A student who submits an application for readmission to an institution under paragraph (c)(1)(iii) of this section shall provide to the institution documentation to establish that—

(i) The student has not exceeded the service limitation in paragraph (c)(1)(ii) of this section; and

(ii) The student's eligibility for readmission has not been terminated due to an exception in paragraph (h) of this section.

(2)(i) Documents that satisfy the requirements of paragraph (g)(1) of this section include, but are not limited to, the following:

(A) DD (Department of Defense) 214 Certificate of Release or Discharge from Active Duty.

(B) Copy of duty orders prepared by the facility where the orders were fulfilled carrying an endorsement indicating completion of the described service.

(C) Letter from the commanding officer of a Personnel Support Activity or someone of comparable authority.

(D) Certificate of completion from military training school.

(E) Discharge certificate showing character of service.

(F) Copy of extracts from payroll documents showing periods of service.

(G) Letter from National Disaster Medical System (NDMS) Team Leader or Administrative Officer verifying dates and times of NDMS training or Federal activation.

(ii) The types of documents that are necessary to establish eligibility for readmission will vary from case to case. Not all of these documents are available or necessary in every instance to establish readmission eligibility.

(3) An institution may not delay or attempt to avoid a readmission of a student under this section by demanding documentation that does not exist, or is not readily available, at the time of readmission.

(h) *Termination of readmission eligibility.* A student's eligibility for readmission to an institution under this section by reason of such student's service in the uniformed services

terminates upon the occurrence of any of the following events:

(1) A separation of such person from the Armed Forces (including the National Guard and Reserves) with a dishonorable or bad conduct discharge.

(2) A dismissal of a commissioned officer permitted under section 1161(a) of title 10, United States Code by sentence of a general court-martial; in commutation of a sentence of a general court-martial; or, in time of war, by order of the President.

(3) A dropping of a commissioned officer from the rolls pursuant to section 1161(b) of title 10, United States Code due to absence without authority for at least three months; separation by reason of a sentence to confinement adjudged by a court-martial; or, a sentence to confinement in a Federal or State penitentiary or correctional institution.

(Approved by the Office of Management and Budget under control number 1845-NEW1)

Authority:

20 U.S.C. 1088 *et seq.*)

12. In 668.23, revise paragraph (d)(4) to read as follows:

§ 668.23 Compliance audits and audited financial statements.

* * * * *

(d) * * *

(4) *Disclosure of title IV, HEA program revenue.* A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the title IV, HEA program funds that the institution received during the fiscal year covered by that audit. The revenue percentage must be calculated in accordance with § 668.28. The institution must also report in the footnote the non-Federal and Federal revenue by source that was included in the 90/10 calculation.

* * * * *

13. Section 668.28 is added to subpart B of part 668 to read as follows:

§ 668.28 Non-title IV revenue (90/10).

(a) *General.* (1) *Calculating the revenue percentage.* A proprietary institution determines whether it satisfies the requirement in § 668.14(b)(16) that at least 10 percent of its revenue is derived from sources other than title IV, HEA program funds by using the formula in appendix C of this subpart to calculate its revenue percentage for its latest complete fiscal year.

(2) *Cash basis accounting.* Except for institutional loans made to students under paragraph (a)(5)(i) of this section, the institution must use the cash basis of accounting in calculating its revenue percentage.

(3) *Revenue generated from programs and activities.* The institution must consider as revenue only those funds it generates from—

(i) Tuition, fees, and other institutional charges for students enrolled in eligible programs as defined in § 668.8;

(ii) Activities conducted by the institution that are necessary for the education and training of its students provided those activities are—

(A) Conducted on campus or at a facility under the institution's control;

(B) Performed under the supervision of a member of the institution's faculty; and

(C) Required to be performed by all students in a specific educational program at the institution; and

(iii) Funds paid by a student, or on behalf of a student by a party other than the institution, for an education or training program that is not eligible under § 668.8 if the program—

(A) Is approved or licensed by the appropriate State agency;

(B) Is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602;

(C) Provides an industry-recognized credential or certification, or prepares students to take an examination for an industry-recognized credential or certification issued by an independent third party;

(D) Provides training needed for students to maintain State licensing requirements; or

(E) Provides training needed for students to meet additional licensing requirements for specialized training for practitioners that already meet the general licensing requirements in that field.

(4) *Application of funds.* The institution must presume that any title IV, HEA program funds it disburses, or delivers, to or on behalf of a student will be used to pay the student's tuition, fees, or institutional charges, regardless of whether the institution credits the funds to the student's account or pays the funds directly to the student, except to the extent that the student's tuition, fees, or other charges are satisfied by—

(i) Grant funds provided by non-Federal public agencies or private sources independent of the institution;

(ii) Funds provided under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals who need that training;

(iii) Funds used by a student from a savings plan for educational expenses established by or on behalf of the student if the saving plan qualifies for

special tax treatment under the Internal Revenue Code of 1986; or

(iv) Institutional scholarships as provided under paragraph (a)(5)(iv) of this section.

(5) *Revenue generated from institutional aid.* The institution must include the following institutional aid as revenue:

(i) For loans made to students, including funds advanced to students under installment sales contracts, on or after July 1, 2008 and prior to July 1, 2012, include as revenue the net present value of the loans made to students during the fiscal year, as calculated under paragraph (b) of this section, if the loans—

(A) Are bona fide as evidenced by standalone repayment agreements between the students and the institution that are enforceable promissory notes;

(B) Are issued at intervals related to the institution's enrollment periods;

(C) Are subject to regular loan repayments and collections by the institution; and

(D) Are separate from the enrollment contracts signed by the students.

(ii) For loans made to students before July 1, 2008, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iii) For loans made to students on or after July 1, 2012, include as revenue only the amount of payments made on those loans that the institution received during the fiscal year.

(iv) For scholarships provided by the institution in the form of monetary aid or tuition discount and based on the academic achievement or financial need of its students, include as revenue the amount disbursed to students during the fiscal year. The scholarships must be disbursed from an established restricted account and only to the extent that the funds in that account represent designated funds from an outside source or income earned on those funds.

(6) *Revenue generated from loan funds in excess of loan limits prior to the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA).* For each student who receives an unsubsidized loan under the FFEL or Direct Loan programs on or after July 1, 2008 and prior to July 1, 2011, the amount of the loan disbursement for a payment period that exceeds the disbursement for which the student would have been eligible for that

payment period under the loan limit in effect on the day prior to enactment of the ECASLA is included as revenue from a source other than title IV, HEA program funds but only to the extent that the excess amount pays for tuition, fees, or institutional charges remaining on the student's account after title IV, HEA program funds are applied.

(7) *Funds excluded from revenues.* For the fiscal year, the institution does not include—

(i) The amount of Federal Work Study (FWS) wages paid directly to the student. However, if the institution credits the student's account with FWS funds, those funds are included as revenue;

(ii) The amount of funds received by the institution from a State under the LEAP, SLEAP, or GAP programs;

(iii) The amount of institutional funds used to match title IV, HEA program funds;

(iv) The amount of title IV, HEA program funds refunded or returned under § 668.22, including funds refunded or returned under paragraph (a)(6) of this section; or

(v) The amount the student is charged for books, supplies, and equipment unless the institution includes that amount as tuition, fees, or other institutional charges.

(b) *Net present value (NPV).* (1) As illustrated in appendix C of this subpart, an institution calculates the NPV of the loans it made under paragraph (a)(5)(i) of this section by—

(i) Using the formula, $NPV = \text{sum of the discounted cash flows } R^t / (1+i)^t$, where—

(A) The variable “i” is the discount rate. For purposes of this section, an institution must use the most recent annual inflation rate as the discount rate;

(B) The variable “t” is time or period of the cash flow, in years, from the time the loan entered repayment; and

(C) The variable “R” is the net cash flow at time or period t; and

(ii) Applying the NPV formula to the loans made during the fiscal year by—

(A) If the loans have substantially the same repayment period, using that repayment period for the range of values of variable “t”; or

(B) Grouping the loans by repayment period and using the repayment period for each group for the range of values of variable “t”; and

(C) For each group of loans, as applicable, multiplying the total annual payments due on the loans by the institution's loan collection rate (e.g., the total amount of payments collected divided by the total amount of payments due). The resulting amount is used for variable “R” in each period “t”, for each group of loans that a NPV is calculated.

(2) Instead of performing the calculations in paragraph (b)(1) of this section, using 50 percent of the total amount of loans that the institution made during the fiscal year as the NPV. However, if the institution chooses to use this 50 percent calculation, the institution may not sell any of these loans until they have been in repayment for at least two years.

(c) *Sanctions.* If an institution does not derive at least 10 percent of its revenue from sources other than title IV, HEA program funds—

(1) For two consecutive fiscal years, it loses its eligibility to participate in the title IV, HEA programs for at least two fiscal years. To regain eligibility, the institution must demonstrate that it complied with the State licensure and accreditation requirements under 34 CFR 600.5(a)(4) and (a)(6), and the financial responsibility requirements under subpart L of this part, for a minimum of two fiscal years after the fiscal year it became ineligible; or

(2) For any fiscal year, it becomes provisionally certified under § 668.13(c)(1)(ii) for the two fiscal years after the fiscal year it failed to satisfy the revenue requirement. However, the institution's provisional certification terminates on—

(i) The expiration date of the institution's program participation agreement that was in effect on the date the Secretary determined the institution failed this requirement; or

(ii) The date the institution loses its eligibility to participate under paragraph (c)(1) of this section; and

(3) It must notify the Secretary no later than 45 days after the end of its fiscal year that it failed to meet this requirement.

(Approved by Office of Management and Budget under control number 1845–NEW2)

(Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099a-3, 1099c, 1141)

14. Appendix C is added to subpart B of part 668 to read as follows:

BILLING CODE 4000-01-P

APPENDIX C TO SUBPART B OF PART 668 - 90/10 REVENUE CALCULATION**Section 1: Sample Student Account at the Institution / Funds Applied in Priority Order**

Item		Debit	Credit	Balance
1	Tuition and Fees	\$7,000.00		
	Funds Applied First			
2	Grant funds for the student from non-Federal public agencies or private sources independent of the institution		\$ 2,200.00	\$ 4,800.00
3	Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals			\$...4,800.00
4	Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code			\$ 4,800.00
5	Institutional scholarships disbursed to the student		\$ 500.00	\$ 4,300.00
6	Total Funds Applied First		\$ 2,700.00	
	Title IV Aid			
7	Subsidized Loan		\$ 1,000.00	\$,300.00
8	Unsubsidized Loan up to pre-ECASLA Loan Limits		\$ 1,500.00	\$ 1,800.00
9	Federal Pell Grant		\$ 1,700.00	\$ 100.00
10	FSEOG (subject to matching reduction)		\$ 500.00	\$ (400.00)
11	Federal Work Study Applied to Tuition and Fees (subject to matching reduction)		-	\$ (400.00)
12	Total Title IV Aid		\$ 4,700.00	
	Cash and Other Non-Title IV Aid			
13	Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits		\$ 250.00	\$ (650.00)
14	Student payments		-	\$ (650.00)
15	Institutional loan disbursed		\$ 300.00	\$ (950.00)
16	Total Cash and Other Non-Title IV Aid		\$ 550.00	
	Refund to Student	\$ 950.00		-

Section 2: Revenue by Source

Item		Amount Disbursed	Adjusted Amount
	Adjusted Student Title IV Revenue		
7	Subsidized Loan	\$ 1,000.00	\$ 1,000.00
8	Unsubsidized Loan up to pre-ECASLA Loan Limits	\$ 1,500.00	\$ 1,500.00
9	Federal Pell Grant	\$ 1,700.00	\$ 1,700.00
10	FSEOG (subject to matching reduction, see Section 3, Adjustments to Student Title IV Revenue, item 1)	\$ 500.00	\$ 375.00
11	Federal Work Study Applied to Tuition and Fees (subject to matching reduction)	-	-
17	Student Title IV Revenue		\$ 4,575.00
18	Revenue Adjustment (see Section 3, Adjustments to Student Title IV Revenue, item 2)		\$ (275.00)
19	Adjusted Student Title IV Revenue		\$ 4,300.00
	Student Non-Title IV Revenue		
2	Grant funds for the student from non-Federal public agencies or private sources independent of the institution	\$ 2,200.00	
3	Funds provided for the student under a contractual arrangement with a Federal, State, or local government agency for the purpose of providing job training to low-income individuals	-	
4	Funds used by a student from savings plans for educational expenses established by or on behalf of the student that qualify for special tax treatment under the Internal Revenue Code	-	
5	Institutional scholarships disbursed to the student	\$ 500.00	
13	Amount of Unsubsidized Loan Over the pre-ECASLA Loan Limits	-	
14	Student payments	-	
20	Student Non-Title IV Revenue	\$ 2,700.00	
	Revenue From Other Sources (Totals for the Fiscal Year)		
21	Activities conducted by the institution that are necessary for education and training	\$ 25,000.00	
22	Funds paid to the institution by, or on behalf of, students for education and training in qualified non-Title IV eligible programs	\$ 43,000.00	
23	The Net Present Value (NPV) of institutional loans disbursed to students	\$ 129,818.68	
24	Revenue from Other Sources	\$ 197,818.68	

Section 3: Calculating the Revenue Percentage

ΣAdjusted Student Title IV Revenue	
ΣAdjusted Student Title IV Revenue + ΣStudent Non-Title IV Revenue + Total Revenue from Other Sources	= 90/10 Revenue Percentage

Adjustments to Student Title IV Revenue

1. The amount of FSEOG funds disbursed to a student (Item 10) and the amount of FWS funds credited to the student's account (Item 11) are reduced by the amount of the institutional matching funds (see Item 10 in Section 2 of the example).
2. If the amount of Funds Applied First (Item 6) + Student Title IV Revenue (Item 17) is more than Tuition and Fees (Item 1), then Student Title IV Revenue (Item 17) is reduced by the amount over Tuition and Fees (Item 1) (see Item 18 in Section 2 of the example).
3. If Title IV funds are returned for a student under 34 CFR 668.22, then Student Title IV Revenue is reduced by the amount returned.

Σ Adjusted Student Title IV Revenue = The sum of the amounts of Item 17, as adjusted, for each student at the institution during the fiscal year to whom the institution disbursed Title IV Aid

Adjustments to Student Non-Title IV Revenue

An Unsubsidized loan over the pre-ECSALA loan limit (Item 13) and any Student Payments (Item 14) count as Student Non-Title IV Revenue only for the amount needed to cover Tuition and Fees (Item 1) that are not paid by Funds Applied First (Item 6) and funds under Student Title IV Revenue (Item 19) (see Items 13 and 14 in Section 2 of the example).

Σ Student Non-Title IV Revenue = The sum of the amounts of Item 20, as adjusted, for each student at the institution during the fiscal year whose Non-Title IV funds were used to pay all or some of those student's Tuition and Fee charges

Total Revenue from Other Sources

Activities conducted by the institution that are necessary for education and training (Item 21) = Total revenue generated by the institution from these activities during the fiscal year

Funds paid to the institution by, or on behalf of, students for education and training in qualified non-Title IV eligible programs (Item 22) = Total revenue generated by the institution from these programs during the fiscal year

The Net Present Value (NPV) of institutional loans disbursed to students (Item 23)

Total Revenue from Other Sources = The sum of the amounts for Items 21, 22, and 23 for the fiscal year

Section 4: Calculating the Net present Value

$$NPV = \sum R^t / (1+i)^t$$

An institution makes a total of \$125,000 in 3-year loans at 8.5% and a total of \$75,000 in 4-year loans at 8.5%.
The Discount rate is 3%.

	Year	Expected Cash Flow*	Actual Cash Flow (R) using 60% Collection Rate	Discounted Cash Flow
3- year Loans	1	47340.00	28404.00	$28404 / (1+.03)^1 = 27576.70$
	2	47340.00	28404.00	$28404 / (1+.03)^2 = 26773.49$
	3	47340.00	28404.00	$28404 / (1+.03)^3 = 25993.68$

NPV or Sum of the discounted cash flows for 3-year loans = 80343.87

	Year	Expected Cash Flow*	Actual Cash Flow (R) using 60% Collection Rate	Discounted Cash Flow
4- year Loans	1	22183.44	13310.06	$13310.06 / (1+.03)^1 = 12922.39$
	2	22183.44	13310.06	$13310.06 / (1+.03)^2 = 12546.01$
	3	22183.44	13310.06	$13310.06 / (1+.03)^3 = 12180.59$
	4	22183.44	13310.06	$13310.06 / (1+.03)^4 = 11825.82$

NPV or Sum of the discounted cash flows for 4-year loans = 49474.81

Total NPV for all loans = 129818.68

* Expected cash flow represents the total amount of payments due on the loans for the fiscal year.

BILLING CODE 4000-01-C

15. Section 668.32 is amended by:

A. Revising the introductory text.

B. In paragraph (a)(1)(iii), adding the word “and” after the punctuation “;”.

C. In paragraph (a)(2), removing the punctuation “;” and adding, in its place, the punctuation “.”.

D. In paragraph (b), removing the punctuation “;” and adding, in its place, the punctuation “.”.

E. In paragraph (c)(4)(ii), removing the punctuation “;” and adding, in its place, the punctuation “.”.

F. In paragraph (d), removing the punctuation “;” and adding, in its place, the punctuation “.”.

G. In paragraph (e)(4)(ii), removing the punctuation “;” and adding, in its place, the punctuation “.”.

H. In paragraph (f), removing the punctuation “;” and adding, in its place, the punctuation “.”.

I. In paragraph (g)(4), removing the punctuation “;” at the end of the paragraph and adding, in its place, the punctuation “.”.

J. In paragraph (h), removing the punctuation “;” and adding, in its place, the punctuation “.”.

K. In paragraph (i), removing the punctuation “;” and adding, in its place, the punctuation “.”.

L. In paragraph (j), removing the punctuation “;” and adding, in its place, the punctuation “.”.

M. In paragraph (k)(9), removing the word “; and” and adding, in its place, the punctuation “.”.

N. In paragraph (l), removing the word “; and” and adding, in its place, the punctuation “.”.

O. Adding paragraph (n).

The revision and addition read as follows:

§ 668.32 Student eligibility—general.

A student is eligible to receive title IV, HEA program assistance if the student either meets all of the requirements in paragraphs (a) through (m) of this section or meets the requirement in paragraph (n) of this section as follows:

* * * * *

(n) Is enrolled in a comprehensive transition and postsecondary program under subpart O of this part and meets the student eligibility criteria in that subpart.

* * * * *

16. Section 668.41 is amended by:

A. In paragraph (a), adding, in alphabetical order, definitions of *on-campus student housing facility* and *retention rate*.

B. Revising paragraph (d).

C. Revising paragraph (e).

D. In paragraph (g)(1)(i), removing the words “on request”.

E. In the OMB control number parenthetical at the end of the section, removing the words, “and 1845-0010”.

The additions and revisions read as follows:

§ 668.41 Reporting and disclosure of information.

(a) * * *

On-campus student housing facility:

A dormitory or other residential facility for students that is located on an

institution's campus, as defined in § 668.46(a).

* * * * *

Retention rate means a measure of the rate at which students persist in their educational program at an institution expressed as a percentage. For four-year institutions, this is the percentage of first-time bachelors (or equivalent) degree-seeking undergraduates from the previous fall who are again enrolled in the current fall. For all other institutions, this is the percentage of first-time degree- or certificate-seeking students from the previous fall who either re-enrolled or successfully completed their program by the current fall.

* * * * *

(d) *General disclosures for enrolled or prospective students.* An institution must make available to any enrolled student or prospective student through appropriate publications, mailings or electronic media, information concerning—

(1) Financial assistance available to students enrolled in the institution (pursuant to § 668.42).

(2) The institution (pursuant to § 668.43).

(3) The institution's retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(4) The institution's completion or graduation rate and, if applicable, its transfer-out rate (pursuant to § 668.45). In the case of a request from a prospective student, the information must be made available prior to the student's enrolling or entering into any financial obligation with the institution.

(5) The placement of, and types of employment obtained by, graduates of the institution's degree or certificate programs.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) The institution's placement rate for any program, if it calculates such a rate;

(B) State data systems;

(C) Alumni or student satisfaction surveys; or

(D) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(iii) The institution must disclose any placement rates it calculates.

(6) The types of graduate and professional education in which graduates of the institution's four-year degree programs enroll.

(i) The information provided in compliance with this paragraph may be gathered from—

(A) State data systems;

(B) Alumni or student satisfaction surveys; or

(C) Other relevant sources.

(ii) The institution must identify the source of the information provided in compliance with this paragraph, as well as any time frames and methodology associated with it.

(e) *Annual security report and annual fire safety report*—(1) *Enrolled students and current employees—annual security report and annual fire safety report.* By October 1 of each year, an institution must distribute to all enrolled students and current employees its annual security report described in § 668.46(b), and, if the institution maintains an on-campus student housing facility, its annual fire safety report described in § 668.49(b), through appropriate publications and mailings, including—

(i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;

(ii) A publication or publications provided directly to each individual; or

(iii) Posting on an Internet Web site or an Intranet Web site, subject to paragraph (e)(2) and (3) of this section.

(2) *Enrolled students—annual security report and annual fire safety report.* If an institution chooses to distribute either its annual security report or annual fire safety report to enrolled students by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution must comply with the requirements of paragraph (c)(2) of this section.

(3) *Current employees—annual security report and annual fire safety report.* If an institution chooses to distribute either its annual security report or annual fire safety report to current employees by posting the disclosure or disclosures on an Internet Web site or an Intranet Web site, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.

(4) *Prospective students and prospective employees—annual security report and annual fire safety report.* For each of the reports, the institution must

provide a notice to prospective students and prospective employees that includes a statement of the report's availability, a description of its contents, and an opportunity to request a copy. An institution must provide its annual security report and annual fire safety report, upon request, to a prospective student or prospective employee. If the institution chooses to provide either its annual security report or annual fire safety report to prospective students and prospective employees by posting the disclosure on an Internet Web site, the notice described in this paragraph must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request.

(5) *Submission to the Secretary—annual security report and annual fire safety report.* Each year, by the date and in a form specified by the Secretary, an institution must submit the statistics required by §§ 668.46(c) and 668.49(c) to the Secretary.

(6) *Publication of the annual fire safety report.* An institution may publish its annual fire safety report concurrently with its annual security report only if the title of the report clearly states that the report contains both the annual security report and the annual fire safety report. If an institution chooses to publish the annual fire safety report separately from the annual security report, it must include information in each of the two reports about how to directly access the other report.

* * * * *

17. Section 668.43 is amended by:

A. In the introductory text of paragraph (a), removing the words "upon request".

B. In paragraph (a)(5)(ii), removing the word "and" that appears after the punctuation ";;".

C. In paragraph (a)(5)(iii), adding the word "and" after the punctuation ";;".

D. Adding paragraph (a)(5)(iv).

E. Revising paragraph (a)(7).

F. In paragraph (a)(8), removing the word "and" that appears after the punctuation ";;".

G. In paragraph (a)(9), removing the punctuation "." And adding, in its place, the word ";; and".

H. Adding paragraph (a)(10).

I. In paragraph (b), removing the words " , upon request ,".

The additions and revision read as follows:

§ 668.43 Institutional information.

(a) * * *

(5) * * *

(iv) Any plans by the institution for improving the academic program of the institution;

* * * * *

(7) A description of the services and facilities available to students with disabilities, including students with intellectual disabilities as defined in subpart O of this part;

* * * * *

(10) Institutional policies and sanctions related to copyright infringement, including—

(i) A statement that explicitly informs its students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;

(ii) A summary of the penalties for violation of Federal copyright laws; and

(iii) A description of the institution's policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the institution's information technology system.

* * * * *

18. Section 668.45 is revised to read as follows:

§ 668.45 Information on completion or graduation rates.

(a)(1) An institution annually must prepare the completion or graduation rate of its certificate- or degree-seeking, first-time, full-time undergraduate students, as provided in paragraph (b) of this section.

(2) An institution that determines that its mission includes providing substantial preparation for students to enroll in another eligible institution must prepare the transfer-out rate of its certificate- or degree-seeking, first-time, full-time undergraduate students, as provided in paragraph (c) of this section.

(3)(i) An institution that offers a predominant number of its programs based on semesters, trimesters, or quarters must base its completion or graduation rate, retention rate, and, if applicable, transfer-out rate calculations, on the cohort of certificate- or degree-seeking, first-time, full-time undergraduate students who enter the institution during the fall term of each year.

(ii) An institution not covered by the provisions of paragraph (a)(3)(i) of this section must base its completion or graduation rate, retention rate, and, if applicable, transfer-out rate

calculations, on the cohort of certificate- or degree-seeking, first-time, full-time undergraduate students who enter the institution between September 1 of one year and August 31 of the following year.

(4)(i) An institution covered by the provisions of paragraph (a)(3)(i) of this section must count as an entering student a first-time undergraduate student who is enrolled as of October 15, the end of the institution's drop-add period, or another official reporting date as defined in § 668.41(a).

(ii) An institution covered by paragraph (a)(3)(ii) of this section must count as an entering student a first-time undergraduate student who is enrolled for at least—

(A) 15 days, in a program of up to, and including, one year in length; or

(B) 30 days, in a program of greater than one year in length.

(5) An institution must make available its completion or graduation rate and, if applicable, transfer-out rate, no later than the July 1 immediately following the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation has elapsed for all of the students in the group on which the institution bases its completion or graduation rate and, if applicable, transfer-out rate calculations.

(6)(i) Completion or graduation rate information must be disaggregated by gender, by each major racial and ethnic subgroup (as defined in IPEDS), by recipients of a Federal Pell Grant, by recipients of a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Stafford Loan) who did not receive a Federal Pell Grant, and by recipients of neither a Federal Pell Grant nor a Federal Family Education Loan or a Federal Direct Loan (other than an Unsubsidized Stafford Loan made under the Federal Family Education Loan Program or a Federal Direct Unsubsidized Loan) if the number of students in such group or with such status is sufficient to yield statistically reliable information and reporting will not reveal personally identifiable information about an individual student. If such number is not sufficient for such purpose, i.e., is too small to be meaningful, then the institution shall note that the institution enrolled too few of such students to so disclose or report with confidence and confidentiality.

(ii) With respect to the requirement in paragraph (a)(6)(i) of this section to disaggregate the completion or

graduation rate information by the receipt or nonreceipt of Federal student aid, students shall be considered to have received the aid in question only if they received such aid in the period specified in paragraph (a)(3) of this section.

(iii) The requirement in paragraph (a)(6)(i) of this section shall not apply to two-year, degree-granting institutions of higher education until academic year 2011–2012.

(b) In calculating the completion or graduation rate under paragraph (a)(1) of this section, an institution must count as completed or graduated—

(1) Students who have completed or graduated by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from their program has lapsed; and

(2) Students who have completed a program described in § 668.8(b)(1)(ii), or an equivalent program, by the end of the 12-month period ending August 31 during which 150 percent of normal time for completion from that program has lapsed.

(c) In calculating the transfer-out rate under paragraph (a)(2) of this section, an institution must count as transfers-out students who by the end of the 12-month period ending August 31 during which 150 percent of the normal time for completion or graduation from the program in which they were enrolled has lapsed, have not completed or graduated but have subsequently enrolled in any program of an eligible institution for which its program provided substantial preparation.

(d) For the purpose of calculating a completion or graduation rate and a transfer-out rate, an institution may—

(1) Exclude students who—

(i) Have left school to serve in the Armed Forces;

(ii) Have left school to serve on official church missions;

(iii) Have left school to serve with a foreign aid service of the Federal Government, such as the Peace Corps;

(iv) Are totally and permanently disabled; or

(v) Are deceased.

(2) In cases where the students described in paragraphs (d)(1)(i) through (iii) of this section represent 20 percent or more of the certificate- or degree-seeking, full-time, undergraduate students at the institution, recalculate the completion or graduation rates of those students by adding to the 150 percent time-frame they normally have to complete or graduate, as described in paragraph (b) of this section, the time period the students were not enrolled due to their service in the Armed

Forces, on official church missions, or with a recognized foreign aid service of the Federal Government.

(e)(1) The Secretary grants a waiver of the requirements of this section dealing with completion and graduation rate data to any institution that is a member of an athletic association or conference that has voluntarily published completion or graduation rate data, or has agreed to publish data, that the Secretary determines are substantially comparable to the data required by this section.

(2) An institution that receives a waiver of the requirements of this section must still comply with the requirements of § 668.41(d)(3) and (f).

(3) An institution, or athletic association or conference applying on behalf of an institution, that seeks a waiver under paragraph (e)(1) of this section must submit a written application to the Secretary that explains why it believes the data the athletic association or conference publishes are accurate and substantially comparable to the information required by this section.

(f) In addition to calculating the completion or graduation rate required by paragraph (a)(1) of this section, an institution may, but is not required to—

(1) Calculate a completion or graduation rate for students who transfer into the institution;

(2) Calculate a completion or graduation rate for students described in paragraphs (d)(1)(i) through (iv) of this section; and

(3) Calculate a transfer-out rate as specified in paragraph (c) of this section, if the institution determines that its mission does not include providing substantial preparation for its students to enroll in another eligible institution.

(Approved by the Office of Management and Budget under control number 1845-0004)

(Authority: 20 U.S.C. 1092)

19. Section 668.46 is amended by:

A. In paragraph (a), adding, in alphabetical order, a definition of *test*.

B. In paragraph (b), adding paragraphs (13) and (14).

C. Revising paragraph (c)(3).

D. In paragraph (e), revising the paragraph heading and adding paragraph (e)(3).

E. Adding paragraph (g).

F. Adding paragraph (h).

The additions and revisions read as follows:

§ 668.46 Institutional security policies and crime statistics.

(a) * * *

Test: Regularly scheduled drills, exercises, and appropriate follow-

through activities, designed for assessment and evaluation of emergency plans and capabilities.

* * * * *

(b) * * *

(13) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding emergency response and evacuation procedures, as described in paragraph (g) of this section.

(14) Beginning with the annual security report distributed by October 1, 2010, a statement of policy regarding missing student notification procedures, as described in paragraph (h) of this section.

(c) * * *

(3) *Reported crimes if a hate crime.*

An institution must report, by category of prejudice, the following crimes reported to local police agencies or to a campus security authority that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability:

(i) Any crime it reports pursuant to paragraph (c)(1)(i) through (vii) of this section.

(ii) The crimes of larceny-theft, simple assault, intimidation, and destruction/damage/vandalism of property.

(iii) Any other crime involving bodily injury.

* * * * *

(e) *Timely warning and emergency notification.* * * *

(3) If there is an immediate threat to the health or safety of students or employees occurring on campus, as described in paragraph (g)(1) of this section, an institution must follow its emergency notification procedures. An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances; however, the institution must provide adequate follow-up information to the community as needed.

* * * * *

(g) *Emergency response and evacuation procedures.* An institution must include a statement of policy regarding its emergency response and evacuation procedures in the annual security report. This statement must include—

(1) The procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus;

(2) A description of the process the institution will use to—

(i) Confirm that there is a significant emergency or dangerous situation as described in paragraph (g)(1) of this section;

(ii) Determine the appropriate segment or segments of the campus community to receive a notification;

(iii) Determine the content of the notification; and

(iv) Initiate the notification system;

(3) A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency;

(4) A list of the titles of the person or persons or organization or organizations responsible for carrying out the actions described in paragraph (g)(2) of this section;

(5) The institution's procedures for disseminating emergency information to the larger community; and

(6) The institution's procedures to test the emergency response and evacuation procedures on at least an annual basis, including—

(i) Tests that may be announced or unannounced;

(ii) Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and

(iii) Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.

(h) *Missing student notification policies and procedures.* (1) An institution that provides any on-campus student housing facility must include a statement of policy regarding missing student notification procedures for students who reside in on-campus student housing facilities in its annual security report. This statement must—

(i) Indicate a list of titles of the persons or organizations to which students, employees, or other individuals should report that a student has been missing for 24 hours;

(ii) Require that any missing student report must be referred immediately to the institution's police or campus security department, or, in the absence of an institutional police or campus security department, to the local law enforcement agency that has jurisdiction in the area;

(iii) Contain an option for each student living in an on-campus student housing facility to identify a contact person or persons whom the institution shall notify if the student is determined

missing by the institutional police or campus security department, or the local law enforcement agency;

(iv) Advise students that their contact information will be registered confidentially, that this information will be accessible only to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;

(v) Advise students that if they are under 18 years of age and not emancipated, the institution must notify a custodial parent or guardian when the student is missing, in addition to any additional contact person designated by the student; and

(vi) Advise students that, regardless of whether they name a contact person, unless the local law enforcement agency was the entity that made the determination that a student is missing, the institution will notify the local law enforcement agency that the student is missing.

(2) The procedures that the institution must follow when a student who resides in an on-campus student housing facility is determined to have been missing for 24 hours include—

(i) If the student has designated a contact person, notifying that contact person within 24 hours;

(ii) If the student is under 18 years of age and is not emancipated, notifying the student's custodial parent or guardian and any other designated contact person within 24 hours; and

(iii) Regardless of whether the student has identified a contact person, is above the age of 18, or is an emancipated minor, informing the local law enforcement agency that has jurisdiction in the area that the student has been reported to be missing within 24 hours.

* * * * *

§ 668.48 [Amended]

20. Section 668.48(b) is amended by removing the parenthetical “(d)” and adding, in its place, the parenthetical “(e)”.

21. Section 668.49 is added to subpart D of part 668 to read as follows:

§ 668.49 Institutional fire safety policies and fire statistics.

(a) *Additional definitions that apply to this section.*

Cause of fire: The factor or factors that give rise to a fire. The causal factor may be, but is not limited to, the result of an intentional or unintentional action, mechanical failure, or act of nature.

Fire: Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.

Fire drill: A supervised practice of a mandatory evacuation of a building for a fire.

Fire-related injury: Any instance in which a person is injured as a result of a fire, including an injury sustained from a natural or accidental cause, while involved in fire control, attempting rescue, or escaping from the dangers of the fire. The term “person” may include students, faculty, staff, visitors, firefighters, or any other individuals.

Fire-related death: Any instance in which a person—

(1) Is killed as a result of a fire, including death resulting from a natural or accidental cause while involved in fire control, attempting rescue, or escaping from the dangers of a fire; or

(2) Dies within one year of injuries sustained as a result of the fire.

Fire safety system: Any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. This may include sprinkler systems or other fire extinguishing systems, fire detection devices, stand-alone smoke alarms, devices that alert one to the presence of a fire, such as horns, bells, or strobe lights; smoke-control and reduction mechanisms; and fire doors and walls that reduce the spread of a fire.

Value of property damage: The estimated value of the loss of the structure and contents, in terms of the cost of replacement in like kind and quantity. This estimate should include contents damaged by fire, and related damages caused by smoke, water, and overhaul; however, it does not include indirect loss, such as business interruption.

(b) *Annual fire safety report.* Beginning by October 1, 2010, an institution that maintains any on-campus student housing facility must prepare an annual fire safety report that contains, at a minimum, the following information:

(1) The fire statistics described in paragraph (c) of this section.

(2) A description of each on-campus student housing facility fire safety system.

(3) The number of fire drills held during the previous calendar year.

(4) The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility.

(5) The institution's procedures for student housing evacuation in the case of a fire.

(6) The policies regarding fire safety education and training programs provided to the students, faculty, and staff. In these policies, the institution

must describe the procedures that students and employees should follow in the case of a fire.

(7) For purposes of including a fire in the statistics in the annual fire safety report, a list of the titles of each person or organization to which students and employees should report that a fire occurred.

(8) Plans for future improvements in fire safety, if determined necessary by the institution.

(c) *Fire statistics.* (1) An institution must report statistics for each on-campus student housing facility, for the three most recent calendar years for which data are available, concerning—

(i) The number of fires and the cause of each fire;

(ii) The number of injuries related to a fire that resulted in treatment at a medical facility, including at an on-campus health center;

(iii) The number of deaths related to a fire; and

(iv) The value of property damage caused by a fire.

(2) An institution is required to submit a copy of the fire statistics in paragraph (c)(1) of this section to the Secretary on an annual basis.

(d) *Fire log.* (1) An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. This log must include the nature, date, time, and general location of each fire.

(2) An institution must make an entry or an addition to an entry to the log within two business days, as defined under § 668.46(a), of the receipt of the information.

(3) An institution must make the fire log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection.

(4) An institution must make an annual report to the campus community on the fires recorded in the fire log. This requirement may be satisfied by the annual fire safety report described in paragraph (b) of this section.

(Approved by the Office of Management and Budget under control number 1845-NEW3)
(Authority: 20 U.S.C. 1092)

22. Appendix A to subpart D of part 668 is amended by:

A. Revising the introductory text.

B. Under the heading, “Crime Definitions From the Uniform Crime Reporting Handbook,” revising and

renaming the definition of *Weapon Law Violations*, as *Weapons: Carrying, Possessing, Etc.* and revising the definitions of *Drug Abuse Violations* and *Liquor Law Violations*.

C. Adding a heading at the end of the appendix, “Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook” followed by definitions for *larceny-theft (except motor vehicle theft)*, *simple assault, intimidation, and destruction/damage/vandalism of property*.

The revisions and additions read as follows:

Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation’s Uniform Crime Reporting Program

The following definitions are to be used for reporting the crimes listed in § 668.46, in accordance with the Federal Bureau of Investigation’s Uniform Crime Reporting Program. The definitions for *murder; robbery; aggravated assault; burglary; motor vehicle theft; weapons: carrying, possessing, etc.; law violations; drug abuse violations; and liquor law violations* are excerpted from the Uniform Crime Reporting Handbook. The definitions of *forcible rape and nonforcible sex offenses* are excerpted from the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Handbook. The definitions of *larceny-theft (except motor vehicle theft)*, *simple assault, intimidation, and destruction/damage/vandalism of property* are excerpted from the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook.

* * * * *

Crime Definitions From the Uniform Crime Reporting Handbook

* * * * *

Weapons: Carrying, Possessing, Etc.

The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

Drug Abuse Violations

The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance. Arrests for violations of State and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

Liquor Law Violations

The violation of State or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use

of alcoholic beverages, not including driving under the influence and drunkenness.

* * * * *

Definitions From the Hate Crime Data Collection Guidelines of the Uniform Crime Reporting Handbook

Larceny-Theft (except motor vehicle theft)

The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

Simple Assault

An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

Intimidation

To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

Destruction/Damage/Vandalism of Property

To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

23. Section 668.161 is amended by:

A. Revising the section heading.

B. Revising paragraph (a)(4).

The revisions read as follows:

§ 668.161 Scope and purpose (cash management rules).

(a) * * *

(4) 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 in §§ 668.164(a), (b), and (d) through (g), and 668.165.

* * * * *

§ 668.184 [Amended]

24. Section 668.184(a)(1) is amended by removing the word “If” and adding, in its place, the words “Except as provided under 34 CFR 600.32(d), if”.

25. Subpart O, consisting of §§ 668.230 through 668.233, is added to part 668 to read as follows:

Subpart O—Financial Assistance for Students With Intellectual Disabilities

Sec.

668.230 Scope and purpose.

668.231 Definitions.

668.232 Program eligibility.

668.233 Student eligibility.

Subpart O—Financial Assistance for Students With Intellectual Disabilities

§ 668.230 Scope and purpose.

This subpart establishes regulations that apply to an institution that offers comprehensive transition and postsecondary programs to students with intellectual disabilities. Students enrolled in these programs are eligible for Federal financial assistance under the Federal Pell Grant, FSEOG, and FWS programs. Except for provisions related to needs analysis, the Secretary may waive any title IV, HEA program requirement related to the Federal Pell Grant, FSEOG, and FWS programs or institutional eligibility, to ensure that students with intellectual disabilities remain eligible for funds under these assistance programs. However, unless provided in this subpart or subsequently waived by the Secretary, students with intellectual disabilities and institutions that offer comprehensive transition and postsecondary programs are subject to the same regulations and procedures that otherwise apply to title IV, HEA program participants.

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

§ 668.231 Definitions.

The following definitions apply to this subpart:

Comprehensive transition and postsecondary program means a degree, certificate, nondegree, or noncertificate program that—

(1) Is offered by a participating institution;

(2) Is delivered to students physically attending the institution;

(3) Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment;

(4) Includes an advising and curriculum structure;

(5) Requires students with intellectual disabilities to have at least one-half of their participation in the program, as determined by the institution, focus on academic components through one or more of the following activities:

(i) Taking credit-bearing courses with students without disabilities.

(ii) Auditing or otherwise participating in courses with students without disabilities for which the student does not receive regular academic credit.

(iii) Taking non-credit-bearing, nondegree courses with students without disabilities.

(iv) Participating in internships or work-based training in settings with individuals without disabilities; and

(6) Provides students with intellectual disabilities opportunities to participate in coursework and other activities with students without disabilities.

Student with an intellectual disability means a student—

(1) With mental retardation or a cognitive impairment characterized by significant limitations in—

(i) Intellectual and cognitive functioning; and

(ii) Adaptive behavior as expressed in conceptual, social, and practical adaptive skills; and

(2) Who is currently, or was formerly, eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401), including a student who was determined eligible for special education or related services under the IDEA but was home-schooled or attended private school.

(Authority: 20 U.S.C. 1091, 1140)

§ 668.232 Program eligibility.

An institution that offers a comprehensive transition and postsecondary program must apply to the Secretary to have the program determined to be an eligible program. The institution applies under the provisions in 34 CFR 600.20 for adding an educational program, and must include in its application—

(a) A detailed description of the comprehensive transition and postsecondary program that addresses all of the components of the program, as defined in § 668.231;

(b) The institution's policy for determining whether a student enrolled in the program is making satisfactory academic progress;

(c) The number of weeks of instructional time and the number of semester or quarter credit hours or clock hours in the program, including the equivalent credit or clock hours associated with noncredit or reduced credit courses or activities;

(d) A description of the educational credential offered (*e.g.*, degree or certificate) or identified outcome or outcomes established by the institution for all students enrolled in the program;

(e) A copy of the letter or notice sent to the institution's accrediting agency informing the agency of its comprehensive transition and postsecondary program. The letter or notice must include a description of the items in paragraphs (a) through (d) of this section; and

(f) Any other information the Secretary may require.

(Approved by the Office of Management and Budget under control number 1845-NEW4)

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

§ 668.233 Student eligibility.

A student with an intellectual disability is eligible to receive Federal Pell, FSEOG, and FWS program assistance under this subpart if—

(a) The student satisfies the general student eligibility requirements under § 668.32, except for the requirements in paragraphs (a), (e), and (f) of that section. With regard to these exceptions, a student—

(1) Does not have to be enrolled for the purpose of obtaining a degree or certificate;

(2) Is not required to have a high school diploma, a recognized equivalent of a high school diploma, or have passed an ability to benefit test; and

(3) Is making satisfactory progress according to the institution's published standards for students enrolled in its comprehensive transition and postsecondary programs;

(b) The student is enrolled in a comprehensive transition and postsecondary program approved by the Secretary; and

(c) The institution obtains a record from a local educational agency that the student is or was eligible for special education and related services under the IDEA. If that record does not identify the student as having an intellectual disability, as described in paragraph (1) of the definition of a student with an intellectual disability in § 668.231, the institution must also obtain documentation establishing that the student has an intellectual disability, such as—

(1) A documented comprehensive and individualized psycho-educational evaluation and diagnosis of an intellectual disability by a psychologist or other qualified professional; or

(2) A record of the disability from a local or State educational agency, or government agency, such as the Social Security Administration or a vocational rehabilitation agency, that identifies the intellectual disability.

(Approved by the Office of Management and Budget under control number 1845-NEW4)

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

PART 675—FEDERAL WORK-STUDY PROGRAMS

26. The authority citation for part 675 is revised to read as follows:

Authority: 3 20 U.S.C. 1070g, 1094; 42 U.S.C. 2751-2756b; unless otherwise noted.

§ 675.2 [Amended]

27. In § 675.2(b), paragraph (1) of the definition of *community services* is amended by adding the words “emergency preparedness and response,” after the words “public safety.”

28. Section 675.16 is revised to read as follows:

§ 675.16 Payments to students.

(a) *General.* (1) An institution must follow the disbursement procedures in this section for paying a student his or her wages under the FWS Program instead of the disbursement procedures in 34 CFR 668.164(a), (b), and (d) through (g), and 34 CFR 668.165. The institution must follow 34 CFR 668.164(c) on making direct FWS payments to students and 34 CFR 668.164(h) on handling the return of FWS funds that are not received or negotiated by a student.

(2) An institution must pay a student FWS compensation at least once a month.

(3) Before an institution makes an initial disbursement of FWS compensation to a student for an award period, the institution must notify the student of the amount of funds the student is authorized to earn, and how and when the FWS compensation will be paid.

(4) Regardless of who employs the student, the institution is responsible for ensuring that the student is paid for work performed.

(5) A student's FWS compensation is earned when the student performs the work.

(6) An institution may pay a student after the student's last day of attendance for FWS compensation earned while he or she was in attendance at the institution.

(7) A correspondence student must submit his or her first completed lesson before receiving a payment.

(8) The institution may not obtain a student's power of attorney to authorize any disbursement of funds without prior approval from the Secretary.

(9) An institution makes a disbursement of FWS program funds on the date that the institution credits a student's account at the institution or pays a student directly with—

(i) Funds received from the Secretary; or

(ii) Institutional funds used in advance of receiving FWS program funds.

(b) *Crediting a student's account at the institution.* (1) If the institution obtains the student's authorization described in paragraph (d) of this section, the institution may use the FWS

funds to credit a student's account at the institution to satisfy—

- (i) Current year charges for—
 - (A) Tuition and fees;
 - (B) Board, if the student contracts with the institution for board;
 - (C) Room, if the student contracts with the institution for room; and
 - (D) Other educationally related charges incurred by the student at the institution; and

(ii) Prior award year charges with the restriction provided in paragraph (b)(2) of this section for a total of not more than \$200 for—

- (A) Tuition and fees, room, or board; and
- (B) Other institutionally related charges incurred by the student at the institution.

(2) If the institution is using FWS funds in combination with other title IV, HEA program funds to credit a student's account at the institution to satisfy prior award year charges, a single \$200 total prior award year charge limit applies to the use of all the title IV, HEA program funds for that purpose.

(c) *Credit balances.* Whenever an institution disburses FWS funds by crediting a student's account and the result is a credit balance, the institution must pay the credit balance directly to the student as soon as possible, but no later than 14 days after the credit balance occurs on the account.

(d) *Student authorizations.* (1) Except for the noncash contributions allowed under paragraphs (e)(2) and (3) of this section, if an institution obtains written authorization from a student, the institution may—

- (i) Use the student's FWS compensation to pay for charges described in paragraph (b) of this section that are included in that authorization; and
- (ii) Except if prohibited by the Secretary under the reimbursement or cash monitoring payment method, hold on behalf of the student any FWS compensation that would otherwise be paid directly to the student under paragraph (c) of this section.

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

- (i) May not require or coerce the student to provide that authorization;
- (ii) Must allow the student to cancel or modify that authorization at any time; and

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

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

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

(ii) If a student cancels an authorization to use his or her FWS compensation to pay for authorized charges under paragraph (b) of this section, the institution may use those funds to pay only those authorized charges incurred by the student before the institution received the notice.

(iii) If a student cancels an authorization to hold his or her FWS compensation under paragraph (d)(1)(ii) of this section, the institution must pay those funds directly to the student as soon as possible, but no later than 14 days after the institution receives that notice.

(5) If an institution holds excess FWS compensation under paragraph (d)(1)(ii) of this section, the institution must—

(i) Identify the amount of funds the institution holds for each student 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 FWS compensation the institution holds for the student; and

(iii) Notwithstanding any authorization obtained by the institution under this paragraph, pay any remaining balances by the end of the institution's final FWS payroll period for an award year.

(e)(1) *Timing of institutional share and noncash contributions.* Except for the noncash contributions allowed under paragraph (e)(2) or (3) of this section, an institution must pay the student its share of his or her FWS compensation at the same time it pays the Federal share.

(2) If an institution pays a student its FWS share for an award period in the form of tuition, fees, services, or equipment, it must pay that share before the student's final payroll period.

(3) If an institution pays its FWS share in the form of prepaid tuition, fees, services, or equipment for a forthcoming academic period, it must give the student a statement before the close of his or her final payroll period listing the amount of tuition, fees, services, or equipment earned.

(Authority: 20 U.S.C. 1091, 1094; 42 U.S.C. 2753)

29. Section 675.18 is amended by:

A. Adding paragraph (g)(4).

B. Adding paragraph (i).

C. Revise the authority citation at the end of the section.

The additions and revisions read as follows:

§ 675.18 Use of funds.

* * * * *

(g) * * *

(4)(i) In meeting the seven percent community service expenditure requirement in paragraph (g)(1) of this section, students may be employed to perform civic education and participation activities in projects that—

- (A) Teach civics in schools;
 - (B) Raise awareness of government functions or resources; or
 - (C) Increase civic participation.
- (ii) To the extent practicable, in providing civic education and participation activities under paragraph (g)(4)(i) of this section, an institution must—

(A) Give priority to the employment of students in projects that educate or train the public about evacuation, emergency response, and injury prevention strategies relating to natural disasters, acts of terrorism, and other emergency situations; and

(B) Ensure that the students receive appropriate training to carry out the educational services required.

* * * * *

(i) *Flexibility in the event of a major disaster.* (1) An institution located in any area affected by a major disaster may make FWS payments to disaster-affected students for the period of time (not to exceed the award period) in which the students were prevented from fulfilling their FWS obligations. The FWS payments—

(i) May be made to disaster-affected students for an amount equal to or less than the amount of FWS wages the students would have been paid had the students been able to complete the work obligation necessary to receive the funds;

(ii) May not be made to any student who was not eligible for FWS or was not completing the work obligation necessary to receive the funds, or had already separated from their employment prior to the occurrence of the major disaster; and

(iii) Must meet the matching requirements of § 675.26, unless those requirements are waived by the Secretary.

(2) The following definitions apply to this section:

(i) *Disaster-affected student* means a student enrolled at an institution who—

(A) Received an FWS award for the award period during which a major disaster occurred;

(B) Earned FWS wages from an institution for that award period;

(C) Was prevented from fulfilling his or her FWS obligation for all or part of the FWS award period because of the major disaster; and

(D) Was unable to be reassigned to another FWS job.

(ii) *Major disaster* is defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)).

(Authority: 20 U.S.C. 1095, 1096; 42 U.S.C. 2753, 2755, 2756(b))

30. Section 675.26 is amended by:

A. In paragraph (d)(2)(iii), removing the word “or” that appears after the punctuation “;”.

B. In paragraph (d)(2)(iv), removing the punctuation “.” and adding, in its place, the word “; or”.

C. Adding paragraph (d)(2)(v).

The addition reads as follows:

§ 675.26 FWS Federal share limitations.

* * * * *

(d) * * *

(2) * * *

(v) The student is employed in community service activities and is performing civic education and participation activities in a project as defined in § 675.18(g)(4).

* * * * *

31. Section 675.41 is amended by:

A. Revising paragraph (a).

B. Revising the paragraph heading and introductory text in paragraph (b).

C. In paragraph (b)(2), removing the word “, participation,”.

D. In paragraph (b)(5), removing the words “work-learning” and adding, in their place, the words “work-learning-service”.

E. In paragraph (b)(6), removing the words “work-learning” and adding, in their place, the words “work-learning-service”.

The revisions read as follows:

§ 675.41 Special definitions.

* * * * *

(a) *Work-college*: An eligible institution that—

(1) Is a public or private nonprofit, four-year, degree-granting institution with a commitment to community service;

(2) Has operated a comprehensive work-learning-service program for at least two years;

(3) Requires resident students, including at least one-half of all students who are enrolled on a full-time basis, to participate in a comprehensive work-learning-service program for at least five hours each week, or at least 80 hours during each period of enrollment, except summer school, unless the student is engaged in an institutionally organized or approved study abroad or externship program; and

(4) Provides students participating in the comprehensive work-learning-

service program with the opportunity to contribute to their education and to the welfare of the community as a whole.

(b) *Comprehensive student work-learning-service program*: A student work-learning-service program that—

* * * * *

§ 675.43 [Amended]

32. Section 675.43 is amended by removing the words “work-learning” and adding, in their place, the words “work-learning-service”.

§ 675.44 [Amended]

33. Section 675.44(b) is amended by removing the words “work-learning” and adding, in their place, the words “work-learning-service”.

§ 675.45 [Amended]

34. Section 675.45 is amended by:

A. In paragraph (a)(1), in the introductory text of paragraph (a)(4), and in paragraph (a)(4)(i) removing the words “work-learning” and adding, in their place, the words “work-learning-service”.

B. In paragraph (a)(5), removing the words “work service learning” and adding, in their place, the words “work-learning-service”.

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

35. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.*, unless otherwise noted.

§ 686.12 [Amended]

36. Section 686.12(c)(1) is amended by adding the words “, a suspension approved under § 686.41(a)(2), or a military discharge granted under § 686.42(c)(2)” after the words “teaching service”.

37. Section 686.41 is amended by:

A. In the introductory text of paragraph (a)(2), removing the words “and (ii)” and adding, in their place, the words “, (ii), and (iii)”.

B. Revising paragraphs (a)(2)(ii), (b), and (c).

C. Adding an OMB control number at the end of the section.

The revisions and addition read as follows:

§ 686.41 Periods of suspension.

(a) * * *

(2) * * *

(ii) Does not exceed a total of three years under paragraph (a)(1)(iii) of this section.

(b) A grant recipient, or his or her representative in the case of a grant

recipient who qualifies under paragraph (a)(1)(iii) of this section, must apply for a suspension in writing on a form approved by the Secretary prior to being subject to any of the conditions under § 686.43(a)(1) through (a)(5) that would cause the TEACH Grant to convert to a Federal Direct Unsubsidized Loan.

(c) A grant recipient, or his or her representative in the case of a grant recipient who qualifies under paragraph (a)(1)(iii) of this section, must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

(Approved by the Office of Management and Budget under control number 1845–0083)

* * * * *

38. Section 686.42 is amended by:

A. Adding paragraph (c).

B. Adding an OMB control number at the end of the section.

The additions read as follows:

§ 686.42 Discharge of agreement to serve.

* * * * *

(c) *Military discharge.* (1) A grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH Grant funds and has exceeded the period of time allowed under § 686.41(a)(2)(ii), may qualify for a proportional discharge of his or her service obligation due to an extended call or order to active duty status. To apply for a military discharge, a grant recipient or his or her representative must submit a written request to the Secretary.

(2) A grant recipient described in paragraph (c)(1) of this section may receive a—

(i) One-year discharge of his or her service obligation if a call or order to active duty status is for more than three years;

(ii) Two-year discharge of his or her service obligation if a call or order to active duty status is for more than four years;

(iii) Three-year discharge of his or her service obligation if a call or order to active duty status is for more than five years; or

(iv) Full discharge of his or her service obligation if a call or order to active duty status is for more than six years.

(3) A grant recipient or his or her representative must provide the Secretary with—

(i) A written statement from the grant recipient's commanding or personnel officer certifying—

(A) That the grant recipient is on active duty in the Armed Forces of the United States;

(B) The date on which the grant recipient's service began; and

(C) The date on which the grant recipient's service is expected to end; or
(ii)(A) A copy of the grant recipient's official military orders; and

(B) A copy of the grant recipient's military identification.

(4) For the purpose of this section, the Armed Forces means the Army, Navy, Air Force, Marine Corps, and the Coast Guard.

(5) Based on a request for a military discharge from the grant recipient or his or her representative, the Secretary will notify the grant recipient or his or her representative of the outcome of the discharge request. For the portion on the service obligation that remains, the grant recipient remains responsible for fulfilling his or her service obligation in accordance with § 686.12.

(Approved by the Office of Management and Budget under control number 1845-0083)

* * * * *

PART 690—FEDERAL PELL GRANT PROGRAM

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

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

40. Section 690.63 is amended by:

A. Adding paragraph (h).

B. Adding an OMB control number and authority citation at the end of the section.

The additions read as follows:

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

* * * * *

(h) *Payment from two Scheduled Awards.* (1) In a payment period, a student may receive a payment from the student's first Scheduled Award in the award year and the student's second Scheduled Award in the award year if—

(i) The student is an eligible student who meets the provisions of § 690.67; and

(ii) The student's payment for the payment period is greater than the remaining balance of the first Scheduled Award.

(2) The student's payment for the payment period—

(i) Is calculated based on the total credit or clock hours and weeks of instructional time in the payment period; and

(ii) Is the remaining amount of the first Scheduled Award plus an amount from the second Scheduled Award for the balance of the payment for the payment period.

(Approved by the Office of Management and Budget under control number 1845-NEW5)

(Authority: 20 U.S.C. 1070a)

41. Section 690.64 is revised to read as follows:

§ 690.64 Calculation of a Federal Pell Grant for a payment period which occurs in two award years.

If a student enrolls in a payment period that is scheduled to occur in two award years—

(a) The entire payment period must be considered to occur within one award year;

(b)(1) Except as provided in paragraph (b)(2) of this section—

(i) For a full-time or a three-quarter-time student—

(A) An institution must assign the payment period to the award year in which the student receives the greater payment for the payment period based on the information available at the time that the student's Federal Pell Grant is initially calculated; and

(B) If, subsequent to the initial calculation of the student's payment for the payment period, the institution receives information that the student would receive a greater payment for the payment period by reassigning the payment to the other award year, the institution must reassign the payment to the award year providing the greater payment; and

(ii) For a half-time or less-than-half-time student, an institution may assign the payment period to either award year if the student is enrolled for the payment period as a half-time or less-than-half-time student; and

(2) Upon request of a student, an institution must assign the payment period to the award year in which the student can be expected to receive a greater amount of Federal Pell Grants over the two award years in which the payment period is scheduled to occur;

(c) Except as provided in paragraph (b)(1)(i) of this section, the institution shall place a payment period with more than six months scheduled to occur within one award year in that award year;

(d) If an institution places the payment period in the first award year, it shall pay a student with funds from the first award year; and

(e) If an institution places the payment period in the second award year, it shall pay a student with funds from the second award year.

(Approved by the Office of Management and Budget under control number 1845-NEW5)

(Authority: 20 U.S.C. 1070a)

42. Section 690.67 is revised to read as follows:

§ 690.67 Receiving up to two Scheduled Awards during a single award year.

(a) *Eligibility.* An institution shall award up to the full amount of a second Scheduled Award to a student in an award year if the student—

(1) Has successfully completed the credit or clock hours of the first academic year in the award year;

(2) Is enrolled in an eligible program leading to a bachelor's or associate degree or other recognized educational credential except as provided in 34 CFR part 668, subpart O for students with intellectual disabilities; and

(3) Is enrolled at least as a half-time student.

(b) *Transfer student.* If a student transfers to an institution during an award year, the institution must—

(1) Assume that a student has completed the credit or clock hours in the first academic year of the award year if the first Scheduled Award was disbursed at other institutions during the award year; or

(2) If less than the first Scheduled Award has been disbursed at a prior institution that the student attended during the award year, the institution must determine the credit or clock hours the student is considered to have previously earned in the award year by—

(i) Multiplying the amount of the student's Scheduled Award disbursed at a prior institution during the award year by the number of credit or clock hours in the institution's academic year and dividing the product of the multiplication by the amount of the Scheduled Award at the prior institution; and

(ii) If the student previously attended more than one institution in the award year, adding the results of paragraph (b)(2)(i) of this section for each prior institution.

(c) *Special circumstances.* (1) The financial aid administrator at a student's institution may waive the requirement in paragraph (a)(1) of this section, if the financial aid administrator—

(i) Determines that, in the period during which the first Scheduled Award was disbursed, the student was unable to complete the clock or credit hours in the student's first academic year in the award year due to circumstances beyond the student's control; and

(ii) The determination is made and documented on an individual basis.

(2) For purposes of paragraph (c)(1) of this section, circumstances beyond a student's control—

(i) May include, but are not limited to, the student withdrawing from classes due to illness or being unable to register for classes necessary to complete his or

her eligible program because those classes were not offered during that period; and

(ii) Do not include, for example, withdrawing to avoid a particular grade or failing to register for a necessary class that was offered during the period to avoid a particular instructor.

(d) *Nonapplicable credit or clock hours.* To determine the student's eligibility for a second Scheduled Award in an award year, an institution may not use credit or clock hours that the student received based on Advanced Placement (AP) programs, International Baccalaureate (IB) programs, testing out, life experience, or similar competency measures.

(Approved by the Office of Management and Budget under control number 1845-NEW5)

(Authority: 20 U.S.C. 1070a)

43. Section 690.75 is amended by:

A. Adding paragraph (e).

B. Revising the OMB control number at the end of the section.

The additions read as follows:

§ 690.75 Determination of eligibility for payment.

* * * * *

(e) A student is considered to have an expected family contribution of zero if—

(1) The student's parent or guardian was a member of the Armed Forces of the United States and the parent or guardian died as a result of performing military service in Iraq or Afghanistan after September 11, 2001; and

(2) At the time of the parent or guardian's death the student—

(i) Was under the age of 24; or

(ii) Was enrolled at an institution of higher education.

(Approved by the Office of Management and Budget under control number 1845-NEW6)

* * * * *

PART 692—LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

44. The authority citation for part 692 is revised to read as follows:

Authority: 20 U.S.C. 1070c-1070c-4, unless otherwise noted.

§ 692.10 [Amended]

45. Section 692.10 is amended by:

A. In paragraph (a)(1), adding the words “for the programs under this part” after the number “1979”.

B. In paragraph (a)(2), removing the word “If” and adding, in its place, the words “For the programs under this part, if”.

C. In paragraph (a)(2), removing the word “LEAP” each time it appears.

D. In paragraph (b), removing the word “appropriated” after the word State, both times it appears.

E. In the authority citation at the end of the section, adding “, 1070c-2” after the number “1070c”

46. Section 692.21 is amended by:

A. In paragraph (c), removing the figure “\$5,000” and adding, in its place, the words “the lesser of \$12,500 or the student's cost of attendance under section 472 of the HEA”.

B. In paragraph (j), removing the word “and” that appears after the punctuation “;”.

C. Redesignating paragraph (k) as paragraph (l).

D. Adding a new paragraph (k).

E. Adding an OMB control number at the end of the section.

The additions read as follows:

§ 692.21 What requirements must be met by a State program?

* * * * *

(k) Notifies eligible students that the grants are—

(1) Leveraging Educational Assistance Partnership Grants; and

(2) Funded by the Federal Government, the State, and, where applicable, other contributing partners; and

* * * * *

(Approved by the Office of Management and Budget under control number 1845-NEW7)

* * * * *

47. Section 692.70 is revised to read as follows:

§ 692.70 How does the Secretary allot funds to the States?

For fiscal year 2010–2011, the Secretary allots to each eligible State that applies for SLEAP funds an amount in accordance with the provisions in § 692.10 prior to calculating allotments for States applying for GAP funds under subpart C of this part.

(Authority: 20 U.S.C. 1070c-3a)

48. Subpart C, consisting of §§ 692.90 through 692.130, is added to part 692 to read as follows:

Subpart C—Grants for Access and Persistence Program

General

Sec.

692.90 What is the Grants for Access and Persistence Program?

692.91 What other regulations apply to the GAP Program?

692.92 What definitions apply to the GAP Program?

692.93 Who is eligible to participate in the GAP Program?

692.94 What requirements must a State satisfy, as the administrator of a partnership, to receive GAP Program funds?

How Does a State Apply To Participate in GAP?

692.100 What requirements must a State meet to receive an allotment under this program?

692.101 What requirements must be met by a State partnership?

What Is the Amount of Assistance and How May It Be Used?

692.110 How does the Secretary allot funds to the States?

692.111 For what purposes may a State use its payment under the GAP Program?

692.112 May a State use the funds it receives from the GAP Program to pay administrative costs?

692.113 What are the matching requirements for the GAP Program?

How Does the Partnership Select Students Under the GAP Program?

692.120 What are the requirements for student eligibility?

How Does the Secretary Approve a Waiver of Program Requirements?

692.130 How does a participating institution request a waiver of program requirements?

Appendix A to Subpart C of Part 692—Grants for Access and Persistence Program (GAP) State Grant Allotment Case Study

Subpart C—Grants for Access and Persistence Program

General

§ 692.90 What is the Grants for Access and Persistence Program?

The Grants for Access and Persistence (GAP) Program assists States in establishing partnerships to provide eligible students with LEAP Grants under GAP to attend institutions of higher education and to encourage increased participation in early information and intervention, mentoring, or outreach programs.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.91 What other regulations apply to the GAP Program?

The regulations listed in § 692.3 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.92 What definitions apply to the GAP Program?

The definitions listed in § 692.4 also apply to the GAP Program.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.93 Who is eligible to participate in the GAP Program?

(a) *States.* States that meet the requirements in §§ 692.94 and 692.100 are eligible to receive payments under the GAP Program.

(b) *Degree-granting institutions of higher education.* Degree-granting

institutions of higher education that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(c) *Early information and intervention, mentoring, or outreach programs.* Early information and intervention, mentoring, or outreach programs that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(d) *Philanthropic organizations or private corporations.* Philanthropic organizations or private corporations that meet the requirements in § 692.101 are eligible to participate in a partnership under the GAP Program.

(e) *Students.* Students who meet the requirements of § 692.120 are eligible to receive assistance or services from a partnership under the GAP Program.

(Authority: 20 U.S.C. 1070c–3a)

§ 692.94 What requirements must a State satisfy, as the administrator of a partnership, to receive GAP Program funds?

To receive GAP Program funds for any fiscal year—

(a) A State must—

(1) Participate in the LEAP Program;

(2) Establish a State partnership with—

(i) At least—

(A) One public degree-granting institution of higher education that is located in the State; and

(B) One private degree-granting institution of higher education, if at least one exists in the State that may be eligible to participate in the State's LEAP Program under subpart A of this part;

(ii) New or existing early information and intervention, mentoring, or outreach programs located in the State; and

(iii) At least one philanthropic organization located in, or that provides funding in, the State, or private corporation located in, or that does business in, the State;

(3) Meet the requirements in § 692.100; and

(4) Have a program under this subpart that satisfies the requirements in § 692.21(a), (e), (f), (g), and (j).

(b) A State may provide an early information and intervention, mentoring, or outreach program under paragraph (a)(2)(ii) of this section.

(Authority: 20 U.S.C. 1070c–3a)

How Does a State Apply To Participate in GAP?

§ 692.100 What requirements must a State meet to receive an allotment under this program?

For a State to receive an allotment under the GAP Program, the State agency that administers the State's LEAP Program under subpart A of this part must—

(a) Submit an application on behalf of a partnership in accordance with the provisions in § 692.20 at such time, in such manner, and containing such information as the Secretary may require including—

(1) A description of—

(i) The State's plan for using the Federal funds allotted under this subpart and the non-Federal matching funds; and

(ii) The methods by which matching funds will be paid;

(2) An assurance that the State will provide matching funds in accordance with § 692.113;

(3) An assurance that the State will use Federal GAP funds to supplement, and not supplant, Federal and State funds available for carrying out the activities under Title IV of the HEA;

(4) An assurance that early information and intervention, mentoring, or outreach programs exist within the State or that there is a plan to make these programs widely available;

(5) A description of the organizational structure that the State has in place to administer the program, including a description of how the State will compile information on degree completion of students receiving grants under this subpart;

(6) A description of the steps the State will take to ensure, to the extent practicable, that students who receive a LEAP Grant under GAP persist to degree completion;

(7) An assurance that the State has a method in place, such as acceptance of the automatic zero expected family contribution under section 479(c) of the HEA, to identify eligible students and award LEAP Grants under GAP to such students;

(8) An assurance that the State will provide notification to eligible students that grants under this subpart are LEAP Grants and are funded by the Federal Government and the State, and, where applicable, other contributing partners.

(b) Serve as the primary administrative unit for the partnership;

(c) Provide or coordinate non-Federal share funds, and coordinate activities among partners;

(d) Encourage each institution of higher education in the State that

participates in the State's LEAP Program under subpart A of this part to participate in the partnership;

(e) Make determinations and early notifications of assistance;

(f) Ensure that the non-Federal funds used as matching funds represent dollars that are in excess of the total dollars that a State spent for need-based grants, scholarships, and work-study assistance for fiscal year 1999, including the State funds reported for the programs under this part;

(g) Provide an assurance that, for the fiscal year prior to the fiscal year for which the State is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in § 692.111 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

(h) Provide for reports to the Secretary that are necessary to carry out the Secretary's functions under the GAP Program.

(Approved by the Office of Management and Budget under control number 1845–NEW7)

(Authority: 20 U.S.C. 1070c–3a)

§ 692.101 What requirements must be met by a State partnership?

(a) *State.* A State that is receiving an allotment under this subpart must meet the requirements under §§ 692.94 and 692.100.

(b) *Degree-granting institution of higher education.* A degree-granting institution of higher education that is in a partnership under this subpart—

(1) Must participate in the State's LEAP Program under subpart A of this part;

(2) Must recruit and admit participating eligible students and provide additional institutional grant aid to participating students as agreed to with the State agency;

(3) Must provide support services to students who receive LEAP Grants under GAP and are enrolled at the institution;

(4) Must assist the State in the identification of eligible students and the dissemination of early notifications of assistance as agreed to with the State agency; and

(5) May provide funding or services for early information and intervention, mentoring, or outreach programs.

(c) *Early information and intervention, mentoring, or outreach program.* An early information and

intervention, mentoring, or outreach program that is in a partnership under this subpart shall provide direct services, support, and information to participating students.

(d) *Philanthropic organization or private corporation.* A philanthropic organization or private corporation in a partnership under this subpart shall provide non-Federal funds for LEAP Grants under GAP for participating students or provide funds or support for early information and intervention, mentoring, or outreach programs.

(Approved by the Office of Management and Budget under control number 1845-NEW7)

(Authority: 20 U.S.C. 1070c-3a)

What Is the Amount of Assistance and How May It Be Used?

§ 692.110 How does the Secretary allot funds to the States?

(a)(1) The Secretary allots to each State participating in the GAP Program an amount of the funds available for the GAP Program based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a).

(2) If a State meets the requirements of § 692.113(b) for a fiscal year, the number of students under § 692.10(a) for the State is increased to 125 percent in determining the ratio in paragraph (a) of this section for that fiscal year.

(3) Notwithstanding paragraph (a)(1) and (2) of this section—

(i) If the Federal GAP funds available from the appropriation for a fiscal year are sufficient to allot to each State that participated in the prior year the same amount of Federal GAP funds allotted in the prior fiscal year, but are not sufficient both to allot the same amount of Federal GAP funds allotted in the prior fiscal year to these States and also to allot additional funds to additional States in accordance with the ratio used to allot the States' Federal LEAP funds under § 692.10(a), the Secretary allots—

(A) To each State that participated in the prior year, the amount the State received in the prior year; and

(B) To each State that did not participate in the prior year, an amount of Federal GAP funds available to States based on the ratio used to allot the State's Federal LEAP funds under § 692.10(a); and

(ii) If the Federal GAP funds available from the appropriation for a fiscal year are not sufficient to allot to each State that participated in the prior year at least the amount of Federal GAP funds allotted in the prior fiscal year, the Secretary allots to each State an amount which bears the same ratio to the amount of Federal GAP funds available as the amount of Federal GAP funds

allotted to each State in the prior fiscal year bears to the amount of Federal GAP funds allotted to all States in the prior fiscal year.

(b) The Secretary allots funds available for reallocation in a fiscal year in accordance with the provisions of paragraph (a) of this section used to calculate initial allotments for the fiscal year.

(c) Any funds made available for the program under this subpart but not expended may be allotted or reallocated for the program under subpart A of this part.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.111 For what purposes may a State use its payment under the GAP Program?

(a) *Establishment of a partnership.* Each State receiving an allotment under this subpart shall use the funds to establish a partnership to award grants to eligible students in order to increase the amount of financial assistance students receive under this subpart for undergraduate education expenses.

(b) *Amount of LEAP Grants under GAP.* (1) The amount of a LEAP Grant under GAP by a State to an eligible student shall be not less than—

(i) The average undergraduate in-State tuition and mandatory fees for full-time students at the public institutions of higher education in the State where the student resides that are the same type of institution that the student attends (four-year degree-granting, two-year degree-granting, or non-degree-granting); minus

(ii) Other Federal and State aid the student receives.

(2) The Secretary determines the average undergraduate in-State tuition and mandatory fees for full-time students at public institutions in a State weighted by enrollment using the most recent data reported by institutions in the State to the Integrated Postsecondary Education Data System (IPEDS) administered by the National Center for Educational Statistics.

(c) *Institutional participation.* (1) A State receiving an allotment under this subpart may restrict the use of LEAP Grants under GAP only to students attending institutions of higher education that are participating in the partnership.

(2) If a State provides LEAP Grants under subpart A of this part to students attending institutions of higher education located in another State, LEAP Grants under GAP may be used at institutions of higher education located in another State.

(d) *Early notification to potentially eligible students.* (1) Each State receiving an allotment under this

subpart shall annually notify potentially eligible students in grades 7 through 12 in the State, and their families, of their potential eligibility for student financial assistance, including a LEAP Grant under GAP, to attend a LEAP-participating institution of higher education.

(2) The notice shall include—

(i) Information about early information and intervention, mentoring, or outreach programs available to the student;

(ii) Information that a student's eligibility for a LEAP Grant under GAP is enhanced through participation in an early information and intervention, mentoring, or outreach program;

(iii) An explanation that student and family eligibility for, and participation in, other Federal means-tested programs may indicate eligibility for a LEAP Grant under GAP and other student aid programs;

(iv) A nonbinding estimate of the total amount of financial aid that an eligible student with a similar income level may expect to receive, including an estimate of the amount of a LEAP Grant under GAP and an estimate of the amount of grants, loans, and all other available types of aid from the major Federal and State financial aid programs;

(v) An explanation that in order to be eligible for a LEAP Grant under GAP, at a minimum, a student shall—

(A) Meet the eligibility requirements under § 692.120; and

(B) Enroll at a LEAP-participating institution of higher education in the State of the student's residence or an out-of-State institution if the State elects to make LEAP Grants under GAP for attendance at out-of-State institutions in accordance with paragraph (c)(2) of this section;

(vi) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP in accordance with § 692.120(a)(4); and

(vii) An explanation that a student is required to file a Free Application for Federal Student Aid to determine his or her eligibility for Federal and State financial assistance and may include a provision that eligibility for an award is subject to change based on—

(A) A determination of the student's financial eligibility at the time of the student's enrollment at a LEAP-participating institution of higher education or an out-of-State institution in accordance with paragraph (c)(2) of this section;

(B) Annual Federal and State spending for higher education; and

(C) Other aid received by the student at the time of the student's enrollment at the institution of higher education.

(e) *Award notification.* (1) Once a student, including a student who has received early notification under paragraph (d) of this section, applies for admission to an institution that is a partner in the partnership of the State of the student's residence, files a Free Application for Federal Student Aid and any related State form, and is determined eligible by the State, the State shall—

(i) Issue the student a preliminary award certificate for a LEAP Grant under GAP with estimated award amounts; and

(ii) Inform the student that the payment of the grant is subject to certification of enrollment and eligibility by the institution.

(2) If a student enrolls in an institution that is not a partner in the partnership of the student's State of residence but the State has not restricted eligibility to students enrolling in partner institutions, including, if applicable, out-of-State institutions, the State shall, to the extent practicable, follow the procedures of paragraph (e)(1) of this section.

(Approved by the Office of Management and Budget under control number 1845-NEW7)

(Authority: 20 U.S.C. 1070c-3a)

§ 692.112 May a State use the funds it receives from the GAP Program to pay administrative costs?

(a) A State that receives an allotment under this subpart may reserve not more than two percent of the funds made available annually for State administrative functions required for administering the partnership and other program activities.

(b) A State must use not less than ninety-eight (98) percent of an allotment under this subpart to make LEAP Grants under GAP.

(Authority: 20 U.S.C. 1070c-3a)

§ 692.113 What are the matching requirements for the GAP Program?

(a) The matching funds of a partnership—

(1) Shall be funds used for making LEAP Grants to eligible students under this subpart;

(2) May be—

(i) Cash; or

(ii) A noncash, in-kind contribution that—

(A) Is fairly evaluated;

(B) Has monetary value, such as a tuition waiver or provision of room and board, or transportation;

(C) Helps a student meet the cost of attendance at an institution of higher education; and

(D) Is considered to be estimated financial assistance under 34 CFR part 673.5(c); and

(3) May be funds from the State, institutions of higher education, or philanthropic organizations or private corporations that are used to make LEAP Grants under GAP.

(b) The non-Federal match of the Federal allotment shall be—

(1) Forty-three percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents less than a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State; and

(2) Thirty-three and thirty-four one-hundredths percent of the expenditures under this subpart if a State applies for a GAP allotment in partnership with—

(i) Any number of degree-granting institutions of higher education in the State whose combined full-time enrollment represents a majority of all students attending institutions of higher education in the State as determined by the Secretary using the most recently available data from IPEDS; and

(ii) One or both of the following—

(A) Philanthropic organizations that are located in, or that provide funding in, the State; or

(B) Private corporations that are located in, or that do business in, the State.

(c) Nothing in this part shall be interpreted as limiting a State or other member of a partnership from expending funds to support the activities of a partnership under this subpart that are in addition to the funds matching the Federal allotment.

(Authority: 20 U.S.C. 1070c-3a)

How Does the Partnership Select Students under the GAP Program?

§ 692.120 What are the requirements for student eligibility?

(a) *Eligibility.* A student is eligible to receive a LEAP Grant under GAP if the student—

(1) Meets the relevant eligibility requirements contained in 34 CFR 668.32;

(2) Has graduated from secondary school or, for a home-schooled student, has completed a secondary education;

(3)(i) Has received, or is receiving, a LEAP Grant under GAP for each year the student remains eligible for assistance under this subpart; or

(ii) Meets at least two of the following criteria—

(A) As designated by the State, either has an EFC equal to zero, as determined under part F of the HEA, or a comparable alternative based on the State's approved criteria for the LEAP Program under subpart A of this part;

(B) Qualifies for the State's maximum undergraduate award for LEAP Grants under subpart A of this part in the award year in which the student is receiving an additional LEAP Grant under GAP; or

(C) Is participating in, or has participated in, a Federal, State, institutional, or community early information and intervention, mentoring, or outreach program, as determined by the State agency administering the programs under this part; and

(4) Any additional requirements that the State may require for receipt of a LEAP Grant under GAP.

(b) *Priority.* In awarding LEAP Grants under GAP, a State shall give priority to students meeting all the criteria in paragraph (a)(3)(i) of this section.

(c) *Duration of eligibility.* (1) A student may receive a LEAP Grant under GAP if the student continues to demonstrate that he or she is financially eligible by meeting the provisions of paragraph (a)(3)(ii)(A) or (B) of this section.

(2) A State may impose reasonable time limits to degree completion.

(Authority: 20 U.S.C. 1070c-3a)

How Does the Secretary Approve a Waiver of Program Requirements?

§ 692.130 How does a participating institution request a waiver of program requirements?

(a) The Secretary may grant, upon the request of an institution participating in a partnership that meets the requirements of § 692.113(b)(2), a waiver for the institution from statutory or regulatory requirements that inhibit the ability of the institution to successfully and efficiently participate in the activities of the partnership.

(b) An institution must submit a request for a waiver through the State agency administering the partnership.

(c) The State agency must forward to the Secretary, in a timely manner, the request made by the institution and may include any additional information or

recommendations that it deems

appropriate for the Secretary's
consideration.

(Authority: 20 U.S.C. 1070c-3a)

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Appendix A to subpart C of part 692 – Grants for Access and Persistence Program (GAP)

State Grant Allotment Case Study

Basic Allotment Formula for LEAP, SLEAP, and GAP

1979 State Enrollment Data

State	Enrollment
Alabama	174,170
Alaska	18,594
Arizona	199,274
Arkansas	74,057
California	1,798,400
Colorado	159,836
Connecticut	152,431
Delaware	31,228
District of Columbia	85,259
Florida	366,344
Georgia	203,269
Hawaii	48,097
Idaho	39,198
Illinois	632,654
Indiana	234,086
Iowa	125,845
Kansas	129,705
Kentucky	142,958
Louisiana	166,660
Maine	41,954
Maryland	213,490
Massachusetts	376,361
Michigan	483,833
Minnesota	226,365
Mississippi	99,078
Missouri	231,327
Montana	32,270
Nebraska	83,922
Nevada	31,926
New Hampshire	40,803
New Jersey	306,983
New Mexico	59,420
New York	989,409
North Carolina	254,199
North Dakota	31,357
Ohio	464,069
Oklahoma	157,622
Oregon	150,353
Pennsylvania	514,421
Rhode Island	61,773
South Carolina	126,628
South Dakota	33,227
Tennessee	189,530
Texas	638,504
Utah	86,966
Vermont	29,398
Virginia	249,297
Washington	265,593
West Virginia	85,012
Wisconsin	244,111
Wyoming	19,633
American Samoa	836
Guam	3,710
Northern Marianas Island	143
Puerto Rico	104,640
Virgin Islands	2,122
Total	11,712,350

Basic Allotment Formula

1) Derive a percentage of total enrollment of all states:

State Enrollment Data*

Total State Enrollment (for all states/territories)	=	% of Total Enrollment
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2) Determine what portion of the Federal Appropriation a State/territory receives:

% of Total Enrollment	×	Federal Appropriation Amount	=	Amount of the Allocation per State
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*Use FY 1979 enrollment data unless the appropriation exceeds \$76,452,287 (the FY 1979 appropriation); 1976-1977 award year enrollment data used for FY 1979. Use most recent enrollment data if appropriation exceeds \$76,452,287.

NOTE: This case study illustrates the requirements for allotting funds under the GAP Program under §692.110 and SLEAP Program funding during fiscal year 2010 (the 2010-2011 award year) under §692.70. Apart from State enrollments for fiscal year 1979 used in the allotment formula, nothing in the case study should be considered to reflect any State's actual circumstances or the expected funding for any State.

First Year of GAP Implementation (2010-11)**Conditions:**

Appropriation for FY 2010: \$63,852,000

LEAP funds for FY 2010: \$30,000,000

SLEAP/GAP funds for FY 2010: \$33,852,000

Illustrates:

First, must allot to SLEAP applicants (Table A)

Then, use remaining funds for GAP applicants (Table B)

First Year of GAP Implementation (2010-11): SLEAP Allotment (Table A)

Must calculate SLEAP first

Federal Appropriation Available after LEAP Allotment: \$33,852,000

State	State Enrollment	Formula Amount	Formula Amount	State SLEAP Allotment	
§ Alabama		\$0.00	\$0		
‡ Alaska	18,594	\$59,494.79	\$59,495	\$59,495	
Arizona	199,274	\$637,612.43	\$637,612		
§ Arkansas		\$0.00	\$0		
California	1,798,400	\$5,754,299.06	\$5,754,299		
Colorado	159,836	\$511,423.57	\$511,424		
Connecticut	152,431	\$487,729.96	\$487,730		
Delaware	31,228	\$99,919.51	\$99,920		
District of Columbia	85,259	\$272,801.26	\$272,801		
Florida	366,344	\$1,172,182.46	\$1,172,182		
§ Georgia		\$0.00	\$0		
§ Hawaii		\$0.00	\$0		
‡ Idaho	39,198	\$125,420.94	\$125,421	\$125,421	
Illinois	632,654	\$2,024,288.43	\$2,024,288		
Indiana	234,086	\$748,999.58	\$749,000		
Iowa	125,845	\$402,663.35	\$402,663		
Kansas	129,705	\$415,014.10	\$415,014		
Kentucky	142,958	\$457,419.42	\$457,419		
Louisiana	166,660	\$533,258.16	\$533,258		
‡ Maine	41,954	\$134,239.25	\$134,239	\$134,239	
Maryland	213,490	\$683,099.04	\$683,099		
§ Massachusetts		\$0.00	\$0		
‡ Michigan	483,833	\$1,548,109.31	\$1,548,109	\$1,548,109	
Minnesota	226,365	\$724,294.88	\$724,295		
§ Mississippi		\$0.00	\$0		
Missouri	231,327	\$740,171.67	\$740,172		
‡ Montana	32,270	\$103,253.58	\$103,254	\$103,254	
Nebraska	83,922	\$268,523.29	\$268,523		
Nevada	31,926	\$102,152.89	\$102,153		
New Hampshire	40,803	\$130,556.42	\$130,556		
New Jersey	306,983	\$982,246.44	\$982,246		
‡ New Mexico	59,420	\$190,124.81	\$190,125	\$190,125	
New York	989,409	\$3,165,789.19	\$3,165,789		
North Carolina	254,199	\$813,354.69	\$813,355		
North Dakota	31,357	\$100,332.27	\$100,332		
‡ Ohio	464,069	\$1,484,870.89	\$1,484,871	\$1,484,871	
Oklahoma	157,622	\$504,339.48	\$504,339		
Oregon	150,353	\$481,081.03	\$481,081		
Pennsylvania	514,421	\$1,645,981.03	\$1,645,981		
Rhode Island	61,773	\$197,653.65	\$197,654		
South Carolina	126,628	\$405,168.70	\$405,169		
§ South Dakota		\$0.00	\$0		
Tennessee	189,530	\$606,434.78	\$606,435		
Texas	638,504	\$2,043,006.54	\$2,043,007		
Utah	86,966	\$278,263.11	\$278,263		
Vermont	29,398	\$94,064.10	\$94,064		
Virginia	249,297	\$797,669.87	\$797,670		
Washington	265,593	\$849,811.81	\$849,812		
‡ West Virginia	85,012	\$272,010.94	\$272,011	\$272,011	
Wisconsin	244,111	\$781,076.34	\$781,076		
§ Wyoming		\$0.00	\$0		
‡ American Samoa	836	\$2,674.93	\$2,675	\$2,675	
‡ Guam	3,710	\$11,870.80	\$11,871	\$11,871	
‡ No. Marianas Island	143	\$457.55	\$458	\$458	
§ Puerto Rico		\$0.00	\$0		
‡ Virgin Islands	2,122	\$6,789.71	\$6,790	\$6,790	
Total	10,579,818	\$33,852,000.00	\$33,852,000	\$3,939,317	Total SLEAP Allotments
Key: ‡ Applies for SLEAP					
§ Does not apply or qualify					
				\$29,912,683	Remaining balance for GAP allotment

First Year of GAP Implementation (2010-11): GAP Allotment-with Priority (Table B)**Demonstrate GAP actual allotment with required priority****Federal Appropriation Available for GAP Allotment: \$29,912,683**

State	State Enrollment with Priority Applied	Formula Amount with Priority Applied	State GAP Allotment with Priority Applied
§ Alabama		\$0.00	\$0
‡ Alaska		\$0.00	\$0
Arizona	199,274	\$547,813.66	\$547,814
§ Arkansas		\$0.00	\$0
# California	2,248,000	\$6,179,858.41	\$6,179,858
Colorado	159,836	\$439,396.73	\$439,397
# Connecticut	190,539	\$523,800.04	\$523,800
# Delaware	39,035	\$107,309.06	\$107,309
District of Columbia	85,259	\$234,381.03	\$234,381
# Florida	457,930	\$1,258,871.25	\$1,258,871
§ Georgia		\$0.00	\$0
§ Hawaii		\$0.00	\$0
‡ Idaho		\$0.00	\$0
# Illinois	790,818	\$2,173,994.74	\$2,173,995
Indiana	234,086	\$643,513.49	\$643,513
Iowa	125,845	\$345,953.86	\$345,954
Kansas	129,705	\$356,565.18	\$356,565
Kentucky	142,958	\$392,998.31	\$392,998
Louisiana	166,660	\$458,156.23	\$458,156
‡ Maine		\$0.00	\$0
Maryland	213,490	\$586,894.12	\$586,894
§ Massachusetts		\$0.00	\$0
‡ Michigan		\$0.00	\$0
Minnesota	226,365	\$622,288.10	\$622,288
§ Mississippi		\$0.00	\$0
Missouri	231,327	\$635,928.87	\$635,929
‡ Montana		\$0.00	\$0
Nebraska	83,922	\$230,705.55	\$230,706
Nevada	31,926	\$87,766.09	\$87,766
New Hampshire	40,803	\$112,169.38	\$112,169
# New Jersey	383,729	\$1,054,888.50	\$1,054,888
‡ New Mexico		\$0.00	\$0
New York	989,409	\$2,719,932.17	\$2,719,932
# North Carolina	317,749	\$873,506.35	\$873,506
North Dakota	31,357	\$86,201.88	\$86,202
‡ Ohio		\$0.00	\$0
# Oklahoma	197,028	\$541,637.92	\$541,638
# Oregon	187,941	\$516,659.39	\$516,659
# Pennsylvania	643,026	\$1,767,709.60	\$1,767,710
# Rhode Island	77,216	\$212,271.13	\$212,271
South Carolina	126,628	\$348,106.37	\$348,106
§ South Dakota		\$0.00	\$0
# Tennessee	236,913	\$651,283.68	\$651,284
# Texas	798,130	\$2,194,097.15	\$2,194,097
# Utah	108,708	\$298,842.06	\$298,842
# Vermont	36,748	\$101,020.62	\$101,021
# Virginia	311,621	\$856,661.57	\$856,662
# Washington	331,991	\$912,659.66	\$912,660
‡ West Virginia		\$0.00	\$0
# Wisconsin	305,139	\$838,840.87	\$838,841
§ Wyoming		\$0.00	\$0
‡ American Samoa		\$0.00	\$0
‡ Guam		\$0.00	\$0
‡ No. Marianas Islands		\$0.00	\$0
§ Puerto Rico		\$0.00	\$0
‡ Virgin Islands		\$0.00	\$0
Total	10,881,109	\$29,912,683.00	\$29,912,683

Key: # Priority States, 125% applied**‡ Applies for SLEAP****§ Does not apply or qualify**

Second Year of GAP Implementation (2011-12): GAP Allotment-Initial Calculation (Table C)**Second Year of GAP Implementation (2011-12)****Conditions:**

Appropriation for FY 2011: \$63,852,000 (level funding from prior year)

LEAP funds for FY 2011: \$30,000,000

GAP funds for FY 2011: \$33,852,000

12 States initially apply for GAP funding (WV with priority)

Priority States in FY 2010 continue as priority States

IN and IA, continuing States, convert to priority States

Illustrates:

Insufficient funds are available to fund all applicants and meet continuing award requirement (Table C)

Continuing awards are based on prior year (Table D)

IN and IA are funded based on prior year; priority superseded (Table D)

New applicants receive remaining available funds, \$3,912,317 (E)

Perform initial calculation to determine if negative changes from prior year awards
Federal Appropriation Available for GAP Allotment: 33,852,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Calculation	Prior Year Allotment	Change from Allotment
§ Alabama		\$0.00	\$0	\$0	0
§ Alaska		\$0.00	\$0	\$0	0
Arizona	199,274	\$531,382.91	\$531,383	\$547,814	-16,431
> Arkansas	74,057	\$197,479.97	\$197,480	\$0	197,480
# California	2,248,000	\$5,994,503.99	\$5,994,504	\$6,179,858	-185,354
Colorado	159,836	\$426,217.77	\$426,218	\$439,397	-13,179
# Connecticut	190,539	\$508,089.54	\$508,090	\$523,800	-15,710
# Delaware	39,035	\$104,090.51	\$104,091	\$107,309	-3,219
District of Columbia	85,259	\$227,351.16	\$227,351	\$234,381	-7,030
# Florida	457,930	\$1,221,113.53	\$1,221,114	\$1,258,871	-37,758
§ Georgia		\$0.00	\$0	\$0	0
§ Hawaii		\$0.00	\$0	\$0	0
> Idaho	39,198	\$104,525.16	\$104,525	\$0	104,525
# Illinois	790,818	\$2,108,789.44	\$2,108,789	\$2,173,995	-65,205
+ Indiana	292,608	\$780,265.49	\$780,265	\$643,513	136,752
+ Iowa	157,306	\$419,471.95	\$419,472	\$345,954	73,518
Kansas	129,705	\$345,870.61	\$345,871	\$356,565	-10,695
Kentucky	142,958	\$381,210.99	\$381,211	\$392,998	-11,787
Louisiana	166,660	\$444,414.61	\$444,415	\$458,156	-13,742
> Maine	41,954	\$111,874.30	\$111,874	\$0	111,874
Maryland	213,490	\$569,291.22	\$569,291	\$586,894	-17,603
> Massachusetts	376,361	\$1,003,602.10	\$1,003,602	\$0	1,003,602
> Michigan	483,833	\$1,290,186.32	\$1,290,186	\$0	1,290,186
Minnesota	226,365	\$603,623.62	\$603,624	\$622,288	-18,664
> Mississippi	99,078	\$264,200.83	\$264,201	\$0	264,201
Missouri	231,327	\$616,855.26	\$616,855	\$635,929	-19,074
> Montana	32,270	\$86,051.00	\$86,051	\$0	86,051
Nebraska	83,922	\$223,785.93	\$223,786	\$230,706	-6,920
Nevada	31,926	\$85,133.69	\$85,134	\$87,766	-2,632
New Hampshire	40,803	\$108,805.05	\$108,805	\$112,169	-3,364
# New Jersey	383,729	\$1,023,248.90	\$1,023,249	\$1,054,888	-31,640
§ New Mexico		\$0.00	\$0	\$0	0
New York	989,409	\$2,638,352.40	\$2,638,352	\$2,719,932	-81,580
# North Carolina	317,749	\$847,307.01	\$847,307	\$873,506	-26,199
North Dakota	31,357	\$83,616.40	\$83,616	\$86,202	-2,585
> Ohio	464,069	\$1,237,483.75	\$1,237,484	\$0	1,237,484
# Oklahoma	197,028	\$525,392.41	\$525,392	\$541,638	-16,246
# Oregon	187,941	\$501,163.07	\$501,163	\$516,659	-15,496
# Pennsylvania	643,026	\$1,714,690.13	\$1,714,690	\$1,767,710	-53,019
# Rhode Island	77,216	\$205,904.41	\$205,904	\$212,271	-6,367
South Carolina	126,628	\$337,665.50	\$337,666	\$348,106	-10,441
§ South Dakota		\$0.00	\$0	\$0	0
# Tennessee	236,913	\$631,749.52	\$631,750	\$651,284	-19,534
# Texas	798,130	\$2,128,288.91	\$2,128,289	\$2,194,097	-65,808
# Utah	108,708	\$289,878.80	\$289,879	\$298,842	-8,963
# Vermont	36,748	\$97,990.67	\$97,991	\$101,021	-3,030
# Virginia	311,621	\$830,967.45	\$830,967	\$856,662	-25,694
# Washington	331,991	\$885,285.98	\$885,286	\$912,660	-27,374
> + West Virginia	106,265	\$283,365.64	\$283,366	\$0	283,366
# Wisconsin	305,139	\$813,681.25	\$813,681	\$838,841	-25,160
§ Wyoming		\$0.00	\$0	\$0	0
> American Samoa	836	\$2,229.27	\$2,229	\$0	2,229
> Guam	3,710	\$9,893.06	\$9,893	\$0	9,893
§ No. Marianas Island		\$0.00	\$0	\$0	0
§ Puerto Rico		\$0.00	\$0	\$0	0
> Virgin Islands	2,122	\$5,658.51	\$5,659	\$0	5,659
Total	12,694,845	\$33,852,000.00	\$33,852,000		

Key: § Does not apply or qualify

> New applicant

Priority States, 125% applied

+ New Priority States, 125% applied

Second Year of GAP Implementation (2011-12): GAP Allotment-Continuing Awards (Table D)**No calculation: carry over GAP allotment amounts from prior year****Federal Appropriation Available for GAP Allotment: \$29,912,683**

State	Prior Year Allotment	No Formula Amount	State Allotment Continuing Awards
§ Alabama	\$0		\$0
§ Alaska	\$0		\$0
Arizona	\$547,814		\$547,814
> Arkansas	\$0		\$0
# California	\$6,179,858		\$6,179,858
Colorado	\$439,397		\$439,397
# Connecticut	\$523,800		\$523,800
# Delaware	\$107,309		\$107,309
District of Columbia	\$234,381		\$234,381
# Florida	\$1,258,871		\$1,258,871
§ Georgia	\$0		\$0
§ Hawaii	\$0		\$0
> Idaho	\$0		\$0
# Illinois	\$2,173,995		\$2,173,995
+ Indiana	\$643,513		\$643,513
+ Iowa	\$345,954		\$345,954
Kansas	\$356,565		\$356,565
Kentucky	\$392,998		\$392,998
Louisiana	\$458,156		\$458,156
> Maine	\$0		\$0
Maryland	\$586,894		\$586,894
> Massachusetts	\$0		\$0
> Michigan	\$0		\$0
Minnesota	\$622,288		\$622,288
> Mississippi	\$0		\$0
Missouri	\$635,929		\$635,929
> Montana	\$0		\$0
Nebraska	\$230,706		\$230,706
Nevada	\$87,766		\$87,766
New Hampshire	\$112,169		\$112,169
# New Jersey	\$1,054,888		\$1,054,888
§ New Mexico	\$0		\$0
New York	\$2,719,932		\$2,719,932
# North Carolina	\$873,506		\$873,506
North Dakota	\$86,202		\$86,202
> Ohio	\$0		\$0
# Oklahoma	\$541,638		\$541,638
# Oregon	\$516,659		\$516,659
# Pennsylvania	\$1,767,710		\$1,767,710
# Rhode Island	\$212,271		\$212,271
South Carolina	\$348,106		\$348,106
§ South Dakota	\$0		\$0
# Tennessee	\$651,284		\$651,284
# Texas	\$2,194,097		\$2,194,097
# Utah	\$298,842		\$298,842
# Vermont	\$101,021		\$101,021
# Virginia	\$856,662		\$856,662
# Washington	\$912,660		\$912,660
>+ West Virginia	\$0		\$0
# Wisconsin	\$838,841		\$838,841
§ Wyoming	\$0		\$0
> American Samoa	\$0		\$0
> Guam	\$0		\$0
§ No. Marianas Island	\$0		\$0
§ Puerto Rico	\$0		\$0
> Virgin Islands	\$0		\$0
Total	29,912,683		\$29,912,683

Key: § Does not apply or qualify**> New applicant****# Priority States****+ New Priority****} Priority not applied**

Second Year of GAP Implementation (2011-12): GAP Allotment - New Applicants (Table E)**Calculate new applicant allotments using basic allotment formula****Federal Appropriation Available for GAP Allotment: 3,939,317**

State	State Enrollment with Priority Applied	Formula Amount	State Allotment
§ Alabama		\$0.00	\$0
§ Alaska		\$0.00	\$0
Arizona		\$0.00	\$0
> Arkansas	74,057	\$169,243.50	\$169,244
# California		\$0.00	\$0
Colorado		\$0.00	\$0
# Connecticut		\$0.00	\$0
# Delaware		\$0.00	\$0
District of Columbia		\$0.00	\$0
# Florida		\$0.00	\$0
§ Georgia		\$0.00	\$0
§ Hawaii		\$0.00	\$0
> Idaho	39,198	\$89,579.74	\$89,580
# Illinois		\$0.00	\$0
Indiana		\$0.00	\$0
Iowa		\$0.00	\$0
Kansas		\$0.00	\$0
Kentucky		\$0.00	\$0
Louisiana		\$0.00	\$0
> Maine	41,954	\$95,878.07	\$95,878
Maryland		\$0.00	\$0
> Massachusetts	376,361	\$860,103.09	\$860,103
> Michigan	483,833	\$1,105,710.37	\$1,105,710
Minnesota		\$0.00	\$0
> Mississippi	99,078	\$226,424.35	\$226,424
Missouri		\$0.00	\$0
> Montana	32,270	\$73,747.09	\$73,747
Nebraska		\$0.00	\$0
Nevada		\$0.00	\$0
New Hampshire		\$0.00	\$0
# New Jersey		\$0.00	\$0
§ New Mexico		\$0.00	\$0
New York		\$0.00	\$0
# North Carolina		\$0.00	\$0
North Dakota		\$0.00	\$0
> Ohio	464,069	\$1,060,543.42	\$1,060,543
# Oklahoma		\$0.00	\$0
# Oregon		\$0.00	\$0
# Pennsylvania		\$0.00	\$0
# Rhode Island		\$0.00	\$0
South Carolina		\$0.00	\$0
§ South Dakota		\$0.00	\$0
# Tennessee		\$0.00	\$0
# Texas		\$0.00	\$0
# Utah		\$0.00	\$0
# Vermont		\$0.00	\$0
# Virginia		\$0.00	\$0
# Washington		\$0.00	\$0
># West Virginia	106,265	\$242,848.90	\$242,849
# Wisconsin		\$0.00	\$0
§ Wyoming		\$0.00	\$0
> American Samoa	836	\$1,910.52	\$1,911
> Guam	3,710	\$8,478.52	
§ No. Marianas Island			\$0.00
§ Puerto Rico		\$0.00	\$0
> Virgin Islands	2,122	\$4,849.44	\$4,849
Total	1,723,753	\$3,939,317.00	\$3,939,317

Key: § Does not apply or qualify**> New applicant****+ New priority State, 125% applied**

Third Year of GAP Implementation (2012-13)

Conditions:

Appropriation for FY 2012: \$61,000,000 (reduction from prior year)

LEAP funds for FY 2012: \$30,000,000

GAP funds for FY 2012: \$31,000,000

One new applicant, NM, with priority

Priority States in FY 2010 and 2011 continue as priority States

Illustrates:

Funds are insufficient to fund continuing awards (Table F)

Continuing awards are ratably reduced based on prior year allotment (Table G)

IN and IA are subject to ratable reduction based on prior year allotment; no priority applied (Table G)

New applicant, NM, is also subject to ratable reduction; reduced to zero (Table G)

Third Year of GAP Implementation (2012-13): GAP Allotment-Initial Calculation (Table F)

Perform initial calculation to determine if there are negative changes from prior year awards

Federal Appropriation Available for GAP Allotment: 31,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment Initial Calculation	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		\$0.00	\$0	\$0	0
§ Alaska		\$0.00	\$0	\$0	0
Arizona	199,274	\$483,783.87	\$483,784	\$547,814	-64,030
Arkansas	74,057	\$179,790.55	\$179,791	\$169,244	10,547
# California	2,248,000	\$5,457,541.53	\$5,457,542	\$6,179,858	-722,317
Colorado	159,836	\$388,038.97	\$388,039	\$439,397	-51,358
# Connecticut	190,539	\$462,577.02	\$462,577	\$523,800	-61,223
# Delaware	39,035	\$94,766.52	\$94,767	\$107,309	-12,543
District of Columbia	85,259	\$206,986.00	\$206,986	\$234,381	-27,395
# Florida	457,930	\$1,111,731.31	\$1,111,731	\$1,258,871	-147,140
§ Georgia		\$0.00	\$0	\$0	0
§ Hawaii		\$0.00	\$0	\$0	0
Idaho	39,198	\$95,162.24	\$95,162	\$89,580	5,582
# Illinois	790,818	\$1,919,892.95	\$1,919,893	\$2,173,995	-254,102
+ Indiana	292,608	\$710,372.59	\$710,373	\$643,513	66,859
+ Iowa	157,306	\$381,897.42	\$381,897	\$345,954	35,944
Kansas	129,705	\$314,888.98	\$314,889	\$356,565	-41,676
Kentucky	142,958	\$347,063.71	\$347,064	\$392,998	-45,935
Louisiana	166,660	\$404,605.81	\$404,606	\$458,156	-53,550
Maine	41,954	\$101,853.07	\$101,853	\$95,878	5,975
Maryland	213,490	\$518,296.50	\$518,297	\$586,894	-68,598
Massachusetts	376,361	\$913,703.64	\$913,704	\$860,103	53,601
Michigan	483,833	\$1,174,616.86	\$1,174,617	\$1,105,710	68,907
Minnesota	226,365	\$549,553.55	\$549,554	\$622,288	-72,735
Mississippi	99,078	\$240,534.83	\$240,535	\$226,424	14,111
Missouri	231,327	\$561,599.96	\$561,600	\$635,929	-74,329
Montana	32,270	\$78,342.91	\$78,343	\$73,747	4,596
Nebraska	83,922	\$203,740.12	\$203,740	\$230,706	-26,965
Nevada	31,926	\$77,507.77	\$77,508	\$87,766	-10,258
New Hampshire	40,803	\$99,058.75	\$99,059	\$112,169	-13,111
# New Jersey	383,729	\$931,590.57	\$931,591	\$1,054,888	-123,298
> + New Mexico	74,275	\$180,319.79	\$180,320	\$0	180,320
New York	989,409	\$2,402,019.89	\$2,402,020	\$2,719,932	-317,912
# North Carolina	317,749	\$771,408.81	\$771,409	\$873,506	-102,098
North Dakota	31,357	\$76,126.39	\$76,126	\$86,202	-10,075
Ohio	464,069	\$1,126,635.16	\$1,126,635	\$1,060,543	66,092
# Oklahoma	197,028	\$478,329.97	\$478,330	\$541,638	-63,308
# Oregon	187,941	\$456,270.99	\$456,271	\$516,659	-60,388
# Pennsylvania	643,026	\$1,561,095.40	\$1,561,095	\$1,767,710	-206,614
# Rhode Island	77,216	\$187,460.36	\$187,460	\$212,271	-24,811
South Carolina	126,628	\$307,418.85	\$307,419	\$348,106	-40,688
§ South Dakota		\$0.00	\$0	\$0	0
# Tennessee	236,913	\$575,160.06	\$575,160	\$651,284	-76,124
# Texas	798,130	\$1,937,645.74	\$1,937,646	\$2,194,097	-256,451
# Utah	108,708	\$263,912.68	\$263,913	\$298,842	-34,929
# Vermont	36,748	\$89,213.08	\$89,213	\$101,021	-11,808
# Virginia	311,621	\$756,532.88	\$756,533	\$856,662	-100,129
# Washington	331,991	\$805,985.78	\$805,986	\$912,660	-106,674
# West Virginia	106,265	\$257,982.94	\$257,983	\$242,849	15,134
# Wisconsin	305,139	\$740,795.11	\$740,795	\$838,841	-98,046
§ Wyoming		\$0.00	\$0	\$0	0
American Samoa	836	\$2,029.58	\$2,030	\$1,911	119
Guam	3,710	\$9,006.89	\$9,007	\$8,479	528
§ No. Marianas Island		\$0.00	\$0	\$0	0
§ Puerto Rico		\$0.00	\$0	\$0	0
Virgin Islands	2,122	\$5,151.65	\$5,152	\$4,849	303
Total	12,769,120	\$31,000,000.00	\$31,000,000		

Key: # Priority States, 125% applied

+ Priority not previously funded

> + New applicant, 125% priority

§ Does not apply or qualify

Third Year of GAP Implementation (2012-13): Ratable Reduction (Table G)

Calculate ratable reduction based on proportions of prior year allotment

Federal Appropriation Available for GAP Allotment: \$31,000,000

State	Prior Year Allotment	Formula Amount	State Allotment	Change from Prior Year Allotment
§ Alabama	\$0	\$0.00	\$0	0
§ Alaska	\$0	\$0.00	\$0	0
Arizona	\$547,814	\$501,660.86	\$501,661	-46,153
Arkansas	\$169,244	\$154,985.35	\$154,985	-14,259
# California	\$6,179,858	\$5,659,211.00	\$5,659,211	-520,647
Colorado	\$439,397	\$402,377.96	\$402,378	-37,019
# Connecticut	\$523,800	\$479,670.37	\$479,670	-44,130
# Delaware	\$107,309	\$98,268.37	\$98,268	-9,041
District of Columbia	\$234,381	\$214,634.64	\$214,635	-19,746
# Florida	\$1,258,871	\$1,152,812.50	\$1,152,812	-106,059
§ Georgia	\$0	\$0.00	\$0	0
§ Hawaii	\$0	\$0.00	\$0	0
Idaho	\$89,580	\$82,032.97	\$82,033	-7,547
# Illinois	\$2,173,995	\$1,990,837.67	\$1,990,838	-183,157
+ Indiana	\$643,513	\$589,298.07	\$589,298	-54,215
+ Iowa	\$345,954	\$316,807.57	\$316,808	-29,146
Kansas	\$356,565	\$326,524.89	\$326,525	-30,040
Kentucky	\$392,998	\$359,888.56	\$359,889	-33,110
Louisiana	\$458,156	\$419,556.99	\$419,557	-38,599
Maine	\$95,878	\$87,800.37	\$87,800	-8,078
Maryland	\$586,894	\$537,448.82	\$537,449	-49,445
Massachusetts	\$860,103	\$787,640.11	\$787,640	-72,463
Michigan	\$1,105,710	\$1,012,554.95	\$1,012,555	-93,155
Minnesota	\$622,288	\$569,860.90	\$569,861	-52,427
Mississippi	\$226,424	\$207,347.99	\$207,348	-19,076
Missouri	\$635,929	\$582,352.45	\$582,352	-53,576
Montana	\$73,747	\$67,533.88	\$67,534	-6,213
Nebraska	\$230,706	\$211,268.82	\$211,269	-19,437
Nevada	\$87,766	\$80,371.87	\$80,372	-7,394
New Hampshire	\$112,169	\$102,719.21	\$102,719	-9,450
# New Jersey	\$1,054,888	\$966,015.11	\$966,015	-88,873
> + New Mexico	\$0	\$0.00	\$0	0
New York	\$2,719,932	\$2,490,780.38	\$2,490,780	-229,152
# North Carolina	\$873,506	\$799,914.24	\$799,914	-73,592
North Dakota	\$86,202	\$78,939.45	\$78,939	-7,262
Ohio	\$1,060,543	\$971,193.22	\$971,193	-89,350
# Oklahoma	\$541,638	\$496,005.42	\$496,005	-45,632
# Oregon	\$516,659	\$473,131.31	\$473,131	-43,528
# Pennsylvania	\$1,767,710	\$1,618,781.68	\$1,618,782	-148,928
# Rhode Island	\$212,271	\$194,387.48	\$194,387	-17,884
South Carolina	\$348,106	\$318,778.72	\$318,779	-29,328
§ South Dakota	\$0	\$0.00	\$0	0
# Tennessee	\$651,284	\$596,413.62	\$596,414	-54,870
# Texas	\$2,194,097	\$2,009,246.47	\$2,009,246	-184,851
# Utah	\$298,842	\$273,664.89	\$273,665	-25,177
# Vermont	\$101,021	\$92,509.72	\$92,510	-8,511
# Virginia	\$856,662	\$784,488.61	\$784,489	-72,173
# Washington	\$912,660	\$835,768.92	\$835,769	-76,891
# West Virginia	\$242,849	\$222,389.19	\$222,389	-20,460
# Wisconsin	\$838,841	\$768,169.29	\$768,169	-70,672
§ Wyoming	\$0	\$0.00	\$0	0
American Samoa	\$1,911	\$1,750.00	\$1,750	-161
Guam	\$8,479	\$7,764.65	\$7,765	-714
§ No. Marianas Island	\$0	\$0.00	\$0	0
§ Puerto Rico	\$0	\$0.00	\$0	0
Virgin Islands	\$4,849	\$4,440.48	\$4,440	-409
Total	33,852,000	\$31,000,000.00	\$31,000,000	

Key: # Ratable reduction; priority previously applied, now superseded
+ Ratable reduction; priority superseded
§ Does not apply or qualify
> + New applicant receives \$0

Fourth Year of GAP Implementation (2013-14)**Conditions:**

Appropriation for FY 2013: \$71,000,000 (increase in funding from prior year)

LEAP funds for FY 2013: \$30,000,000

GAP funds for FY 2013: \$41,000,000

Priority States in FY 2010, 2011, and 2012 continue as priority States

Illustrates:

Sufficient funds are available, no ratable reduction necessary (Table H)

IN and IA priority is applied (Table H)

NM initially funded with priority (Table H)

Fourth Year of GAP Implementation (2013-14) (Table H)

Calculate using basic formula with all priorities applied

Federal Appropriation Available for GAP Allotment: \$41,000,000

State	State Enrollment with Priority Applied	Formula Amount	State Allotment	Prior Year Allotment	Change from Prior Year Allotment
§ Alabama		\$0.00	\$0	\$0	0
§ Alaska		\$0.00	\$0	\$0	0
Arizona	199,274	\$639,843.18	\$639,843	\$490,916	148,927
Arkansas	74,057	\$237,787.50	\$237,787	\$182,441	55,346
# California	2,248,000	\$7,218,038.80	\$7,218,039	\$5,537,998	1,680,041
Colorado	159,836	\$513,212.83	\$513,213	\$393,760	119,453
# Connecticut	190,539	\$611,795.41	\$611,795	\$469,396	142,399
# Delaware	39,035	\$125,336.36	\$125,336	\$96,164	29,173
District of Columbia	85,259	\$273,755.68	\$273,756	\$210,037	63,718
# Florida	457,930	\$1,470,354.32	\$1,470,354	\$1,128,121	342,234
§ Georgia		\$0.00	\$0	\$0	0
§ Hawaii		\$0.00	\$0	\$0	0
Idaho	39,198	\$125,859.74	\$125,860	\$96,565	29,295
# Illinois	790,818	\$2,539,213.26	\$2,539,213	\$1,948,196	591,017
+ Indiana	292,608	\$939,525.04	\$939,525	\$576,676	362,849
+ Iowa	157,306	\$505,090.13	\$505,090	\$310,022	195,068
Kansas	129,705	\$416,466.07	\$416,466	\$319,531	96,935
Kentucky	142,958	\$459,019.75	\$459,020	\$352,180	106,840
Louisiana	166,660	\$535,123.82	\$535,124	\$410,571	124,553
Maine	41,954	\$134,708.90	\$134,709	\$103,355	31,354
Maryland	213,490	\$685,488.93	\$685,489	\$525,937	159,552
Massachusetts	376,361	\$1,208,446.75	\$1,208,447	\$927,174	281,273
Michigan	483,833	\$1,553,525.52	\$1,553,526	\$1,191,933	361,592
Minnesota	226,365	\$726,828.89	\$726,829	\$557,655	169,174
Mississippi	99,078	\$318,126.71	\$318,127	\$244,081	74,046
Missouri	231,327	\$742,761.24	\$742,761	\$569,879	172,882
Montana	32,270	\$103,614.82	\$103,615	\$79,498	24,117
Nebraska	83,922	\$269,462.75	\$269,463	\$206,744	62,719
Nevada	31,926	\$102,510.28	\$102,510	\$78,650	23,860
New Hampshire	40,803	\$131,013.18	\$131,013	\$100,519	30,494
# New Jersey	383,729	\$1,232,103.65	\$1,232,104	\$945,324	286,779
> + New Mexico	74,275	\$238,487.47	\$238,487	\$0	238,487
New York	989,409	\$3,176,865.01	\$3,176,865	\$2,437,431	739,434
# North Carolina	317,749	\$1,020,250.36	\$1,020,250	\$782,781	237,469
North Dakota	31,357	\$100,683.29	\$100,683	\$77,249	23,435
Ohio	464,069	\$1,490,065.86	\$1,490,066	\$1,143,244	346,822
# Oklahoma	197,028	\$632,629.96	\$632,630	\$485,382	147,248
# Oregon	187,941	\$603,455.18	\$603,455	\$462,997	140,458
# Pennsylvania	643,026	\$2,064,674.57	\$2,064,675	\$1,584,109	480,565
# Rhode Island	77,216	\$247,931.45	\$247,931	\$190,224	57,707
South Carolina	126,628	\$406,586.22	\$406,586	\$311,951	94,635
§ South Dakota		\$0.00	\$0	\$0	0
# Tennessee	236,913	\$760,695.56	\$760,696	\$583,639	177,056
# Texas	798,130	\$2,562,692.75	\$2,562,693	\$1,966,211	596,482
# Utah	108,708	\$349,045.80	\$349,046	\$267,803	81,242
# Vermont	36,748	\$117,991.50	\$117,991	\$90,528	27,463
# Virginia	311,621	\$1,000,575.74	\$1,000,576	\$767,686	232,890
# Washington	331,991	\$1,065,981.19	\$1,065,981	\$817,868	248,113
# West Virginia	106,265	\$341,203.24	\$341,203	\$209,429	131,774
# Wisconsin	305,139	\$979,761.27	\$979,761	\$751,716	228,045
§ Wyoming		\$0.00	\$0	\$0	0
American Samoa	836	\$2,684.29	\$2,684	\$2,060	625
Guam	3,710	\$11,912.33	\$11,912	\$9,140	2,773
§ No. Marianas Island		\$0.00	\$0	\$0	0
§ Puerto Rico		\$0.00	\$0	\$0	0
Virgin Islands	2,122	\$6,813.47	\$6,813	\$5,228	1,586
Total	12,769,120	\$41,000,000.00	\$41,000,000		

Key: # Priority States, 125% applied

> New applicant

+ Priority initially applied

§ Does not apply or qualify